

**NON-EXCLUSIVE FRANCHISE WASTE CONTRACTOR AGREEMENT BETWEEN  
CITY OF MIAMI BEACH, FLORIDA (CITY)  
AND  
PROGRESSIVE WASTE SOLUTIONS OF FL, INC. (FRANCHISEE)  
FOR  
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL FOR  
MULTIFAMILY RESIDENCES WITH NINE (9) OR MORE UNITS; COMMERCIAL  
SOLID WASTE COLLECTION AND DISPOSAL; AS WELL AS FOR RECYCLING  
SERVICES FOR MULTI-FAMILY RESIDENCES WITH TWO (2) OR MORE UNITS;  
AND FOR  
COMMERCIAL PROPERTIES IN THE CITY OF MIAMI BEACH, FLORIDA.**

**RECITALS**

The City of Miami Beach, Florida, does hereby find, determine and declare as follows:

- (a) That it is in the public interest to ensure that all areas within the City limits are adequately provided with high-quality solid waste collection and disposal service; and
- (b) That it is in the public interest to retain regulatory authority over solid waste collection and disposal, to the extent allowed by law, because of the overriding public health, safety and welfare considerations associated with the provision of this service; and
- (c) That it is in the public interest to retain control over the use of public right-of-way by solid waste collectors to ensure against interference with the public convenience, to promote aesthetic considerations, and to protect the public investment in right-of-way property; and
- (d) That it is in the public interest to attract high-quality solid waste collectors; and
- (e) That it is in the public interest to ensure that high-quality solid waste collection and disposal service is maintained through a responsive complaint handling procedure; and
- (f) That it is also in the public interest for solid waste collectors to offer and directly provide recycling services to their clients (Recycling Services); and

- (g) That the granting of a non-exclusive franchise is the best means of assuring that the above-described interests of the City of Miami Beach are promoted; and
- (h) That, at the October 16, 2013 City Commission Meeting, the Mayor and City Commission authorized the City Administration to issue Request for Qualifications No. 2013-178SR for franchise waste contractors to provide municipal solid waste (MSW) collections and disposal services, including additional solid waste/recycling services at city-owned properties (the RFQ); and
- (i) That at the July 23, 2014 City Commission Meeting, the Mayor and City Commission adopted Resolution No. 2014-28681, accepting the recommendation of the City Manager pertaining to the ranking of proposals pursuant to the RFQ, and authorizing the Administration to enter into negotiations for new franchise agreements with the top three (3) ranked proposers, Waste Management Inc. of Florida, Progressive Waste Solutions of FL, Inc., and Southern Waste Systems, LLC (collectively, the Franchisees); and
- (j) That, in addition to authorizing the Administration to negotiate and, if successful, execute new Franchise Agreements with the Franchisees, as a condition of the award of such agreements, the Mayor and City Commission also authorized the Administration to negotiate and, if successful, execute a new Service Agreement with the Franchisees for MSW and Recycling Services, including other related public benefits to the City which, at a minimum, should contain the same (or more favorable) business terms than the existing services agreement; and
- (k) That the new Franchise Agreements and the new Service Agreement shall each have an initial term of five years, commencing on October 1, 2014, and ending on September 30, 2019, along with a possible renewal term of up to three (3) years, at the City Commission's sole discretion; and
- (j) That Progressive Waste Solutions of FL, Inc., a Delaware corporation authorized to conduct business in the State of Florida (Franchisee), has indicated to the City that it is ready, willing, and able to provide the aforesaid services within the City of Miami Beach, in accordance with the provisions contained within the following franchise agreement (hereinafter, the Franchise Agreement or Agreement), Chapter 90 of the City Code, and under the (additional) service agreement (hereinafter, the Service Agreement) executed simultaneously herewith.

**NOW THEREFORE**, City and Franchisee, in consideration of the mutual covenants herein contained, agree as follows:

## **SECTION I. DEFINITIONS**

For the purposes of this Agreement, the following words shall have the following meanings:

"Chapter 90 of the City Code" shall mean Chapter 90 of the Miami Beach City Code (the City Code), as may be amended from time to time.

"City" shall mean the City of Miami Beach, Florida.

"City Commission" shall mean the elected officials of the City of Miami Beach, Florida.

"City Manager" shall mean the chief operating officer of the City or his authorized designee.

"Franchisee" shall mean Progressive Waste Solutions of FL, Inc., a Delaware corporation authorized to conduct business in the State of Florida, which is hereby granted this franchise and has hereby agreed to undertake and perform each and every obligation as set forth in this Agreement.

"Gross Receipts" as referred to herein shall mean the entire amount of the fees collected by the contractor (whether wholly or partially collected) for solid waste collection and disposal within the City, but excluding any sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind, collected by the Franchisee from the account holder and required by law to be remitted to the taxing or other governmental authority, and further excluding fees from servicing rolloff and portable containers.

"Service Agreement" shall mean the certain agreement between the City and Franchisee for the provision of additional solid waste collection and disposal and recycling services at certain City owned facilities and properties. The Service Agreement is intended to have a term

that will run concurrently with the term of the franchise and this Agreement. Execution of the Service Agreement by City and Franchisee is a condition of the Franchise Agreement.

Any other words or terms used herein which are not defined in this Section shall have their normal dictionary meaning and customary usage unless such terms are defined in Chapter 90 of the City Code, in which case they shall have the meaning set forth therein.

## **SECTION 2. GRANT OF FRANCHISE**

Pursuant to Chapter 90 of the City Code, which authorizes the granting of franchises for the purposes set forth herein, Franchisee is hereby granted a franchise, including every right and privilege appertaining thereto (except as otherwise limited by Chapter 90 of the City Code, and/or by present or future Federal, State and County ordinances and laws), to operate and maintain a solid waste collection and disposal service, and also to provide such recycling services as contemplated in Section 90-231 of the City Code, in, upon, over, and across the present and future streets, alleys, bridges, easements and other public rights-of-way, property(ies), and/or facility(ies) within the limits of the City of Miami Beach, Florida, for the purpose of collecting and disposing of solid waste, and for the purpose of providing recycling services as contemplated in Section 90-231 of the City Code, generated by the citizens, residents, inhabitants, business enterprises, and other entities therein. Except for Recyclable Material otherwise provided for pursuant to Chapter 90 of the City Code, and/or by present or future Federal, State or County ordinances and laws, Franchisee is hereby granted title to all of such solid waste generated within said boundaries, insofar as the City can establish its legal right to make such grant of title.

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### **SECTION 3. GEOGRAPHICAL LIMITS OF THE FRANCHISE**

The area covered by this franchise is the area within the city limits of the City of Miami Beach, Florida, as they are now located and any areas which may at some future time be incorporated into the City. Franchisee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Franchisee has no vested right in a specific area.

### **SECTION 4. TERM**

As to Franchisee, the initial term of this franchise shall be deemed to have commenced on October 1, 2014, which shall be the effective date of this Agreement (and may also be referred to as the Commencement Date). The initial term of the franchise shall be five (5) years, commencing on the Commencement Date, and shall terminate on September 30, 2019, unless sooner terminated by revocation of the franchise, as provided in Chapter 90 of the City Code (Initial Term). Prior to the expiration of the Initial Term of the franchise, the City Commission may choose, in its sole discretion, to renew the franchise for a renewal term of up to an additional three (3) years (Renewal Term).

### **SECTION 5. FRANCHISE CONSIDERATION**

For a period of one year after the Commencement Date of this franchise, the Franchisee shall pay to the City a franchise fee consisting of eighteen percent (18%) of said Franchisee's total monthly Gross Receipts. Thereafter, the City Commission shall have the option of raising the franchise fee, as provided in Section 90-221 of the City Code.

Gross Receipts from servicing rolloff containers are not included under the franchise fee due to the City, and shall be subject to separate fees, as set forth in Section 90-278 of the City Code.

Payment of the franchise fee shall be made monthly in accordance with Section 90-223 of the City Code.

In addition to monthly payment of the franchise fee, and in accordance with Franchisee's proposal in response to the RFQ, the Franchisee shall (during the term herein) also pay an annual amount equal to two percent (2%) of its total annual Gross Receipts, to be applied by the City toward the establishment, implementation, and operation of a public right-of-way cleaning program, which shall be operated through the City's Sanitation Division. The means, method, and operation of this program shall be determined and implemented in the City's sole and reasonable discretion. The franchisee shall, on or before thirty (30) days following the close of its fiscal year, and in any event no later than February 15<sup>th</sup> of each year during the term of the franchise, deliver to the City's Chief Financial Officer a statement of its annual Gross Receipts, certified by an independent certified public accountant, reflecting Gross Receipts generated within the City for the preceding fiscal year. Payment of the two percent (2%) amount shall be made annually to the City's Chief Financial Officer, concurrent with the delivery of Franchisee's certified statement of annual Gross Receipts (as provided above).

#### **SECTION 6. ASSIGNMENT**

The rights herein granted to the Franchisee, and any licenses granted to the Franchisee by the City, shall not be assigned by the Franchisee except with the express prior approval of the City Commission, and as provided in Section 90-192(h) of the City Code.

In the event of such assignment, Franchisee shall cause its assignee to execute an agreement of acceptance, subject to the approval of the City Manager, 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 assignee's intent to fulfill the obligations imposed upon Franchisee herein. Notwithstanding the City's approval of the assignment and assignee's acceptance, Franchisee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Franchisee.

#### **SECTION 7. BANKRUPTCY OR INSOLVENCY**

If the Franchisee becomes insolvent, this franchise shall terminate. If the Franchisee files a petition of voluntary bankruptcy, or in the event of involuntary bankruptcy, this franchise shall terminate no later than the date of filing of the bankruptcy petition.

#### **SECTION 8. INDEMNIFICATION AND INSURANCE**

Franchisee hereby agrees to indemnify, hold harmless, and defend the City, its officers, employees, agents, and contractors against, and assumes all liability for, any and all claims, suits, actions, damages, liabilities, expenditures, or causes of action, of any kind, arising from Franchisee's, and/or its officers', employees', agents', and contractors' activities and/or the use of the public streets and/or other City property or rights-of-way, for the purposes authorized in this franchise and in Chapter 90 of the City Code, and resulting or accruing from any negligence, act, omission, or error of the Franchisee, and/or its officers, agents, employees, and contractors, and/or arising from the failure of Franchisee to comply with each and every covenant of this franchise, or with Chapter 90 of the City Code, or with any other Federal, State, County and/or City ordinance, law, or regulation applicable to Franchisee's activities,

resulting in or relating to bodily injury, loss of life or limb, or damage to property sustained by any person, property, firm, corporation (or other business entity). Franchisee hereby agrees to hold City, its officers, employees, agents and contractors, harmless from and against all judgments, orders, decrees, attorney's fees, costs, expenses and liabilities incurred in and resulting from any such claim, investigation, or defense thereof, which may be entered, incurred, or assessed as a result of the foregoing. Franchisee shall defend, at its sole cost and expense, any legal action, claim or proceeding instituted by any person against the City, its officers, employees, agents or contractors, as a result of any claim, suit, or cause of action accruing from activities authorized by this franchise, for injuries to body, limb, or property as set forth above.

Franchisee agrees to maintain in full force and effect throughout the entire Term of the franchise, the insurance coverages set forth in Section 90-196 of the City Code. Franchisee further agrees that the City Manager may increase the kinds and amounts of insurance coverage required if, in his sole reasonable judgment and discretion, he deems such increase necessary to protect the City.

Operation of activities by the Franchisee without the required insurance shall be grounds for revocation of the franchise.

#### **SECTION 9. COMPLIANCE WITH ORDINANCES, RULES, LAWS**

Franchisee shall be solely responsible for keeping and maintaining itself fully informed with all Federal, State, County, and City ordinances (including, without limitation, Chapter 90 of the City Code), laws, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any manner affect its activities and this franchise, or which in any way affect the conduct of its work (collectively, the aforestated are referred to as

the Applicable Laws). Franchisee shall at all times observe and comply with all Applicable Laws. Additionally, Franchisee shall be solely responsible for obtaining and maintaining current and in good standing any licenses and permits required under Applicable Laws to conduct its business(es) and activities under the franchise.

#### **SECTION 10. REVOCATION OF FRANCHISE**

Failure on the part of Franchisee to comply in any material way with the provisions of this Franchise Agreement, Chapter 90 of the City Code, or other Applicable Laws, shall be grounds for revocation or termination of the franchise, which termination shall be in accordance with Section 90-234 of the City Code, and shall be effective upon written notice to Franchisee.

#### **SECTION 11. REPORTING; ACCOUNTING; AUDIT**

Franchisee shall keep an accurate set of books and records in accordance with general accounting principles, reflecting the Gross Receipts derived under and pursuant to the franchise rights granted herein. The City shall have the right to audit Franchisee's books and records, as provided in Section 90-224 of the City Code.

#### **SECTION 12. COLLECTION EQUIPMENT**

Franchisee shall have on hand, at all times during the Term of the franchise, sufficient personnel and equipment to permit Franchisee to fully, adequately and efficiently perform its duties hereunder. Collection equipment shall be kept clean, sanitary, neat in appearance, and in good repair and working order at all times. Franchisee shall at all times have available to it reserve equipment, which can be put into service and operation within two (2) hours of any

breakdown. Such reserve equipment shall substantially correspond in size and capability to the equipment normally used by Franchisee to perform its duties hereunder.

### **SECTION 13. DISPOSAL**

All solid waste shall be hauled to sites or facilities legally empowered to accept it for treatment or disposal. The City reserves the right to approve or disapprove 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 or facilities.

### **SECTION 14. COLLECTION SERVICES AND OPERATIONS**

Franchisee's procedures for collection of solid waste shall be in keeping with all provisions of Chapter 90 of the City Code and other Applicable Laws.

### **SECTION 15. STORMS AND OTHER EMERGENCIES**

In case of an unusually severe storm, and/or other extreme acts of weather (i.e. including, without limitation, tropical storms, tropical depressions, hurricanes, floods, tornadoes, etc.), or disruption caused by other emergencies not caused by Franchisee, the City Manager may grant Franchisee reasonable variance from its regular schedules. As soon as practicable after such storm, act of weather, or other emergency, Franchisee shall inform the City of the estimated time required before regular schedules and routes can be resumed and, upon request of the City Manager and in such form as determined by the City Manager, Franchisee shall provide notice of same to its commercial and residential (multi-family) clients in the franchise area. In event of a storm, act of weather, or other emergency requiring mass clean-up operations, Franchisee shall, upon direction of the City Manager, participate in said clean-up, to the extent directed by the City Manager. Franchisee shall be compensated by the

City, in the amount of actual costs, plus twelve percent (12%) of said costs, and shall be excused from conducting regular services, as and to the extent approved by the City Manager. Any expense incurred or revenue received under this Section 15 shall not be included or considered in base rate calculations.

#### **SECTION 16. NON-WAIVER**

The failure by the City at any time to require performance by the Franchisee of any provision hereof, or of Chapter 90 of the City Code, or of any other Applicable Laws, shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the City thereafter to enforce same, nor shall waiver by the City of any breach of any provision of the Franchise Agreement, or of Chapter 90, or of any other Applicable Laws, be taken or held to be a waiver of the City's rights to enforce or take action against any such succeeding breach (of such provision), or as waiver of any provision itself.

#### **SECTION 17. CONTINUED OPERATIONS DURING DISPUTES**

In the event that a dispute arises between the City and Franchisee (or any other interested party) in any way relating to this franchise (including performance or compensation hereunder), the Franchisee shall continue to perform hereunder and to render service in full compliance with all terms and conditions of the Franchise Agreement, regardless of the nature of the dispute.

Franchisee expressly recognizes the paramount right and duty of the City to provide adequate waste collection and disposal services as a necessary governmental function, and further agrees, as consideration for the City's approval and execution of this Franchise Agreement that, in the event of a dispute, said Franchisee shall not cease performance or stop service during the pendency of any such dispute.

## **SECTION 18. HANDLING OF COMPLAINTS**

Franchisee shall be bound by Chapter 90 of the City Code with regard to handling of complaints from its patrons.

## **SECTION 19. NONDISCRIMINATION**

Franchisee and the City agree that Contractors' compliance with the City's Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, shall be a material term of this Agreement. Franchisee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, or disability. Said nondiscrimination policy shall apply to employment practices of the Franchisee and the provision of services. The Franchisee agrees that, upon written request from the City Manager, it will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records, to the City for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Section; provided, however, that Franchisee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the effective date of this franchise. A finding by the City Manager that Franchisee has engaged in an unlawful discriminatory practice, according to the regulations and procedures set forth in Chapter 62 of the City Code, shall constitute a breach of this Agreement.

## **SECTION 20. RECYCLING SERVICES REQUIREMENTS**

20.1 In accordance with the provisions of Sections 90-231, 90-340, and 90-341 of the City Code, during the Term of this franchise, Franchisee shall comply with the following recycling requirements:

- (a) As a condition of the franchise, each Franchisee shall be required to offer directly, or through a subcontractor, who shall be licensed by the City and state, recycling for any and all accounts serviced by the Franchisee (including, without limitation, any and all residential and commercial accounts).
- (b) All of Franchisee's contracts (within the jurisdictional limits of the City of Miami Beach) for waste collection and disposal services (accounts) for multifamily residences and commercial accounts shall also include a proposal to provide recycling services. Such recycling proposal shall, to the maximum extent that is commercially feasible, maximize recycling activity in the City, and provide for sufficient flexibility in recyclable materials, container size, and location, as is both necessary and consistent for the particular account.
- (c) Whether directly provided, or subcontracted with a qualified recycling contractor, each recycling proposal shall require Franchisee to disclose to the contract holder the savings offset that is anticipated as a result of the recycling and the consequent reduction of solid waste disposed; provided, however, that the recycling proposal (and the required savings offset) shall remain within the purview of the Franchisee and the multifamily or commercial account holder to negotiate.
- (d) Pursuant to Section 90-231(b) of the City Code, with respect to multifamily residences only, each of Franchisee's contracts must disclose to an account holder that in the event that the recycling bid and/or price quote (hereinafter, the offer) provided by the contractor to an account holder who is an owner, occupant, or operator or manager of an apartment building or the multifamily residence, is deemed unfair by said owner, occupant, or operator or manager, then the aggrieved party may file a protest with the City Manager, in writing, within 30 days of receipt of the offer by the aggrieved party; the protest must include a copy of the offer; and must clearly state the reasons and grounds upon which that the aggrieved party considers the offer to be unfair.
- (e) Franchisee must appropriately designate the recycling collection containers that it provides to customers. The containers must contain the appropriate signage and information, as shall be established and approved by the City. Additionally, Franchisee shall assist and provide written notice to the Director of Public Works in identifying multifamily accounts and commercial accounts which do not have a recycling program or, in the alternative, which have allowed a recycling program to lapse or expire.

20.2 PURSUANT TO SECTION 90-340 OF THE CITY CODE, AND EFFECTIVE NOVEMBER 1, 2014, FRANCHISEE SHALL OFFER THOSE RECYCLING SERVICES FOR ANY MULTI-FAMILY RESIDENCE WITH TWO (2) OR MORE DWELLING UNITS, AS A SINGLE-STREAM RECYCLING PROCESS OR AS A MODIFIED RECYCLING PROGRAM, AS MORE PARTICULARLY SET FORTH IN SECTION 90-344.

(a) Pursuant to Section 90-340(b), the recycling services for multifamily residences shall consist of a single-stream recycling process. The single-stream recycling process shall separate, from all other solid waste, the five (5) following recyclable materials:

1. 90-340(b)(1) *Newspaper*. Used or discarded newsprint, including any glossy inserts;
2. 90-340(b)(2) *Glass*. Glass jars, bottles, and containers of clear, green or amber (brown) color of any size or shape used to store and/or package food and beverage products for human or animal consumption, and/or used to package other products, which must be empty and rinsed clean or residue. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs;
3. 90-340(b)(3) *Metal food and beverage containers*. All ferrous and nonferrous (i.e., including, but not limited to, steel, tin-plated steel, aluminum and bimetal) food and beverage containers (i.e., including, but not limited to, cans, plates, and trays) of any size or shape used to store and/or package food and beverage products suitable for human or animal consumption, which must be empty and rinsed clean or residue;
4. 90-340(b)(4) *Other metal containers*. All other ferrous and nonferrous containers used to package household products including, but not limited to, paint cans and aerosol cans, which must be empty and rinsed clean or residue; and
5. 90-340(b)(5) *Plastics*. All high density polyethylene (HDPE) and/or polyethylene terephthalate (PET) bottles, jugs, jars, cartons, tubs, and/or other containers, and lids, of any size or shape used to package food, beverages, and/or other household products, or crankcase oil, which must be empty and rinsed clean

of residue. This term excludes all plastic film, plastic bags, vinyl, rigid plastic (i.e., toys), and plastic foam materials.

20.3 Franchisee shall offer recycling services for commercial establishments, as a single-stream recycling process, as more particularly set forth in Section 90-341 of the City Code, or as a modified recycling program, as more particularly set forth in Section 90-344 of the City Code.

(a) The single-stream recycling process shall separate, from all other solid waste, the following recyclable materials:

1. *90-341(b)(1) Newspaper, cardboard, magazines, and catalogues, telephone books and/or directories, and office paper; used or discarded newsprint, including any glossy inserts;*
2. *90-341(b)(2) Glass.* Glass jars, bottles, and containers of clear, green or amber (brown) color of any size or shape used to store and/or package food and beverage products for human or animal consumption, and/or used to package other products which must be empty and rinsed clean or residue. This term excludes ceramics, window or automobile glass, mirrors, and light bulbs;
3. *90-341(b)(3) Metal food and beverage containers.* All ferrous and nonferrous (i.e., including, but not limited to, steel, tin-plated steel, aluminum and bimetal) food and beverage containers (i.e., including, but not limited to, cans, plates, and trays) of any size or shape used to store and/or package food and beverage products suitable for human or animal consumption, which must be empty and rinsed clean or residue;
4. *90-341(b)(4) Other metal containers.* All other ferrous and nonferrous containers used to package household products including, but not limited to, paint cans and aerosol cans, which must be empty and rinsed clean or residue; including scrap metal, which shall mean used or discarded items suitable for recycling, consisting predominantly of ferrous metals, aluminum, brass, copper, lead, chromium, tin, nickel or alloys thereof including, but not limited to, bulk metals such as large metal fixtures and appliances (including white goods such as washing machines, refrigerators, etc.), but excluding metal containers utilized to store flammable or volatile chemicals, such as fuel tanks;

5. *90-341(b)(5) Plastics.* All high density polyethylene (HDPE) and/or polyethylene terephthalate (PET) bottles, jugs, jars, cartons, tubs, and/or other containers, and lids, of any size or shape used to package food, beverages, and/or other household products, or crankcase oil, which must be empty and rinsed clean of residue. This term excludes all plastic film, plastic bags, vinyl, rigid plastic (i.e., toys), and plastic foam materials;
6. *90-341(b)(6) Textiles;* and
7. *90-341(b)(7) Wood.* Clean wood waste and/or pieces generated as by-products from manufacturing of wood products. It excludes clean yard waste and clean waste (i.e., natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, and associated dirt, sand, tree bark, sand and rocks), treated lumber, wood pieces, or particles containing chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass.

## **SECTION 22. INVALIDITY – NO RIGHT OF ACTION**

If this Franchise Agreement, or any provision thereof, is found to be invalid or unconstitutional by any court of competent jurisdiction, and/or if Franchisee is prevented from exercising its rights hereunder by present or future Federal, State, or County ordinances or laws and Franchisee's rights under this franchise are materially impaired thereby, Franchisee shall have no claim or cause of action against the City therefore.

## **SECTION 23. POWER TO REGULATE STREETS**

Nothing in this Agreement shall be construed as surrender by City of its right or power to pass ordinances regulating the use of its streets, and/or other public rights-of-way, and/or public properties or facilities.

## **SECTION 24. ACCEPTANCE OF FRANCHISE**

This Franchise Agreement shall be filed with the Miami Beach City Clerk within twenty (20) days after the date of approval of the franchise by the Mayor and City Commission

and execution by the parties hereto. Filing of a fully executed Franchise Agreement with the City Clerk shall be deemed proof of Franchisee's acceptance of the franchise.

#### **SECTION 25. GOVERNING LAW AND EXCLUSIVE VENUE**

This Franchisee Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in Federal court.

BY ENTERING INTO THIS AGREEMENT, CITY AND FRANCHISEE EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

#### **SECTION 26. NOTICE**

All notices and communications in writing required or permitted hereunder may be delivered personally to the representatives of the Franchisee and the City listed below or may be mailed by registered mail, postage prepaid (or airmailed if addressed to an address outside of the city of dispatch).

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

<b>TO FRANCHISEE:</b>	Progressive Waste Solutions of FL, Inc. 3840 Northwest 37th Court Miami, Florida 33142 Attention: Damian Ribar General Manager
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**TO CITY:**

City of Miami Beach  
Attn: Jimmy L. Morales, City Manager  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
(305) 673-7010

**WITH COPIES TO:**

City of Miami Beach  
Attn: Eric Carpenter, Public Works Director  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
(305) 673-7080

and

City of Miami Beach  
Attn: Alberto Zamora, Public Works Sanitation Director  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
(305) 673-7616

Notices hereunder shall be effective as follows:

Notices are deemed delivered or given and become effective upon mailing if mailed to an address in the city of dispatch, and upon actual receipt if otherwise delivered.

**SECTION 27. FLORIDA PUBLIC RECORDS LAW.**

Pursuant to Section 119.0701 of the Florida Statutes, if Franchisee meets the definition of "Contractor" as defined in Section 119.0701(1)(a), Franchisee shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and

- (d) Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Franchisee upon termination of this Agreement. Upon termination of this Agreement, the Franchisee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

Franchisee's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event the Franchisee does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

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IN WITNESS WHEREOF, the parties hereto have caused this Franchisee Agreement to be executed by their appropriate officials, as of the date first entered above.

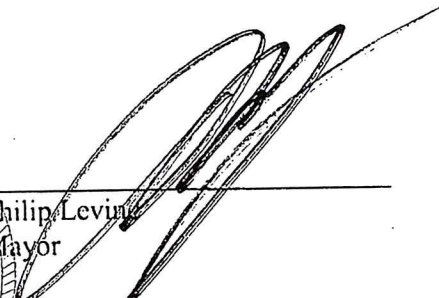
**FOR CITY:**

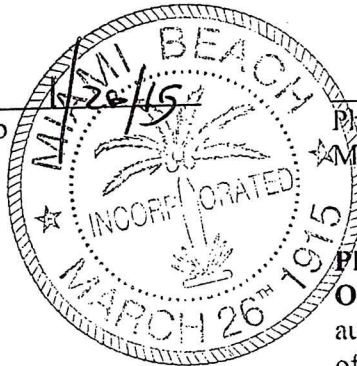
**CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By:

  
Rafael E. Granado  
City Clerk

  
Philip Levine  
Mayor

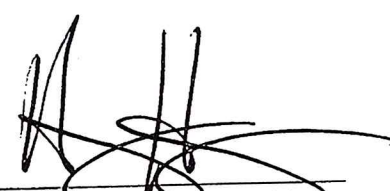



**FOR FRANCHISEE:**

**PROGRESSIVE WASTE SOLUTIONS  
OF FL, INC.**, a Delaware corporation  
authorized to conduct business in the State  
of Florida

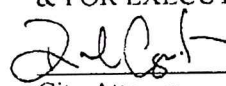
ATTEST:

By:

  
~~XXXXXXXXXXXX~~ Amy J. Hochberger  
~~XXXXXXXX~~ Asst. Secretary

  
~~XXXXXXXXXXXX~~ Thomas J. Fowler  
~~XXXXXXXXXXXX~~ Vice President

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

5/2/10/14  
Date

NK