

ORDINANCE 2021-11

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, AMENDING ORDINANCE 2018-10, THE NEW EXCLUSIVE 5-YEAR FRANCHISE TO ADVANCED DISPOSAL SERVICES STATELINE, LLC, (“ADVANCED DISPOSAL”) A DELAWARE LIMITED LIABILITY COMPANY EFFECTIVE JANUARY 15, 2019, BY REMOVING THE PROVISIONS REGARDING THE COLLECTION OF RESIDENTIAL YARD DEBRIS WITHIN THE CITY LIMITS EFFECTIVE APRIL 7, 2021; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fernandina Beach finds it in the public interest to ensure that all areas within its limits are adequately provided with high quality solid waste collection and disposal services; and

WHEREAS, the City of Fernandina Beach finds it in the public interest to retain regulatory authority over refuse collection and disposal to the extent allowed by law, because of the overriding public health, safety and welfare considerations associated with the provisions of this service; and

WHEREAS, the City of Fernandina Beach finds it in the public interest to retain control over the use of public rights-of-way by refuse collection to assure against interference with the public convenience, to promote aesthetic considerations, and to protect the public investments in right-of-way property; and

WHEREAS, the City of Fernandina Beach finds it in the public interest to utilize quality refuse collectors and that this can be accomplished by protecting capital investments of refuse collectors; and

WHEREAS, the City of Fernandina Beach finds that the granting of an exclusive franchise is the best means of assuring that the above described interests of the City of Fernandina Beach are promoted; and

WHEREAS, the City granted a solid waste franchise to Advanced Disposal Services Stateline, LLC, beginning January 15, 2019; and

WHEREAS, at the February 2, 2021, City Commission meeting, Advanced Disposal representatives presented options for the provisions related to the collection of yard debris, including the current contract language of “bag and bundle” or a significant rate increase for a different service level; and

WHEREAS, the City Commission directed that the City assume the collection of yard debris effective April 7, 2021; and

WHEREAS, this Ordinance is adopted pursuant to the authority of Section 166.021, and Chapter 403, Part IV, Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, THAT:

SECTION 1. DEFINITIONS.

“Anniversary Date” shall mean the date that is one year after the Effective Date of this Franchise Ordinance.

“Authorized Hours for Collection” shall mean the hours that the Grantee is authorized to collect all types of solid waste and recyclables at customer locations within the City’s city limits. The authorized hours for collection are between the hours of 6:00 am and 8:00 pm for residential collection inclusive, unless otherwise authorized by the City for a specific duration. The authorized hours for collection for commercial collection is 3:00 am and 8:00 pm inclusive, unless otherwise authorized by the City for a specific duration. Special consideration will be given for certain commercial establishments that neighbor residential properties.

“Bulky Waste” shall mean large discarded items generated from residences and commercial businesses within the City, such as pallets, furniture, refrigerators, stoves, e-waste, and other household type appliances, abandoned and improperly placed dumps of the same. The Grantee shall have the right to charge for extra bulky waste pickup (items greater than 3 cubic yards)

“Cart” shall mean: (i) a ninety-five gallon container on wheels with attached lids, serviced by rear load collection vehicles with a hydraulic tipper that mechanically assists the helper to empty the container, provided by the Grantee for garbage/trash collection or service at residential and small commercial account locations; (ii) a 65-gallon container on wheels with attached lids serviced by collection vehicles with a hydraulic operated side-arm (or tipper) that mechanically collects and empties the container, provided by the Grantee for recyclables collection or service at residential and small commercial account locations; (iii) all carts shall have imprinted on each on each of the main body a City logo with City name, as approved by the City, and a serial number imprinted on another side of the main body; (iv) cart type/specifications shall be state of the art in the industry in durability and wall thickness, practicality, customer safety and ease of use, washability, mobility, stability to wind load, resistant to opening and toppling by animals, resistant to rain leakage when closed, having lid handles; (v) selection of cart manufacturer and type/specifications and markings are subject to City approval prior to purchase by the Grantee; (vi) the cost of purchasing providing, maintaining, and replacing of all carts to customer account locations shall be the responsibility of the Grantee at no additional cost to the City and shall be a part of the collection and disposal costs in the Grantee unit price rates; (vii) all carts with the City logo(s) with City name shall automatically become the property of the City, at no additional cost to the City, on termination of the franchise contract and the Grantee inventory shall be transported to the City location identified by the City at no additional cost to the City; (viii) Grantee shall collect garbage/trash and recycling materials from carts using collection vehicles having hydraulic side-arm (or tipper) that mechanically collects and empties carts.

“Change in Law” means (i) the adoption, or modification after the date of this Franchise of any substantially increased federal, state or local fees or taxes, law, regulation, order, statute, ordinance or rule that was not adopted, promulgated or modified on or before the date of this Franchise, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Franchise, which in the case of either (i) or (ii) establishes requirements affecting the Grantee’s operation under this Franchise in a substantial manner so as to make the performance of the requirements of this Franchise more burdensome than before the change of said law. Any change in tax law or workers compensation law shall not be considered a change in law pursuant to this definition.

“CITY” shall mean the City of Fernandina Beach, Nassau County, Florida, a municipal corporation and its government and the City Manager, and/or his authorized or designated representative(s); and may also be referred to as GRANTOR or FRANCHISOR.

“Commercial” or “Commercial Establishment” shall mean any public or private place, building and/or enterprise devoted in whole or in part to a business enterprise whether nonprofit or profit making in nature, except where such place, building and/or enterprise constitutes a single-family residence or multifamily dwelling. Commercial establishments utilize Commercial container units such as Grantee provided dumpsters or customer provided Containers that are mechanically emptied by other than cart collection vehicles. These consist of, but are not limited to, office buildings, stores, hotels and motels, restaurants, schools, churches, clubs, medical clinics and hospitals, assisted living facilities, and other service establishments.

“Commercial Collection and Disposal Services” shall mean garbage and trash collection and disposal service for Commercial establishments utilizing containers other than those described as carts for collection of garbage/trash. These containers, such as dumpsters, roll-offs, compactors, etc., are mechanically emptied by other than cart collection vehicles. The Grantee shall provide the following collection and disposal services to each customer location – garbage/trash, recycling (at customer option), bulky waste and ~~yard-waste~~. Commercial establishments in this service category shall use, but are not limited to, any of the following for the accumulation of garbage/trash: (i) refuse containers as defined in this contract and as modified in the future; (ii) containers emptied by mechanical means; (iii) dumpster containers, provided by the Grantee, at the Grantee’s expense (and at no additional cost to the City or account holder) in two, four, six, eight cubic yard capacities, to include ancillary items, such as rollers and dumpster security devices (not enclosures or shoots) Provision, collection, disposal, and servicing are provided in the price per pull; (iv) roll—off containers, provided by the Grantee, at the Grantee’s expense (and at no additional cost to the City or account holder), to include ancillary items, such as rollers and security devices on roll-offs (not enclosures or shoots), as approved by the City, when permanent-use roll-off service is approved by the City, subject to transition from existing customer contracts for existing service. Provision, collection, disposal, and servicing are proved in the price per pull; (v) Commercial cardboard containers for business provided by the Grantee, at the Grantee’s expense (and at no additional cost to the City or account holder) and placed in various locations around the City. Currently, there are twenty-six yard cardboard recycle dumpsters throughout the City; (vi) Grantee provided containers and collection for temporary-use dumpster and/or roll-off service. This will be an optional service for customers provided at the same price as the permanent-use roll-off service. Provision, collection, disposal, and servicing are provided in the price per pull; (vii) Locations, quantities and frequency of pickups, and quantities and sizes of dumpsters and specialty items such as gravity locks and rollers may change from time-to-time at the sole discretion/direction of the City; (viii) Grantee provided solid waste collection and disposal service for customer provided compactors and dumpsters, subject to transition from existing customer contracts for existing service. Collection and disposal are provided in the unit price per pull; (ix) Work shall be done in a sanitary manner. The Grantee’s employees shall immediately pick up any garbage or trash spilled or on the ground in the area.

“Commercial Trash” shall mean any and all accumulations of such combustibles as paper, rags, wood, yard trimmings, wooden or paper or cardboard boxes; non-combustibles such as metal, glass, stone and dirt; and any other accumulations not included within the definition of garbage,

generated by the operation of stores, offices and other business places. Commercial Trash shall include all trash placed in public receptacles, on public streets, in parks and playground, and in other public places. Commercial trash includes bulky items or piles greater than 3 cubic yards.

“Company” shall refer to Advanced Disposal Services Stateline, LLC, (“Advanced Disposal”) and may also be referred to as the GRANTEE or FRANCHISEE.

“Construction and Demolition Debris” shall mean discarded materials generally considered not to be water-soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris. Collection of construction and demolition debris is to be accomplished via the open market and is outside this solicitation.

“Commission” shall mean the City Commission of the City of Fernandina Beach, Florida.

“Curbside Collection Point” shall be that area on or adjacent to the driveway within five feet of, and in no case more than ten feet from, the street, roadway, or alley, behind the curb or edge of pavement and not by the driving surface of the street or roadway or in the drainage gutter or drainage swale or ditch, not on landscaping of any sort other than grass, and as may be specifically requested by the customer, subject to City review. For disabled and/or elderly customers properly acknowledged, this shall mean the side door or other designated collection point. The Grantee is responsible to appropriately identify, subject to City review, the side door pickup customer premises, making the side yard pickup locations easily identifiable from the driving pavement by the collection route drivers. The Grantee shall provide side door pickup at no additional cost to the City. This is also referred to as roll-out, roll-back service.

“Designated Recovery Facility” shall mean the recycling/processing center(s) specifically agreed upon by the Grantee and the City for the recovery of recyclable materials.

"Disaster debris" shall mean any rubbish or remnants, both combustible and noncombustible, resulting from storms or any emergency condition, requiring special handling and/or equipment for bulk removal of both natural and man-made material.

“Franchise” shall mean this Franchise Agreement “Effective Date” shall mean January 15, 2019.

“Excluded Waste” shall mean any and all debris and waste products generated by land clearing, demolition, building construction or alteration and hauled away by the respective contractor (except do-it-yourself projects) as approved by City representatives; public works type construction projects whether performed by a governmental unit or by contract; contractor generated large amounts of vegetation debris which is more than the customer could reasonably do independently; materials deemed by the City to be hazardous waste and items not allowed at the County landfill or other approved landfill. Yard waste produced by and hauled away by landscape maintenance contractors is also considered excluded waste.

“Franchise Fee” shall mean the fees set forth in Section 5 of the Franchise.

"Garbage" shall mean every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers); and all putrescible or easily decomposable animal or vegetable waste matter that is likely to attract flies or rodents.

"Grantee" shall mean Advanced Disposal Services Stateline, LLC, (“Advanced Disposal”) or “Franchisee” who is granted this exclusive Franchise and hereby undertakes to perform each and every obligation assigned herein and hereby agreed to.

"Grantor" shall mean the City of Fernandina Beach, Florida or “Franchisor”.

"Gross Revenue" shall mean and include any and all fees received by Grantee for service and disposal which were generated within the service area pursuant to this Franchise with the exception of those fees associated with storms and other emergencies as defined in Section 28.

"Hazardous Waste" shall mean waste, in any amount, which is deemed, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law. For purposes of this Franchise, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans, and any items containing chlorofluorocarbons or Freon.

“Household Trash” shall mean any and all accumulations of waste material from the operation of a home, which is not included within the definition of garbage. Household Trash shall include all bulky wastes, yard toys, and building material waste from residential type do-it-yourself projects (less than three cubic yards) as approved by City representatives but does not include vegetative matter; and abandoned and improperly placed dumps of the same. Multifamily Dwelling shall mean any building(s) containing more than two permanent living units such as but not limited to condominiums, townhouse complexes and apartment buildings, which utilize Multifamily Dwelling Container Units such as Grantee -provided dumpsters or garbage carts. Within the duration of this contract the City may modify this definition enabling a change of service type to better service the customer and the aesthetic quality of the property. The type, size and number of containers will be determined by the City Manager and/or his designated representative.

“Net Revenue” means gross revenue less expenses directly and proximately related to the operation of the Franchise.

"Occupant" or "Resident" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, syndicates, fiduciaries, corporations, and all other, groups or combinations permitted under Florida law.

"Plastic liner" shall mean a plastic bag no larger than a thirty-five gallon garbage can of sufficient strength to hold contents securely tied at top and not to exceed fifty pounds when full. Receptacle is a general term meaning the container provided to or by the customer that is used by

the customer for depositing garbage/trash or recycling and that is emptied by the Grantee such as a cart, dumpster, compactor, roll-off, etc.

“Recycling Carts” shall mean the carts purchased and distributed by the Grantee on behalf of the City for the intended use as a receptacle for recyclable materials for Residential and Multifamily Dwelling customers. Commercial customers may also use Recycling Carts as receptacles for recyclable materials at the customer option. The purchase, provision, maintenance, and replacement of these carts shall be the responsibility of the Grantee at no additional cost to the City.

“Recycling Collection Service” refers to the collection, transportation, and recovery of recyclable materials by the Grantee from participating residential cart pickup accounts, small commercial cart pickup accounts (optional participation), unique commercial cart pickup accounts (optional participation) and Multifamily Dwelling collection accounts, and Commercial collection accounts (optional participation) in the recycling service area.

“Recyclable Materials” shall mean newspaper, paper, aluminum and metal beverage and food cans, all colors of glass bottles/jars, and plastic bottles/containers, which previously held non-automotive, non-toxic liquid, and such other materials, as mutually agreed by the Grantee and the City, that are recyclable, source separated and co-mingled for single stream recycling collection. Please refer to Section 20: Recycling Program for a more detailed list of Acceptable and Non-Acceptable recycling items.

"Recycling Service Area" refers to the corporate limits of the City of Fernandina Beach, Florida as hereafter amended through annexation.

“Residential Collection & Disposal Service”, also known as Residential Cart Pickup Service, shall mean garbage and household trash collection and disposal service to one single family dwelling, or one living unit in a duplex or other multifamily dwelling utilizing cart pickup garbage/trash collection service. The Grantee shall provide the following collection and disposal services to each customer location - garbage/trash, recycling, ~~and bulky waste and yard waste~~ and bulky waste. Grantee shall service the garbage/trash cart(s) with rear load vehicles with hydraulic tippers to assist the helper to empty the carts whereas recycling carts will be collected by vehicles with hydraulic side-arm (or tipper) that mechanically empties carts.

“Roll-out, Roll-back” service means the Grantee provides, at no additional cost to the City, roll-out, roll-back service for elderly or disabled residents. This service will be provided to elderly residents or those with short-term or long-term disabilities who are unable to bring their solid waste and recyclables to the curbside collection points. Residents who may have such difficulty putting out their refuse or recyclables may request for roll-out, roll-back service by providing to the Utility Billing Department a physician’s note, detailing the duration of the disability. Upon the City’s approval, the resident is notified with the confirmed period of roll-out, roll-back service. The Grantee shall collect, within the City approved time period, the elderly/disability resident’s refuse and recyclables from their side door or designated locations on the property. The roll-out, roll-back service is available to all other City residents for an additional charge.

“Solid Waste or Refuse” shall include and mean all garbage, dead animals, vegetative garden and yard waste, bulky waste, household trash, construction and demolition debris,

commercial trash, abandoned and improperly placed dumps of the same, sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from the waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in s. 403.703(7), Florida Statutes, are not solid waste.

"Special material" shall mean bulky materials or other special wastes that are not stored in standard storage containers and cannot be picked up by a normally used collection vehicle. With the exception of major appliances, all wastes such as furniture, "do it yourself" building materials, tree limbs, non-containerized trash piles and any unusually large amount of refuse not suitable for containerization will be picked up at the curb as a special service of the Grantee at no additional charge. This service will be limited to materials that can safely be collected by the use of a mechanical "clamshell" hoist collection vehicle. Discarded major appliances will be collected by Grantee at a charge specified in Section 30. All fees received by the Grantee for the collection of special materials are subject to the City's Franchise Fee.

"Surety" shall mean the party who is bound with and for the Grantee to insure the payment of all lawful debts pertaining to and for acceptable contract performance.

~~"Yard Waste" shall mean every accumulation of vegetative garden and yard trash which is the accumulation of leaves, grass cuttings, shrubbery cuttings, limbs, trunks, palm fronds or other refuse from the care of lawns, gardens, shrubbery, vines and trees, and improper/ abandoned dumps of the same, including (i) loose piles of garden and yard trash which shall be collected with pitch forks, brooms and other tools as needed. If the grass clippings, leaves and pine needles are not containerized, the City may require the Grantee to pick this up and leave a door hanger or flier for residents on the proper procedures for the containment of yard waste; (ii) but not including dirt, soil or sod removed in the renovation or rebuilding of lawns and turfs, not including tree limbs, shrubbery cuttings and the like which exceed six inches in diameter and/or six feet in length and not including contractor generated accumulations of the same [except where amounts are generally no larger than what the resident(s) could have reasonably generated on their own; City retains sole discretion on this determination. Approximately three cubic yards per residence; (iii) a special pickup may be requested by the customer, and a reasonable service charge may be levied by the Grantee, subject to notification and agreement, of the customer and the City; (iv) landscape maintenance contractors and tree removal contractors are to transport and dispose of generated yard waste from customer locations, and such is considered excluded waste unless the City determines on a case by case basis that such shall be collected by the Grantee.~~

SECTION 2. GRANT OF FRANCHISE.

A. Grantee is hereby granted an exclusive, mandatory residential and commercial Franchise, including every right and privilege appertaining thereto, to operate and maintain a residential recycling and residential and commercial trash, garbage and refuse collection and removal service in, upon, over and across the present and future streets, alleys, bridges, easements and other public places within the limits of this Franchise for the purpose of collecting and

disposing of residential recyclables, residential and commercial trash, garbage and other refuse generated by the citizens, residents and inhabitants of the City of Fernandina Beach, Florida. Grantee is also hereby granted title to all such residential recyclables, residential and commercial trash, garbage and refuse generated within said boundaries, to the extent that the Grantor can establish its legal right to make such grant of title.

B. Grantee understands and agrees that Grantor has the right to use the services of another vendor/contractor for select recycling services such as recycling events and the operation of the City's Recycling Center without breaching the exclusivity granted in Section 2(A) above.

C. Request for Proposals #17-06, including all addendums thereto of the City of Fernandina Beach is herein incorporated by reference, as is the response to the Request for Proposals #17-06 Qualifications and the rate proposal submitted by the Grantee, with the exceptions noted herein, including the collection of yard waste to be assumed by the City on April 7, 2021.

SECTION 3. LIMITS OF FRANCHISE.

This Franchise covers the corporate limits of the City of Fernandina Beach, Florida. Grantee agrees that the limits of the Franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

SECTION 4. TERM.

A. This Franchise shall extend the existing Franchise for a period of five years through January 15, 2024, unless sooner terminated by reason of breach of the terms hereof by the Grantee which result in the failure of the Grantee to provide effective and efficient service.

B. This Franchise may be renewed for additional term(s) of no more than five years, or portion of a term, on the same terms and conditions, upon the mutual written agreement of both the Grantor and Grantee. If either party is willing to renew, said party shall give written notice to the other of its willingness to renew said agreement. Such notice shall be given no sooner than nine months and no later than six months before January 15, 2024. Said notice may also be delivered by hand within the above time frame, and if so delivered, a receipt thereof signed by an authorized agent of the Grantor or of the Grantee as applicable, shall be evidence of delivery. Either party shall have thirty days to respond to the request of the other party, indicating their agreement or disagreement with the proposed renewal.

SECTION 5. FRANCHISE CONSIDERATION.

A. The consideration for this Franchise shall be as follows:

1. Garbage, and Recycling, ~~Yard Debris~~

- a. Residential Service: 10% of the rate established in Section 30
- b. Commercial Service: 10% of the rate established in Section 30
- c. Special/Roll off Services: 10% of the rate established in Section 30

2. Recycling: Additionally, the Grantee may appeal for a rate increase on an annual basis if the cost of recycling processing continues to increase. The shared rebate of 50% of Net Revenues received for the sale of Recyclable Materials, as set forth in Section 20 (C) of this Franchise would only occur if such revenues exceed the recycling processing costs.

B. At the present time, this Franchise does not include construction and demolition waste removal service, and no Franchise Fee will be due for those services. Grantee shall not be required to collect Hazardous Waste, dead animals, yard waste, large branches, trees or bulky or non-combustible materials not susceptible to normal loading and collection in "load packer" type sanitation equipment used for regular collections from domestic households. ~~Branches should be no larger than 4 inches in diameter, no longer than four feet, and not more than three cubic yards in total.~~ This Contract does not include the collection and disposal of any increased volume resulting from a flood, hurricane, or similar or different acts of God over which the Company has no control.

1. It is the Grantor's intent to revise its existing Ordinance to provide for the availability of non-exclusive Franchises for construction and demolition waste removal services. At such time as the Grantor's ordinance is modified, the Grantee will be required to follow the ordinance, and pay the appropriate fees set forth therein.

C. The Franchise Fee will be assessed and collected by the Grantor, and will be added to the Rates as set forth herein.

SECTION 6. ASSIGNMENT.

A. The Franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the express approval of the Grantor, which shall be reflected by a resolution of Grantor. In the event of such an assignment, Grantee shall cause its assigns to execute an Agreement of Acceptance, subject to the approval of the Grantor, evidencing that such assignee accepts the assignment subject to any and all terms, conditions and limitations imposed hereby and which acceptance shall include an affirmative statement evidencing such Grantee's intent to fulfill the obligations imposed by Grantee in contemplation hereof. Notwithstanding the Grantor's approval of such an assignment and assignee's acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

B. A transfer of more than 51% of the issued outstanding stock of Grantee shall constitute an assignment for the purpose of this section. Likewise, any transfer of the voting rights amounting to 51% or more of the issued or outstanding stock of Grantee shall constitute an assignment for the purposes hereof.

SECTION 7. BANKRUPTCY OR INSOLVENCY.

If the Grantee files a petition for the appointment of a receiver or a petition of voluntary or involuntary bankruptcy, this Franchise is automatically terminated as of the date of the filing of such petitions.

SECTION 8. DEFAULT.

A. Material failure on the part of the Grantee to comply in any material respect with any of the provisions of this ordinance shall be grounds for a forfeiture of this Franchise, but no such forfeiture shall take effect until Grantor has served upon the Grantee written notice of default setting forth the nature and extent of said default. Following receipt of the notice of default, Grantee shall have one business day to collect any garbage or trash that was not collected at the regularly scheduled pick up time and shall have ten days to correct, or to notify the City in writing,

subject to City approval, how the Grantee intends to correct other identified defaults. If Grantee disagrees with the reasonableness or propriety of Grantor's notice of default, Grantee may protest such default by filing with the City Manager a written protest within three business days of receipt of Grantor's notice regarding a missed trash/garbage pickup and within ten days of receipt of Grantor's notice for other identified defaults.

B. If the Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's notice of default, then the issue shall be resolved by a court of appropriate jurisdiction located in Nassau County, Florida pursuant to Section 16 of this Ordinance.

SECTION 9. RATE CHANGES AND RIGHT OF FIRST REFUSAL.

A. The rates set forth in Section 30 may be adjusted annually beginning on the Anniversary Date of this Franchise to include the Consumer Price Index –Water, Sewer and Trash Collection Services. All Items (base year 1997=100%), as published by the United States Department of Labor – Bureau of Labor Statistics. Such CPI change will be computed each year after the completion of the month of April and any change will be implemented and effective with July billings each year. The Grantee agrees that the rate increase will be limited to a maximum of 4% per year.

1. The CPI increase for 2021 is 3.557%. In May of each subsequent year during the term of the Franchise, the Grantor shall notify the Grantee of the Consumer Price Index— Water, Sewer and Trash Collection Services by which the rates set forth herein will be adjusted. The rate increase will be effective starting with ~~will~~ bills issued after June 30 of that year.

2. Grantor and Grantee agree that certain Changes in Law, as defined herein, may have such a substantial effect that a rate increase may be required. Grantee may petition the Grantor to adjust its fees based upon increases in the cost of doing business due to said Change in Law. The Grantee's request must be made within 120 days of the occurrence of such change or cost and shall contain reasonable proof and justification to support the need for the rate adjustment. The Grantor may request from the Grantee, and the Grantee shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Grantor shall approve or deny the request, in whole or in part, within sixty days of receipt of the request and all additional information required by the Grantor. The Grantor shall make a reasonable and equitable determination based upon the documentation provided in reaching its decision provided however that Grantor shall not unreasonably withhold consent to any request for fee increase which is based on a legitimate and documented increase in cost.

B. In the event Grantee shall at any time during the term of this Franchise desire to sell the disposal service then existing and shall have received a bona fide offer from any other person, firm, corporation or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, the Grantee shall within ten days after receipt of such bona fide offer advise the Grantor in writing of the purchase price and other terms and conditions of such offer, and the Grantor for a term of thirty days after giving of such notice shall have the option to purchase the disposal service from Grantee upon the terms and conditions as set forth in said offer. In the event the Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, Grantee shall have the right to sell the disposal service to the prospective purchaser thereof, subject to the terms of Section 6 of this Franchise.

C. The Grantor also reserves the right to purchase the disposal service at such time as the Grantee is found to be in material default or demonstrates prolonged substandard service. The Grantor also reserves the right to purchase the disposal service at the conclusion of any term of this Franchise. If the Grantor gives notice of its desire to purchase the disposal service, the purchase price shall be based upon an appraisal of all the assets to be sold. The appraiser performing the appraisal shall be mutually agreeable to both parties. The Grantor and Grantee may also agree in writing on another method for determining the purchase price.

SECTION 10. PUBLIC NOTICES AND EDUCATION SERVICES.

A. The Grantee shall partner with the City in developing and implementing public education and community outreach programs. The public education program shall emphasize recycling and waste reduction. The Grantee shall coordinate with the City in the messaging, publication, and dissemination of such information. The City shall retain final approval of all program materials. The Grantee shall have a Social Media Presence with a texting platform to provide news to customers in an expedient manner. The Grantee shall be responsible for all expenses associated with the notices and education services and Social Media required herein and provide the same at no additional cost to the City.

B. Notices:

1. Notice for Commencement of Services: At least a sixty calendar day notification before the coordinated Commencement (Residential, Multifamily Dwelling and Commercial Establishment) concerning the Grantee's Collection and Disposal Services. A 2nd Notice shall be provided to Residential and Commercial customers approximately two weeks before the Commencement/Transition Start Date. The second or third notice should include a refrigerator magnet with the weekly/two times per week pickup schedule for each customer. The notices are to be hand-delivered via door hangers and posted to Social Media. At a minimum, the notice to Residential and Small Commercial Customers shall:

- a. Identify each of the Scheduled Collection Days for the Customer receiving the notice.
- b. Summarize the applicable Set-Out requirements and include other educational and promotional information coordinated between the Grantee and the City. The notice also may provide any other relevant information concerning the Grantee's services.
- c. The City shall retain final approval of all program materials prior to printing and/or distribution.

2. Notices for New Customers: The Grantee shall design and print upon the City's approval and mail or deliver appropriate informational materials for each New Customer. At a minimum, the notice shall include the same information that is contained in the annual notice to customers. The Grantee will use the Social Media format to expedite this information.

3. Notices Concerning Changes in Collection Schedules: The Grantee shall deliver a notice to each Customer that will be affected by a change in the Scheduled Collection Days. Such Customers shall receive notice approximately two weeks prior to the change. The City's decision on schedules, or changes thereof, shall be final. This Grantee will use the Social Media format for delivering this information immediately to the customer.

5. Notices for Holidays: The Grantee shall provide notice to Customers that will be affected by a change in their Scheduled Collection Days because of a Holiday. The Grantee will use the Social Media format for delivering this information immediately to the customer.

SECTION 11. RESTORATION.

The Grantee agrees to repair all property, public or private, altered or damaged to the extent caused by it, its agents or employees' negligence or misconduct in the performance of its duties herein in as good or better condition as it was before being damaged or altered. The Grantor shall notify the Grantee at least monthly of damages caused by the performance of its operations on streets within the City limits.

SECTION 12. COMPLIANCE WITH LAWS.

Grantee shall conduct operations under this Franchise in compliance with all applicable laws. Grantee specifically agrees to be solely responsible for the enforcement, administration and compliance with all applicable provisions of Chapter 403, Part IV, Florida Statutes, and future amendments thereto.

SECTION 13. LIABILITY INSURANCE; HOLD HARMLESS; WORKERS COMPENSATION.

A. *INSURANCE.* Grantee shall carry commercial general liability insurance in the amount of ~~\$1,000,000~~ \$5,000,000 for each occurrence combined single limit and ~~\$2,000,000~~ \$10,000,000 general aggregate. Grantee will carry commercial automobile liability insurance coverage in the amount of \$5,000,000, covering all of the trucks or other vehicles used for carrying out the work called for in this Franchise. Grantee will also carry commercial excess liability coverage in the amount of \$5,000,000, combined single limit and \$10,000,000 general aggregate. A certificate showing that the Grantee has in full force and effect the aforesaid insurance shall be filed with the Grantor upon execution of this Franchise, and yearly thereafter endeavoring to provide said certificate at least thirty days prior to the date of the expiration of said policies or insurance for each year of said Franchise. The aforesaid insurance shall be in such form and written by such companies whose A.M. Best rating is not less than A+ VII. All such policies shall require thirty days advance notice of the cancellation of the insurance except as otherwise dictated by State law. Said policies of insurance shall name Grantor as additional insured for operations arising out of this contract. The Grantee shall provide Grantor a separate written endorsement showing Grantor as additional insured for all lines of insurance required hereunder (other than workers compensation insurance). The insurance certificate is attached hereto as Exhibit "A."

B. *WORKERS' COMPENSATION COVERAGE.* Grantee shall carry Workers Compensation insurance on all its employees and show proof of insurance to the Grantor, as requested. All such Workers Compensation policies shall provide for notice by the insurer to the Grantor at least thirty days prior to any termination or revocation thereof except as otherwise dictated by law.

C. *INDEMNIFICATION.* The parties recognize that Grantee is an independent contractor. Grantee agrees to indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, and employees (the "City Parties") , from, and against all liability and expense, including

reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by any negligent act or omission in violation of this Agreement of Grantee, its officers, employees, agents, and representatives; provided however, Grantee shall have no obligation hereunder to indemnify, defend or hold harmless the City Parties for any such losses, damages, and claims of any kind arising out of, directly or indirectly, or in connection with the negligent and/or deliberate acts of omissions of the City Parties. Grantee's liability hereunder shall include all reasonable attorney's fees and costs incurred by the City in the enforcement of this indemnification provision in the event the City prevails in such enforcement action. In the event the City does not prevail in its enforcement of this indemnification provision, the City shall reimburse Grantee for all reasonable attorney's fees and costs incurred by Grantee to defend such enforcement action. The obligations contained in this provision shall survive for a period of three years after termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

The City agrees to indemnify, hold harmless, and defend the Grantee, its officers, directors, employees and affiliates (the "Advanced Parties") from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of the City, its commissioners, mayor, officers, employees, agents, and representatives; provided however, the City shall have no obligation hereunder to indemnify, defend or hold harmless the Advanced Parties for any such losses, damages, and claims of any kind arising out of, directly or indirectly, or in connection with the negligent and/or deliberate acts of omissions of the Advanced Parties. The City's liability hereunder shall include all reasonable attorney's fees and costs incurred by Grantee in the enforcement of this indemnification provision in the event the Grantee prevails in such enforcement action. In the event Grantee does not prevail in its enforcement of this indemnification provision, Grantee shall reimburse the City for all reasonable attorney's fees and costs incurred by the City to defend such enforcement action. The obligations contained in this provision shall survive for a period of three years after termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement or other contract or written instrument between the parties.

SECTION 14. PERFORMANCE BOND.

Grantee shall furnish to the Grantor a performance bond, on a form approved by the Grantor, for the full performance of this Franchise and all of the obligations arising hereunder in the amount of \$500,000. Said bond shall be executed by a surety company approved by Grantor and licensed to do business in Florida. The Performance Bond is attached hereto as Exhibit "B."

SECTION 15. RIGHT TO REQUIRE PERFORMANCE.

The failure of the Grantor at any time to require performance by the Grantee of any provision of this Franchise shall not affect the right of the Grantor to enforce same; nor shall waiver

by the Grantor of any breach of any provision in this Franchise be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. The Grantor, in accord with the provisions of Section 8, shall have the right to terminate this Franchise if Grantee fails to timely correct violations of this agreement as provided in Section 8.

SECTION 16. DISPUTE RESOLUTION.

This Franchise shall be governed by the laws of the State of Florida, and if any controversy shall arise between the parties either party may pursue all available legal remedies in the appropriate Nassau County, Florida court.

SECTION 17. OPERATIONS DURING DISPUTE.

A. In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to the terms and conditions, performance or compensation requested under this Franchise, the Grantee shall continue to render service in full compliance with all terms and conditions of this Franchise regardless of the nature of the dispute and Grantor shall continue to pay Grantee for its services.

B. Grantee expressly recognizes the paramount right and duty of Grantor to provide adequate waste collection and disposal service as necessary governmental functions, and further agrees, in consideration for the execution of this Franchise, that in the event of a dispute, said Grantee will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment in the matter in dispute or present the matter to a court of competent jurisdiction located in Nassau County, Florida in an appropriate suit instituted by Grantee.

C. If the term of this Franchise is not renewed, Grantee shall continue to provide service for ninety days following expiration or until a substitute Grantee is in place, whichever comes first.

SECTION 18. STANDARD OF PERFORMANCE.

A. If the Grantee fails to collect the materials herein specified for a period in excess of three consecutive scheduled working days or materially breaches any other substantive provision of this franchise, and fails to cure said breach within three working days after receipt of written notice of said breach by the Grantor, the Grantor may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other causes beyond the reasonable control of Grantee):

1. Enter into contract(s) or agreement(s) with any other qualified firm(s) to provide solid waste collection and disposal until such time as the Grantee is able to satisfactorily fulfill its responsibilities under this Franchise as determined solely by the Grantor.

SECTION 19. CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL.

A. Grantee shall be required to provide curbside recycling to all residential customers.

B. Grantee shall collect all residential recycling materials within the corporate limits of the City, transport and provide for recovery of said residential recyclable materials at a designated

recovery facility. The Grantee shall perform such services as are required to provide a complete residential recyclable materials program.

C. Collection of recyclable materials shall be at curbside or other such locations as will provide ready accessibility to the Grantee's collection crew and vehicle. In the event an appropriate location cannot be agreed upon, the Grantor shall designate the location. Handicapped residents shall be accommodated at no additional fee.

D. The Grantee shall pick up all recyclable materials which have been properly prepared for collection and placed in recycling carts placed at the curbside. The Grantee, at its own cost, shall distribute one cart to hold recyclable materials to be collected to each single-family residence within the service area. Multi-family housing units interested in a recycle program will negotiate with Grantee directly to determine feasibility for implementation. The carts shall be replaced by the Grantee as required. The Grantee shall maintain an adequate supply of carts at all times.

E. The Grantee shall collect all recyclable materials set out for the purpose of recycling from all single family residences. The collection of recyclables shall be conducted using a single cart, furnished by the Grantee, for a commingled/single stream system. As it becomes economically feasible, the Grantee shall provide adequate containers to initiate a multi-material recycling program.

F. All refuse and recyclable materials hauled by the Grantee shall be so contained, held or enclosed that leaking, spilling or blowing are prevented.

G. The Grantee shall make collections with as little noise and disturbance to the residents as practicable and in conformance with the City's Noise Ordinance. Grantee shall handle recycling carts with reasonable care and return them to the approximate curbside location from which they were collected. Any recyclable materials spilled by the Grantee shall be picked up immediately. Recycling carts shall be thoroughly emptied.

H. Grantee shall collect recyclable materials within the service area one time per week. The day of collection shall be the same day as one of the regular collection days for solid waste.

SECTION 20. RECYCLING PROGRAM.

A. The Grantee shall be responsible for maintaining the information and records adequate to determine participation rates and weekly setout rates by percent for each material, volume of solid waste diverted from landfill by percent, weight by material of items recycled, neighborhoods above or below average participation and other information requested by Nassau County or the State of Florida to meet the requirements of the Solid Waste Management Act, any requirements of Florida House Bill 7243, or to obtain grant funds from the Solid Waste Management Trust Fund. The Grantee shall furnish an annual report to the City containing the requested information. Reports shall be on forms and in a format required by the Grantor.

B. To the extent possible, based on availability, capacity and market prices, the Grantee may market the recyclable materials through local business operations in the City of Fernandina Beach. At a minimum, the Grantee shall provide for taking, marketing or storing recyclables at a permitted landfill.

C. The Grantee shall account for all revenues generated through recycling and report all such revenues to the City along with copies of the receipts from the purchaser of the recyclable

materials. The Grantee shall remit monthly to the Grantor 50% of the net revenues from the sale of recycled materials. All documentation relating to the collection and payment for recyclable materials shall be subject to audit by the Grantor. Additionally, the Grantee may appeal for a rate increase on an annual basis if the cost of recycling processing continues to increase. The shared rebate of 50% of Net Revenues received for the sale of Recyclable Materials, as set forth in Section 20 (C) of this Franchise would only occur if such revenues exceed the recycling processing costs.

D. On the Effective Date (July 1, 2018), the Grantee shall provide, at its own expense, the following:

(1) Sixty-five gallon recycle carts to all residents imprinted with the City seal and name;

(2) An in-mold label on the top of the cart which details a list of the acceptable and non-acceptable items that may be recycled and the contact information for concerns or complaints; and

(3) Notice in of the change to the recycling program along with a list of acceptable and non-acceptable items.

E. *Acceptable and Non-Acceptable recycle items.* Acceptable items for recycle are as follows:

Household Sized Containers – Must be empty and dry (1 gallon or 1 liter max)

(1) Plastic Resin Codes #1 thru #7 (Code is on the bottom of container)

(2) Glass (All Colors)

(3) Metal Cans (Aluminum & Tin)

Household Paper Materials – Max single item size may not exceed 2ft. by 2ft

(4) Cardboard Boxes (Must be flattened and, if needed, cut to size.)

(5) Brown or Grey Food Boxes (Cereal, Dry Food, Baking Ingredients, etc.)

(6) Mailing Supplies (Junk Mail, Envelopes, Letters, etc.)

(7) Newspapers (Inserts & Catalogs)

(8) Brown Paper Bags

(9) Office Paper (Copy & Print Paper, File Folders)

(10) Brown or Gray Fiber Packages (Soda Cartons, dry food packages, etc.)

NEVER Acceptable Items & Material

Household Sized Containers= Must be empty and dry (1 gallon or 1 Liter max)

(1) Plastic Film (No Grocery Bags, Tarps, etc.)

(2) Food (No Wet or Dry Food Waste)

- (3) Scrap Metal (No metal except household size containers)
- (4) Wood (No Yard Waste, Construction Material, etc.)
- (5) Fabric (No Clothes, Shoes, Blankets, Cloth, etc.)
- (6) Electronics (No Batteries, Computers, Phones, etc.)
- (7) Chemicals (No Paint, Oil, Aerosols, etc.)
- (8) Tires (No Tires of any size)

SECTION 21. COLLECTION SERVICES AND OPERATIONS.

A. *Residential*

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up solid waste at the curbside adjacent to each residence all household garbage two times per week; ~~the collection of horticultural trash shall be one time per week~~; bulky waste shall be one time per week; on days agreed upon by the Grantee and Grantor. Pickups shall not be reduced by holidays, and pickups normally scheduled to be made on a holiday must be rescheduled and occur in the same week as the holiday. Grantee, at its sole expense, shall notify residences served of the holiday observed and regular pickup schedules at least five days in advance by publication in a local paper or other means approved by Grantor.

(a) During the term of this Franchise the Grantor may elect to change the frequency of residential garbage collection for City residents from two times per week to one time per week. Grantor will provide Grantee with a minimum sixty days prior written notice before Grantee will be made to implement the change. Residents that have a Fletcher Avenue or Ocean Avenue address will remain on a two times per week schedule even if Grantor opts to reduce other residential service to once per week. Residential rate for those that are changed to one per week pickup shall be reduced. See SECTION 30. RATES, CHARGES, BILLING AND AUDITS.

(b) Holidays: The following holidays may be observed by Grantee for purposes of this clause: New Year's Day, Independence Day (July 4), Thanksgiving Day and Christmas Day.

2. Schedule: Regularly scheduled pick up days for household garbage shall be as agreed upon between the Grantor and the Grantee. All schedules and routes are subject to being rescheduled as mutually agreed to by the Grantor and Grantee. The Grantor, at the request of the Grantee or on its own, may extend, suspend or modify these schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

3. Quantity: Grantee shall be required to pick up all household garbage generated by residential premises, provided same is placed in the garbage cart. Grantee shall also be required to pick up all household garbage from the curbside of residential premises when properly bagged or otherwise contained and placed by the garbage cart.

4. Collections. All collections shall normally be made in residential areas no earlier than 6:00 am and no later than 8:00 pm, with no service on Sunday, except in declared emergencies. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Garbage carts shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found at the curbside. All work shall be done in a

safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee. Grantee shall provide a single-axle truck for servicing certain compact residential areas, such as Amelia Park and the downtown area.

5. Special services: Services such as back door collection, below ground collection, removal of any refuse other than garbage or rubbish as defined herein, including white goods and appliances or additional pickups shall be provided on a separate fee basis upon terms agreed to by the Grantee and the customer. Charges for special services shall not be unreasonable or excessive. Household garbage services shall be provided at the rear or side residence for handicapped persons approved by the Grantor at no extra charge.

6. Roll-out/Roll-back service: Those customers holding a Short Term Resort Rental license are required to have Roll-out/Roll-back service, for which a fee will be charged.

7. Garbage: Garbage shall be placed for collection separately from rubbish and shall be placed in the garbage carts furnished by the Grantee with capacities of ninety-six gallons. Smaller carts will be made available to special needs customers (elderly or handicapped) upon request with the Grantor's approval. Plastic bags of at least thirteen gallons and not more than thirty-five gallons securely tied may also be used as long as those bags do not weigh in excess of fifty pounds per container/bundle.

8. Yard waste: Yard waste generated by residents from improved residential properties will be collected by the Grantee until April 6, 2021. Residents shall bag, containerize and/or bundle horticulture trash (not to exceed fifty pounds per container or bundle, and with branches not to exceed four feet in length and four inches in diameter. Beginning April 7, 2021, the City of Fernandina Beach will assume yard waste pickup services.

9. Hazardous materials: Grantee shall not be required to collect hazardous materials, including without limitation Hazardous Waste.

10. Location of Residential Waste for collection: Persons in occupancy of each residential abode shall place their garbage carts at the curb no sooner than 6:00 pm the day before a scheduled pick-up and shall remove the garbage carts by midnight of the day of the pick-up, unless the occupant or resident has been approved for back door, side door or roll-out/roll-back pickup or the occupant of resident has negotiated a special service collection at another location.

11. Customer restrictions: Grantee shall not be required to collect Residential Waste when such waste is not generated on the residence served. Grantee shall have the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

12. Grantee shall be required to provide Garbage Carts and Recycle carts at its own expense.

B. *Commercial*

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up all garbage, rubbish, and wastes. However, pickups normally scheduled to be made on a holiday shall be rescheduled with the approval by the commercial establishment.

(a) Holidays: The following holidays may be observed by Grantee for purposes of this clause: New Year's Day, Independence Day (July 4), Thanksgiving Day and Christmas Day.

2. Schedule: Commercial collection shall be on days agreed to by the Grantee and commercial establishment. The Grantor, or its designee, is authorized to extend, suspend or modify these schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

3. Quantity: Grantee shall be required to pick up all garbage and rubbish generated by a commercial establishment, provided same is placed in a waste receptacle.

4. Collections: All collections shall normally be made at commercial establishments no earlier than 3:00 am and no later than 8:00 pm. These times may be adjusted by mutual agreement of the

parties. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Waste receptacles shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found. All work shall be done in a safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee.

5. Special services: For items requiring roll-off service or any special handling, removal of any refuse other than garbage or rubbish as defined herein or additional pickups, all charges are to be negotiated between the Grantee and the customer. Requests for pickups of special materials as defined herein shall be considered as requests for special pickup services. Charges for special services shall not be unreasonable or excessive and shall be subject to the City's Franchise Fee.

6. Waste receptacles:

(a) Garbage and rubbish: Garbage and rubbish shall be placed for collection within a commercial container.

(b) Hazardous and biohazardous materials: Grantee shall not be required to collect hazardous or biohazardous materials or Hazardous Waste.

(c) Carts in the downtown Central Business District must be clearly labeled with the name of the business it is assigned to. Grantee shall provide these labels.

7. Location of commercial waste for collection: All commercial establishments receiving service pursuant to this Franchise shall keep waste receptacles, disposal containers and other such items at location(s) approved by the City.

8. Customer restrictions: Grantee shall not be required to collect commercial waste receptacles containing garbage or refuse when such waste is not generated in the commercial establishment served. Grantee shall have the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

9. Removal of improper receptacles: Any container used for the collection and storage of commercial waste which fails to meet the standards prescribed by the Grantor shall be clearly marked, specifying the manner in which the container fails to meet the requirements. Such marked, nonconforming containers shall be removed from service by the Grantee.

C. *Special Events*

1. In addition to regular residential and commercial collections, Grantee shall be the service provider for collection services during and after City-sponsored special events. These events include, but are not limited to, the annual Shrimp Festival occurring the first weekend in May of each year. The Grantee shall provide these services at their cost.

SECTION 22. OFFICE HOURS.

The Grantee's office shall remain open for residential and commercial establishment customers Monday through Friday from 8:00 am to 5:00 pm for the purpose of handling complaints, requests for new or replacement containers and to schedule bulk pick-ups, and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. The Franchisee shall maintain a local calling area phone

line, or toll-free number, to receive customer inquiries and complaints during the business hours stated in this section. These requirements do not apply on the legal holidays identified in Section 21.

SECTION 23. COLLECTION EQUIPMENT.

The Grantee shall have on hand at all times sufficient equipment in good working order and of the minimum weight necessary to permit Grantee to perform its duties hereunder fully, adequately and efficiently. Equipment shall be purchased from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment shall be kept clean, sanitary; neat in appearance, in good repair at all times, and shall be equipped with back-up warning lights and alarm. The Grantee, shall at all times, have available reserve equipment, which can be put into service and operation within two hours of any breakdown. Such reserve equipment shall substantially correspond in size and capability to the equipment normally used by the Grantee to perform its duties hereunder.

SECTION 24. DISPOSAL.

All garbage and solid waste shall be hauled to sites or facilities legally empowered to accept it for treatment or disposal. The Grantor reserves the right to approve or disapprove of sites, taking into account all governmental regulations, routes within the Franchise area, and the rules and regulations of the governmental body having jurisdiction over said sites and facilities.

SECTION 25. ROUTES AND SCHEDULES.

The Grantee shall periodically provide the Grantor with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes, schedules, or other program changes that will alter the day of pickup or the type of materials that are picked up, Grantee shall notify each customer affected by either direct mail or door hangers which the Grantor shall approve for such purpose. Grantee shall also notify customers by placing an advertisement prominently displayed in a local newspaper on at least two occasions, the latter being at least one week prior to the change. All such changes in routes, schedules, and programs will also be immediately communicated to Grantor at the time determined by the Grantee.

SECTION 26. GRANTEE PERSONNEL.

Grantee shall assign a qualified person to be in charge of operations under this Franchise and shall give the name and qualifications of said person to the Grantor. Grantor requires that Grantee's collection employees wear clean uniforms bearing Grantee's company name. Each person employed to operate a vehicle shall at all times carry a valid CDL driver's license for the type of vehicle being driven, and it shall be the Grantee's sole responsibility to assure that all drivers are properly licensed. Grantor may request the dismissal of any employee of Grantee who violates any provisions of this subsection or who is found to have been wanton, negligent or discourteous in the performance of his or her duties. Grantee shall provide operating and safety training for all personnel. Wages of all employees of Grantee shall be equal to or exceed the minimum hourly wages for such employees established by local, state or federal law. Grantee shall supply a schedule of all employee wage scales to Grantor upon request.

SECTION 27. SPILLAGE AND LITTER.

A. The Grantee shall not litter on any premise in the process of making collections, but shall not be required to collect any waste material that has not been placed in supplied or approved containers or in a manner herein provided, unless previous arrangements have been agreed upon between the Grantor and the Grantee.

B. During hauling, all solid waste or liquids shall be contained, held or enclosed so that leaking, spilling or blowing is prevented. In the event of spillage by the Grantee, the Grantee shall promptly clean up the litter.

SECTION 28. STORMS AND OTHER EMERGENCIES.

A. In the case of a storm or disruption caused by other severe emergency (e.g., war, insurrection, riot, or act of God) not caused by the Grantee, Grantor may allow Grantee a reasonable variance from regular schedules. As soon as practicable after such storm or other emergency, Grantee shall inform the Grantor of the estimated time required before regular schedules and routes can be resumed and, upon request of Grantor, Grantee shall provide notice to residential premises and commercial establishments in the service area.

B. In the event of a declared disaster and/or any event requiring mass cleanup operations during the period of the Franchise, Grantee shall, if requested and to the extent directed by the Grantor, participate in said cleanup. Grantee shall be compensated by the Grantor in accordance with terms and conditions of a negotiated agreement.

C. The Grantee shall have a disaster response plan for removal and disposal of excessive amounts of debris or refuse accumulated in the event of a storm of catastrophic proportions, any natural calamity, riot or any severe domestic disturbance. The Grantee shall have, at all times, written agreements with a subcontractor to supplement the collection, hauling and disposal of such wastes, in the event that the Grantee's resources are insufficient to effect a timely clean-up. Such agreement shall contain operational details and the add-on unit pricing for collection, hauling, and disposal cost. The subcontractor agreement shall be reviewed and approved by the City. In the event of a small disaster, the City and the Grantee shall meet and coordinate expeditiously to formulate and agree upon the specific clean-up plan. In the event of a small disaster or a severe domestic disturbance, the City shall have the option to utilize any combination of the Grantee's services, the Grantee's subcontractors, the City's own contractors, or any adjacent municipality or County forces provided through mutual aid. In the event of a small disaster such as a hurricane, the Grantee will be expected to continue with collection services and closely coordinate with the City when to cease operations within the City's city limits. Currently, the City's Disaster Plan calls for the Grantee to resume and continue the collection schedule as soon as safely possible.

SECTION 29. NONDISCRIMINATION PROVISION.

The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on fire basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request it will permit reasonable access by Grantor to its records of employment, employment advertisements, application forms, and other

pertinent data and records for purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Franchise, provided, however, that Grantee shall not be required to produce for inspection any record covering any period of time more than two years prior to the date of the Franchise.

SECTION 30. RATES, CHARGES, BILLING AND AUDITS.

A. Rates:

1. For residential recycling and the collection of garbage, rubbish, ~~and yard waste~~, and bulk waste/mixed piles the fee paid to Grantor by Grantee shall be ~~\$18.95~~ \$17.80 per month for twice per week service at the Effective Date and will remain until the next CPI rate adjustment provision specified in Section 9 is applied. A breakdown of the ~~initial~~ residential garbage, recycling, and rubbish and yard waste fees as of April 7, 2021, is shown below:

Service Component	Fee Charged by City	Rate Paid to ADS
Garbage – twice a week	\$8.51 <u>\$9.40</u>	\$7.74 <u>\$8.54</u>
Recycling – once a week	\$5.67 <u>\$6.26</u>	\$5.15 <u>\$5.69</u>
Yard Debris – once a week Administrative Services	\$4.41 <u>\$1.43</u>	\$4.01 <u>\$1.30</u>
Bulk Waste/Mixed Piles – once a week	\$2.26 <u>\$2.50</u>	\$2.05 <u>\$2.27</u>
TOTAL	\$20.85 <u>\$19.59</u>	\$18.95 <u>\$17.80</u>

2. The Grantor shall have the right to change the frequency of residential garbage pickup during the term of this Franchise. Grantor will provide Grantee a minimum of sixty days prior written notice before the change shall be implemented by Grantee. Residential fee paid to Grantee by Grantor shall be reduced by a certain percentage that will be determined at the time of the service level change. At that time, the Grantee will negotiate in good faith with the Grantor on the reduction of the Residential rate/fee paid to Grantee for the one time per week pickup.

3. For garbage and; rubbish, ~~yard debris for the initial term of this Franchise~~, the monthly rate for commercial establishments fees as of April 7, 2021, is shown below and will remain until the next CPI rate adjustment:

Commercial Rates							
Rates For:	1 pickup per week	2 pickup per week	3 pickup per week	4 pickup per week	5 pickup per week	6 pickup per week	7 pickup per week
95 gallon carts	\$15.02 <u>\$16.58</u>	\$30.04 <u>\$33.17</u>	\$45.06 <u>\$49.75</u>	\$60.08 <u>\$66.33</u>	\$75.10 <u>\$82.92</u>	\$90.12 <u>\$99.50</u>	\$105.14 <u>\$116.09</u>

2 yard container	\$45.47 <u>\$50.15</u>	\$90.93 <u>\$100.40</u>	\$136.40 <u>\$150.60</u>	\$181.86 <u>\$200.79</u>	\$227.33 <u>\$251.00</u>	\$272.79 <u>\$301.19</u>	\$318.26 <u>\$351.39</u>
4 yard container	\$90.93 <u>\$100.40</u>	\$181.86 <u>\$200.79</u>	\$272.79 <u>\$301.19</u>	\$363.72 <u>\$401.59</u>	\$454.65 <u>\$501.98</u>	\$545.58 <u>\$602.38</u>	\$636.51 <u>\$702.77</u>
6 yard container	\$136.40 <u>\$150.60</u>	\$272.79 <u>\$301.19</u>	\$409.19 <u>\$451.79</u>	\$545.58 <u>\$602.38</u>	\$681.96 <u>\$752.96</u>	\$818.37 <u>\$903.57</u>	\$954.77 <u>\$1,054.17</u>
8 yard container	\$181.86 <u>\$200.79</u>	\$363.72 <u>\$401.59</u>	\$545.58 <u>\$602.38</u>	\$727.44 <u>\$803.17</u>	\$909.30 <u>\$1,003.96</u>	\$1,019.16 <u>\$1,203.55</u>	\$1,273.02 <u>\$1,405.55</u>

*Compacted front load service will be priced based on \$7.53 per compacted yard

**prices listed do not include 10% franchise fee provided for in Section 5

4. The rates for other services as of April 7, 2021, is shown below and will remain until the next CPI rate adjustment:

Other Services	
10 yard roll-off price per haul	<u>\$272.70</u> \$247.32
20 yard roll-off price per haul	<u>\$272.79</u> \$247.32
30 yard roll-off price per haul	<u>\$272.79</u> \$247.32
Garbage compactor price per haul	<u>\$294.89</u> \$267.32
Special Clean-up of right-of-way	NO ADDITIONAL CHARGE
White Goods (on call service)	<u>\$15.44</u> \$14.00 /per item
<u>Special Cleanup (rear loader, driver & helper)</u>	<u>\$150/hour</u>
<u>Special Cleanup (grapple truck, operator)</u>	<u>\$135/hour</u>

*prices listed do not include 10% franchise fee provided for in Section 5

5. During the term of this franchise no fuel surcharges may be applied or charged by the Grantee.

B. The Grantee is to provide solid waste removal and recycling services to all of the City's facilities, parks including parks, complexes, and recycle stations at no charge. The Grantee will provide six commercial containers of not less than six cubic yards each at no cost to the City for City sponsored events such as City-wide cleanups.

C. *Billing for Services*

1. Residential, Commercial and Special Services.

a. The Grantor shall bill for residential, commercial establishments and special services rendered. The billing will be in conjunction with the other utility billings performed by the Grantor, or such other method as the Grantor may from time to time determine. Bills will be sent to the Residential Units, Commercial Establishments and for Special Services not less than quarterly. Therefore, the Grantee will receive payment on a monthly basis, based on the amounts actually collected by the Grantor, less the Franchise Fee.

b. Requests for opening new residential and commercial accounts will be received at the City. The customer will then be referred to the Grantee to request new containers. Within 1 business day of receiving said requests from the new customer, the Grantee shall be required to provide a new garbage cart and recycle cart (if requested), or such commercial container as requested by the new customer, and shall begin the service for the new customer on the next scheduled pick-up. At the time of delivery of the garbage cart and recycle cart or commercial container, the Grantee shall provide written notice to the new customer of the pick up days for all service.

c. For discontinued services, the billing shall stop on the disconnect date.

d. The Grantee is required to report all new services and changes in service to the Grantor (City) no later than the first day of the following month for billing purposes.

e. In consideration for the Grantor handling the customer billing, payment and related customer service functions related to billing, Grantee will pay to Grantor the sum of 1% of the previous month's net billing to Grantor. This payment will be due within fifteen days of the invoicing of such billing and payment processing fee by Grantor.

SECTION 31. COMPLAINTS & CHARGES FOR FAILURE OF PERFORMANCE .

A. Grantee shall have one business day (see also Section 8 above) to collect any garbage or trash that was not collected at the regularly scheduled pick up time and shall have seven days to correct, or to notify the City in writing, subject to City approval, how the Grantee intends to correct other identified complaints. Grantee shall supply Grantor weekly with copies of all complaints on a form approved by the Grantor and indicate the disposition of each. Each month such record shall be available for inspection by Grantor at all times during the business hours specified herein. The complaint record/form shall indicate the day and hour on which the complaint was received and the day and hour on which the complaint was resolved. When a complaint is received on the day preceding a holiday or on a Sunday, it shall be remedied the next working day. The Grantee shall establish procedures acceptable to the Grantor to ensure that all customers are notified of the complaint procedure. To prevent misunderstanding and any litigation, the CITY, shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of performance, and the acceptable fulfillment of the contract on the part of the FRANCHISEE; and the CITY will determine whether or not the amount, quantity, character and quality of the work performed is satisfactory, which determination shall be final, conclusive and binding upon both the CITY and the FRANCHISEE so long as such determination is not unreasonable or arbitrary. The CITY shall make such explanation as may be necessary to complete, explain or make definite the provisions of this FRANCHISE; and its findings and

conclusions shall be final and binding upon both parties, provided such determinations are not unreasonable or arbitrary.

B. Upon the recommendation of the City Manager or his designee, and reasonable notice to Grantee, administrative charges may be assessed against the Grantee should it be determined that:

1. Total residential complaints during any calendar month involve more than 4% of the total residential customers within the service area;
2. Total residential complaints during the Grantor's fiscal year exceed more than 5% to the total residential customers with the service area;
3. Total commercial complaints during any calendar month involve more than 3% of the total commercial customers with the service area;
4. Total commercial complaints during the Grantor's fiscal year exceed more than 6% to the total commercial customers within the service area; or
5. Where the lack of performance by Grantee is continuous and determined by the City Manager to constitute a threat to the health, safety or welfare of residents and commercial establishments. "Welfare" as used in this subsection shall include the direct and indirect economic effects of Grantee's failure to perform.

C. Administrative charges shall be assessed only for verified complaints which indicate that the Grantee has failed to meet the minimum standards stated herein. Grantee shall be required to keep accurate records of complaints received, and shall forward all complaints to the City Manager, or the City Manager's designated representative. The City Manager may verify complaints through whatever means he deems to be appropriate, including field review or contact with the individuals filing the complaints. Complaints verified by the City Manager will be assessed administrative charges in accord with the following schedule:

SCHEDULE OF ADMINISTRATIVE CHARGES

1. Failure to clean up spilled refuse per incident \$50 per incident
2. Failure to collect solid waste per location or special collection solid waste at any premises at or within the service area \$50 per incident
3. Failure to complete each route on the regular scheduled pickup date \$1,000 per route not completed
4. Failure to keep equipment in clean, safe and sanitary manner \$100 per vehicle per day

5. Failure to have vehicle operator properly licensed \$100 per day per incident
6. Failure to maintain office hours as set forth in Section 22 \$100 per incident
7. Failure to replace or repair any damage caused by Grantee or his personnel \$25 per incident

D. Within five business days of the date of the City Manager's action imposing such administrative charge, Grantee shall be notified in writing by certified United States Mail, return receipt, of the assessment of administrative charges and the basis for such assessment. Grantee may contest such assessments by filing a written protest stating the reasons for disagreement within five business days of the receipt of the notice of an assessment. The protest will be acted upon by the City Commission at a regularly scheduled meeting.

SECTION 32. MISCELLANEOUS.

A. Notices. All notices required herein shall be sent via certified mail, return receipt requested to the addresses contained herein.

For the Grantor:

City of Fernandina Beach
204 Ash Street
Fernandina Beach, FL 32034
Attn: City Manager

With a copy to the City Attorney at the same address.

For the Grantee:

Attn: ~~Jeff Edwards~~ Larry Becker
Advanced Disposal Services Stateline, LLC
450496 State Road 200
Callahan, FL 32011

SECTION 33. REPEAL OF SECTIONS IN CONFLICT.

All ordinances or parts of ordinances and all resolutions in conflict herewith be and the same are hereby repealed.

SECTION 34. SEVERABILITY.

If any section, part of a section, paragraph, clause phrase or word of this agreement is declared invalid, the remaining provisions of this Franchise shall not be affected.

SECTION 35. EFFECTIVE DATE.

This ordinance shall take effect immediately upon its final adoption by the City Commission of the City of Fernandina Beach, Florida, and the signature of the Mayor, and upon filing of Grantee's written acceptance with the City Clerk.

PASSED AND ENACTED this 6th day of April, 2021, at Public Hearing on Second and Final Reading.

CITY OF FERNANDINA BEACH

MICHAEL A. LEDNOVICH
Commissioner-Mayor

ATTEST:

APPROVED AS TO FORM & LEGALITY:



CAROLINE BEST
City Clerk

TAMMI E. BACH
City Attorney

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2021.

CITY OF FERNANDINA BEACH

Dale L. Martin, City Manager
Commissioner

Michael A. Lednovich, Mayor-

ATTEST:

APPROVED AS TO FORM AND LEGALITY:



Caroline Best, City Clerk

Tammi E. Bach, City Attorney

ADVANCED DISPOSAL SERVICES STATELINE, LLC

Advanced Disposal Service Representative

WITNESS

Date of First Reading:	March 2, 2021
Date of Advertisement:	March 24, 2021
Date of Second Reading and Public Hearing:	April 6, 2021