

RESIDENTIAL AND COMMERCIAL WASTE SERVICES AGREEMENT

GRANTING AN EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC. OF FLORIDA, A FLORIDA CORPORATION, FOR THE COLLECTION AND DISPOSAL OF NON-HAZARDOUS RESIDENTIAL AND COMMERCIAL SOLID WASTE; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS AND TERMS; PROVIDING FOR CERTAIN CONDITIONS AND REQUIREMENTS RELATING THERETO; PROVIDING FOR REPEAL OF CONFLICTING AGREEMENTS; PROVIDING FOR SEVERABILITY; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Wewahitchka, Florida ("City") finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality non-hazardous solid waste collection and disposal service; and

WHEREAS, **NAME OF CONTRACTOR** ("Franchisee") has indicated to the City that it is willing to undertake the installation and operation of high-quality waste collection and disposal service under an exclusive franchise; and

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

WHEREAS, the City finds it in the public interest to retain control over the use of public rights-of-way by solid waste collectors to ensure against interference with public convenience, to promote aesthetic considerations and to protect the public investment in right-of-way property; and

WHEREAS, the City finds it in the public interest to ensure that quality solid waste collection and disposal service is maintained through a responsive citizen complaint handling procedure; and

WHEREAS, granting an exclusive franchise is the best means of ensuring the above-described interests of the City are promoted.

NOW, THEREFORE, for and in consideration of the respective covenants herein contained, the parties agree as follows:

SECTION 1. AUTHORITY. The authority for enactment of this Ordinance is Chapters 180, 4033, and 166.021, Florida Statutes, and the City Code.

SECTION 2. DEFINITIONS. The following words, terms or phrases, when used in this contract, shall have the meanings respectively ascribed to them herein. The word “shall” is always mandatory and not merely discretionary. Words not defined shall be given their common and ordinary meaning or for those so included the meaning found in the City Code.

Biomedical Waste means any solid or liquid waste which may present a threat of infection to humans, including, but not limited to, non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; and discarded sharps and as further defined in F.A.C. 64E-16.002.

Biological Waste means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazardous waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals.

Commercial Business Establishment means any establishment other than a curbside residential dwelling, and shall include, but not be limited to, all retail or wholesale business establishments and manufacturing concerns and any other commercial enterprises offering goods or services to the public.

Commercial Service means the service provided to business establishments, churches, schools, office buildings and other establishments using either mechanical containers or mobile carts. Commercial Service includes that rendered to businesses electing to use Roll-Off Container Collection Services.

Construction and Demolition Debris means materials generally considered to be not 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, reconstruction or demolition project, or from the renovation or maintenance of a structure. The term includes rock, soils, tree remains, trees, and other vegetative matter, which normally result from land clearing or land development operations for a construction project. Mixing of construction and demolition debris with other types of solid waste, including material not from the actual construction, reconstruction or destruction of a structure, will cause it to be classified as other than “Construction and Demolition Debris.”

Curbside means that portion of the street right-of-way parallel to any public thoroughfare between the curb line and abutting property line. If ditching bisects the property and thoroughfare, the curbside shall then become the roadside of the ditch. This designated location shall be as near as possible to the traveled streets or alleys. The intention of a “curbside” designation is to allow collection by the Franchisee personnel in a rapid manner with reaching requirements minimized.

Curbside Residential Collection Service means the refuse collection services provided to persons occupying residential dwelling units within the City, including residential dwelling units located in mobile home parks receiving collection services at curbside.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may not enter other lands or be emitted into the air or discharge into any waters, including ground waters, or otherwise enter the environment.

Dumpsters or Container means Mechanical Containers or Mobile Carts (usually measured in cubic yards) for residential and commercial customers.

Franchisee means **COMPANY NAME** the solid waste services provider awarded this contract by the City of Wewahitchka.

Franchise Area means the specifically-described geographic areas exclusively assigned to the Franchisee for the purpose of garbage and trash collection and hauling.

Garbage means every refuse accumulation of animal, fruit or vegetable matter that attends the preparation, use, cooking and dealing in or storage of edibles, that is subject to decay, putrefaction and the generation of noxious or offensive gases or odors, or that during or after decay, any serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material (excluding Recyclable materials, as defined herein).

Garbage Receptacle/Mobile Cart means a 96-gallon Mobile cart supplied by the Franchisee.

Handicapped Carryout Service shall mean the provision of household solid waste collection service at the rear or side of the residence for handicapped persons (as certified by the City).

Hazardous Waste shall mean any solid waste (even though it may be part of a delivered load of waste) that:

(a) Is required to be accompanied by a written manifest or shipping document describing the waste as “hazardous waste,” pursuant to any state or federal law, including, but not limited to, the Resource Conservation and Recovery Act, 42 USC 7901, et seq., as amended, and the regulations promulgated hereunder; or

(b) Contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substances Control Act, 15 USC 2601, et seq., as amended and the regulations promulgated hereunder; or

(c) Contains a “reportable quantity” of one or more “Hazardous substances,” as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and the regulations promulgated hereunder, or as

defined under Florida Administrative Code Section 17-7.020(24) and regulations promulgated hereunder; or

(d) Contains a radioactive material, whose storage or disposal is subject to state and federal regulation; or

(e) Contains paint in a liquid form.

Household Furniture means all movable, compactable articles or apparatus, such as chairs, tables, sofas, mattresses, etc., for equipping a house.

Industrial Waste means any and all debris and waste products generated by manufacturing, food processing (except restaurants), land clearing, commercial shrubbery or tree cutting, building construction or alteration (except do-it-yourself projects) and public works type construction projects, whether performed by a government unit or by contract. Industrial Wastes are not included in the scope of this Contract Agreement.

Infectious Waste means those wastes which may cause disease or may reasonable be suspected of harboring pathogenic organisms. Included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes that may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing and surgical gloves.

Items for Special Pickup means pickup of large items such as furniture, appliances, trees, sod; lumber, discarded automobiles or other items not defined in the Contract Agreement as either “garbage” or “trash” and shall be considered a “request for special pickup services.” Such special pickup services shall not be subject to the fees and charges set out in this contract, but shall be agreed upon by the person requesting such service and the Franchisee.

Loose Refuse means any refuse (either garbage or household trash) stored in and collected from any type of container other than a mechanical container or garbage can as describe. Refuse collected form the ground is considered “loose refuse” and will not be collected by the Franchisee.

Off-Site means any location not on the property where the waste is generated.

Refuse means both rubbish and garbage or a combination or mixture of rubbish and garbage, including paper, glass, metal and other discarded matter or materials.

Residential Dwelling Unit means any structure or shelter, or any part thereof, used on constructed for residential living receiving curbside collection service.

Rubbish means refuse accumulation of paper, excelsior, rags, wooden or paper boxes or container, “sweepings” and all other accumulations of a nature other than garbage, usual to

housekeeping and to the operation of stores, offices, and other business places; also, any bottles, cans, or other containers that, due to their ability to retain water, may serve as breeding places for mosquitoes or other water-breeding insects.

Solid Waste means garbage, rubbish, refuse, trash, yard trash, clean debris, white goods, special waste, ashes, sludge, or other discarded materials, including solid, liquid semisolid, or contained gaseous materials resulting from domestic, industrial, commercial mining, agricultural, or governmental operations.

Special Waste means solid wastes requiring special handling and management, not accepted at a landfill or other disposal facility, or accepted at a landfill or other disposal facility at higher rates than is charged for refuse, including, but not limited to asbestos, white goods, tires, used motor oils, mattresses, furniture, lead-acid batteries, contaminated soils and biohazardous wastes.

Trash means all waste materials not of a putrescible nature, newspapers, magazines, yard trimmings, cardboard boxes, clothing and similar discarded personal waste generated by building contractors or subcontractors is not "trash".

White Goods means discarded washers, dryers, refrigerators, ranges, water heaters, freezers, small air condition units, and other similar domestic large appliance.

Yard Trash means vegetative matter resulting from landscaping maintenance, including accumulations of lawn, grass, or shrubbery cutting or clippings; dry leaf raking; palm fronds; small tree branches; bushes; shrubs; green leaf cutting; fruits, or other matter usually created as refuse in the care of lawn and yards.

SECTION 3. GRANT OF EXCLUSIVE CONTRACT. The City Commission of Wewahatchka, Florida, does hereby grant to **COMPANY NAME** an exclusive contract, including every right and privilege appertaining thereto, to operate a sanitary garbage service for the collection and disposal of all manner of solid waste, not including biohazardous waste, biological waste, construction and demolition debris, hazardous waste, industrial waste, infectious waste, items for special pickup, white goods, and yard trash within the City.

This exclusive right shall apply to the collection and disposal of all solid wastes, as defined herein, generated by the citizens, residents, inhabitants, business enterprises, and other entities herein, and includes title to all such solid waste generated within said boundaries insofar as the City can establish its legal right to make such grant of title. Any person now or hereafter occupying any residential unit or operating a commercial business establishment within any portion of the franchise area shall be required to utilize the services of the Franchisee for garbage collection and disposal.

SECTION 4. TERM. This exclusive Contract shall be granted for a period of five (5) years unless sooner terminated by reason of a breach of the terms hereof by the Franchisee resulting in the material failure of the Franchisee to provide effective and efficient service.

This Contract term commences **DATE** and ends **DATE**. The term of this contract may be renewed annually, commencing at the end of the initial term, under the same terms, conditions, and limitations imposed hereby, unless City or the Franchisee shall give notice to the other of an intent to cancel or renegotiate, which notice shall be in writing, and delivered by certified United States Mail, return receipt requested, and posted no *later than* ninety (90) days *before* the termination date of this non-exclusive contract. Notice may also be delivered by hand, and if so delivered, a receipt therefore, signed by an authorized agent of the City or the Franchisee shall be the evidence of delivery. In the event regulatory changes affecting landfill operations shall occur, then the cost for disposal shall be adjusted at the time such regulatory change takes effect, as agreed upon by Franchisee and City.

SECTION 5. ASSIGNMENT. The non-exclusive contract rights herein granted the Franchisee Shall not be assigned by Franchisee except with the express approval of the City, which approval shall not be unreasonably withheld, and which shall be reflected by an ordinance amendment. However, Franchisee may, without prior approval from the City, assign the rights herein to any parent or subsidiary company of Franchisee.

SECTION 6. DEFAULT. The failure on the part of Franchisee to comply in any substantial respect with any of the provisions of this contract shall be grounds for forfeiture of this contract, but no such forfeiture shall take effect until the City has served, via certified U.S. Mail, written notice of default upon the Franchisee, which notice shall set forth the nature and extent of the default. Franchisee shall have thirty (30) days following its receipt of the notice of default to correct the same. If Franchisee protest the reasonable justification of the City's declaration, said protest shall be served upon the City in writing, via certified U.S. Mail, within ten (10) days following receipt by the Franchisee of the City's notice.

SECTION 7. CUSTOMER BILLING AND COLLECTION. The city shall retain the right sand responsibility for residential and small commercial customer account establishment, the monthly billings, and collection of charges to customers. The City shall notify the Franchisee of new accounts.

SECTION 8. RATE CHARGES.

A. The City will provide the Franchisee, on a monthly basis, a detailed list and summary report of the number of Residential Dwelling Units the number of Commercial Business Establishments receiving Mechanical Container collection service (as well as the frequency of collection service for each such customer.)

B. The Franchisee shall invoice the City, on a monthly basis for the previous month's services by the 10th of the following month. Example: March service will bill 4/1 and invoice

should be received no later than 10th and payment for that invoice should be received by Franchisee no later than 15th. Both invoices can be emailed or faxed the day after billing per customer's preference.

Separate invoices will be forwarded for services provided: Residential house count will be changed monthly per info provided by the City; Commercial services will be billed according to can size and number of service days provided each customer. Prorated debits/credits will be applied based on the information provided by the City advising Franchisee to add accounts/services and/or close accounts. Commercial invoicing will run from 26th to 25th instead of 1st – end of the month. Example: An account added or closed on the 26th of March would appear on the May 1st invoice.

The City and Franchisee will perform a joint annual audit of both commercial and residential accounts to maintain accurate billing information.

All collection services prices shall include disposal costs. Monthly invoices to the City shall be based upon extensions of the Unit Bid Rates multiplied by actual customer volumes. Initially, the Unit Bid Rates shall be established as follows:

1. Residential Dwelling Units \$ _____ per month
 One (1) time per week

Senior Citizens: \$ _____ per month (verification by Franchisee may be required and only Senior Citizens shall reside in the home.)

2. Commercial Business Establishment:

Mobile Cart Service
 One (1) time per week Service \$ _____ per month, per cart

Dumpster Container Service
 (per month rates)

	1x per week	2x per week
2 cubic yard container	\$ _____	\$ _____
3 cubic yard container	\$ _____	\$ _____
4 cubic yard container	\$ _____	\$ _____
6 cubic yard container	\$ _____	\$ _____

C. The City shall remit all monthly fees to the Franchisee within fifteen (15) days of the date of receipt of each monthly invoice and identify accounts that are not current and Franchisee

will not be responsible for providing service to those delinquent accounts. Franchisee and the City shall verify the residential and commercial accounts on an annual basis. The City will retain ten percent (10%) as a contract fee and reserves the right to charge residential and commercial accounts an additional fee above the Franchisee rates as a contract administrative fee.

D. Franchisee will provide commercial accounts with Dumpster or Cart (s) at no charge and waives the right to negotiate fees with such customers. The City may establish the level of service required for commercial and residential customers and the City will enforce mandatory service.

E. Beginning **DATE**, the Franchisee shall receive an annual adjustment to the collection rates and shall provide written documentation at least (30) days prior to the adjustment becomes effective. The rates shall be adjusted annually in an amount equivalent to the net increase in the Consumer Price Index (CPI-W) as measured by the twelve months ended each preceding December. The Franchisee may petition the City for a change in the rates to compensate Franchisee for additional costs occasioned by increases in fuel costs. For fuel cost adjustments, Franchisee's petition shall utilize the cost of fuel as determined by reference to the Energy Information Administration of the US Department of Energy ("EIA/DOE") website that reports average prices of diesel fuel for the "Gulf Coast" United States. The link is as follows: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. The benchmark for determining fuel adjustments shall be the cost of diesel fuel as of **DATE**, which was \$ _____ per gallon as determined by the above website. Franchisee shall be precluded from making a request for adjustment under this provision until such time as the cost of diesel fuel reaches \$ _____ per gallon. Franchisee's request shall indicate the change in fuel costs and supply the proposed rate adjustment to keep the Franchisee whole as to the cost of fuel and will not become effective until fifteen (15) days after the adjustment is approved by the City. Requests for fuel adjustment shall not be unreasonable denied.

SECTION 9. SCOPE OF SERVICES.

A. Residential Solid Waste Collection Services

1. **Frequency of Collection:** The Franchisee shall collect refuse from residential dwelling units within the franchise area one (1) time per week.

2. **Hours of Collection:** Collection shall begin no earlier than 6:00 am and shall cease no later than 7:00 pm, Monday through Saturday. In the event of an emergency, collection may be permitted at times not permitted by this paragraph, provided the Franchisee has received prior approval from the City Manager, or their designee, to be later evidenced by a written memorandum confirming such approval. Should the Franchisee not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the Franchisee had not obtained such approval. No collection shall occur on Sundays, or holidays, except in time of emergency, or to maintain a regular schedule due to holidays recognized by the

Franchisee. Customers may request special pickups at an additional charge. Such charge shall be billed by the Franchisee.

3. **Point of Pickup:** Collection of Refuse shall be at curbside. In the event an appropriate location cannot be agreed upon, the City Manager, or their designee, shall determine the location.

4. **Receptacles:** The Franchisee shall provide 96-gallon Mobile Carts to each curbside residential dwelling unit located within the City. The Franchisee shall be required to pick up all garbage and rubbish generated from residential dwellings that has been placed in a Mobile Cart and placed at Curbside (or such other single collection point as may be agreed upon by the Franchisee and the customer). Franchisee shall not be required to collect residential waste not generated in the residence served. Non-containerized rubbish, trash or yard waste shall not be collected by the Franchisee. However, during high volume periods such as Christmas, arrangement to collect non-containerized materials will be made as agreed upon by the Franchisee and the City Manager.

5. **Method of Collection:** The Franchisee shall make collections with a minimum of noise and disturbance to the householder. Any garbage or trash spilled by the Franchisee shall be picked up immediately by the Franchisee. Receptacles shall be handled carefully by the Franchisee, shall not be bent or otherwise abused, and shall be thoroughly emptied and left at the proper point of collection.

6. **Handicapped Carryout Service:** Upon notification by the City, collection services shall be provided by Franchisee at the rear or side of the residence for qualified handicapped persons. Customer application for such services shall be made by the Customer and approved by the City.

7. **Non-Collectable Items:** The Franchisee shall not be responsible for the collection of bulk waste, household furniture, loose refuse, loose trash, yard waste, white goods, or construction and demolition debris.

8. **Indigent Service:** The City can designate up to 10 homes that qualify for free service.

B. Commercial Solid Waste Collection Service:

1. **Frequency of Collection:** The Franchisee shall collect refuse from Commercial Business Establishments within the City a minimum of one (1) time per week. Collection frequencies shall be mutually agreed upon by the Franchisee and each Commercial Business Establishment; however the City shall require the Commercial Business Establishments to

maintain an adequate level of service to avoid overflowing containers and refuse left outside of the containers.

2. **Hours of Collection:** Collection shall begin no earlier than 5:00 am, and shall cease no later than 7:00 pm, Monday through Saturday. In the event of an emergency, collection may be permitted at times not permitted by this paragraph, provided the Franchisee has received prior approval from the City Manager or their designee, to be later evidenced by a written memorandum confirming the approval. Should the Franchisee not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the Franchisee had not obtained such approval. No collection shall occur on Sundays or holidays, except in a time of emergency, or to maintain a regular schedule due to holidays recognized by the Franchisee. Customers may request special pickups at an additional charge. Such charge shall be billed by the Franchisee.

3. **Point of Pickup:** Collection of refuse shall be at a location mutually agreed upon by the Franchisee and each commercial business establishment. In the event an appropriate location cannot be agreed upon, the City Manager, or their designee, shall determine the location.

4. **Receptacles:** The Franchisee shall provide Dumpsters or Mobile Carts to each commercial business establishment. The quantity and/or size of the receptacles shall be mutually agreed upon by the Franchisee and each commercial business establishment.

5. **Method of Collection:** The Franchisee will furnish each commercial account Dumpster(s) or Mobile Carts. The Franchisee shall make collections with a minimum of noise and disturbance to the customer. Any garbage or trash spilled by the Franchisee shall be picked up immediately by the Franchisee.

6. **City and County Facilities:** The Franchisee shall provide commercial hand collect or dumpster service to the City and County Facilities, with the exception of any waste water treatment facility, located within the City Limits service without charge. The free service does not include roll-off and/or Special Waste with prior written approval of the District Manager of **COMPANY NAME**.

SECTION 10. DISPOSAL SITE AND FEES. All solid waste collected by Franchisee under the Scope of Service, as defined herein, shall be disposed of at a site or facility legally empowered to accept it for treatment or disposal. The Franchisee shall be responsible for all disposal fees.

SECTION 11. FRANCHISEE'S BUSINESS OFFICE. The Franchisee shall maintain a telephone listed in the name in which it conducts business as Franchisee and must answer same at all reasonable times. There shall be an adequate number of telephones and a responsible Franchisee representative in charge during Franchisee business hours for the purpose of addressing consumer complaints.

SECTION 12. PERFORMANCE BOND. Franchisee shall furnish a \$150,000.00 performance bond for the faithful performance of this Contract agreement and all its obligations arising hereunder, made payable in favor of the City, (or, in lieu thereof, pay to the City the sum of \$150,000.00). Said bond shall be executed by a surety company licensed to do business in Florida.

SECTION 13. INSURANCE.

A. **Insurance Liability.**

1. The Franchisee shall not commence any work in connection with this Contract Agreement until all required insurance has been approved by the City.

2. All insurance policies shall be with insurers licensed to do business in the State of Florida, and any insuring company is required to have a minimum rating of A, Class X in the Best's Key Ratings Guide published by A.M. Best & Co., Inc.

3. The City shall be furnished proof of coverage via a certified, complete duplicate of all insurance contracts, including every endorsement. The complete insurance contracts must be delivered to the City Manager or Designee, not less than ten (10) days prior to the commencement of any and all contractual agreements between the City and Franchisee. The City shall retain the right to reject all insurance contracts that do not meet the requirements of this Contract Agreement.

4. The insurance definition of "insured" or "additional insured" shall include Franchisee and any of its subcontractors, and any associated or subsidiary companies of Franchisee that are involved in a part of the Agreement.

5. The designation of "Franchisee" shall include any associated or subsidiary company involved in or part of this Agreement. Any associated or subsidiary company involved in this Agreement must be named in the Workers' Compensation coverage.

6. All policies shall be written to assure that the City will be notified of cancellation at least thirty (30) days prior to the effective date of such cancellation or amendment. Such notice shall be given directly to the City Manager, or his or her designee.

7. All insurance contracts, except that for Workers' Compensation, shall list the City as an "Additional Insured." Franchisee shall provide the City current Certificates of Insurance for all policies.

B. **Workers' Compensation Insurance.**

1. The Franchisee shall secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all persons it employs, including supervisory,

administrative and managerial personnel. In the event any work is sublet with the approval of the City, the Franchisee shall require that the subcontractors provide Workers' Compensation Insurance for all its employees. Evidence of insurance shall be furnished the City not less than ten (10) days prior the commencement of work related to any and all sub-contractual agreements.

2. Such insurance shall comply with the Florida Workers' Compensation Law.

3. Workers' Compensation insurance shall also include Employer's liability coverage and shall include a Broad Form All States Endorsement.

4. Coverage shall include a "waiver of subrogation" clause in favor of the City. Also, this endorsement must be indicated on all Certificates of Insurance.

C. **Business Automobile and Public Liability Insurance.**

1. The Franchisee shall maintain Business Automobile Liability insurance coverage throughout the term of this Agreement. This insurance shall include owned, non-owned and hired motor vehicle coverage.

2. The Franchisee shall carry Public Liability Insurance against all other bodily injury, property damage and personal injury exposures. The coverage shall include both on land off-premises operations, contractual liability, environmental clean-up and professional liability.

3. All liability insurance shall be written on an "occurrence" basis and shall not be written on a "claims-made" basis. If the insurance is issued with an aggregate limit of liability, aggregate limit of liability shall apply only to the locations included in the Agreement. If, as the result of any claims or other reason, the available limits of insurance are reduced to less than those stated in the Limits Liability, the Franchisee shall notify the City Manager in writing.

The Franchisee shall purchase additional liability insurance to maintain the requirements established in this Agreement. Umbrella or Excess Liability insurance can be purchased to meet the limits of liability specified in this Agreement. The Franchisee shall purchase additional liability insurance to maintain the requirements established in this Agreement. Umbrella or Excess Liability insurance can be purchased to meet the limits of liability specified in this Agreement.

4. Public Liability coverage shall be endorsed to include the following:

- a) On and off-premises operation liability
- b) Bodily injury and property damage liability
- c) Independent Franchisee liability

- d) Completed operations and products liability with a two (2) year extension
- e) Blanket broad form contractual liability
- f) Personal injury liability
- g) Broad form property damage liability (including completed operations)
- h) Blanket X, C and U coverage, where applicable

D. **Limits of Liability.** The required insurance shall be written for not less than the following amounts, or greater amounts if required by law, and shall include employer's liability with limits as prescribed in this contract.

<u>TYPE</u>	<u>LIMIT</u>
1. Workers Compensation	
a) State	Statutory
b) Employer's Liability	\$1 Million each accident
2. Comprehensive Automobile and General Liability Insurance, Professional	\$5 Million each occurrence
3. Personal and Advertising Injury	\$250,000.00

SECTION 14. NOTICE OF CLAIMS OR LITIGATION. The Franchisee shall report to the City any incident or claim resulting from the performance of this Agreement. Within ten (10) days of the Franchisee's knowledge of the occurrence of an incident or claim, The City Manager, or designee shall receive written notice describing the incident or claim. In the event such incident or claim involves injury or property damage to a third party, verbal notification shall be given to the City the same day the Franchisee becomes aware of the incident or claim. A detailed written report shall be made to the City within ten (10) days.

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SECTION 15. INDEMNIFICATION AND HOLD HARMLESS. The Franchisee will defend, indemnify, save harmless, and exempt the City, its officers, agents, servants, and employees from and against any and all suits actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from or based on (i) violation of applicable laws, ordinances, rules or regulations by the Franchisee, its agents or employees; (ii) injury to persons or damage to property arising out of the Franchisee's or its agents and/or employee's intentional, willful or negligent acts or omissions in the performance of this Agreement.

SECTION 16. HOLIDAYS. The City shall not require the Franchisee to provide service on the following holidays. New Year's Day, Thanksgiving and Christmas. If the regular

collection day for any route(s) falls on any of the aforementioned holidays, the Franchisee shall collect the refuse on the next collection day for that route.

SECTION 17. ACCESS TO RECORDS. The City may audit the Franchisee at any time with a seven-day notice and shall have access to Franchisee's financial records and customer lists as they pertain to this contract.

SECTION 18. COLLECTION EQUIPMENT.

A. The Franchisee shall have on hand, at all times and in good working order; such equipment (including mobile cart replacements) as shall permit the Franchisee to adequately and efficiently perform its contractual duties. "Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. Equipment shall be of the enclosed loader/packer type and all equipment shall be kept in good repair and appearance and in a sanitary and clean condition at all times. The Franchisee shall have available reserve equipment which can be put into service within twenty-four (24) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Franchisee to perform the contractual duties.

B. Franchisee must place on the sides of its trucks the following: (a) the name of the Franchisee in letters large enough to be seen from a reasonable distance, and (b) the Franchisee's phone number.

SECTION 19. PROTECTION OF FRANCHISE AREA. No collector other than the Franchisee may make any pickups within the franchise area for the services defined in this agreement. Franchisee may not charge a customer, for services under this Agreement, any amount other than that prescribed by the City or as otherwise provided in this Agreement.

SECTION 20. SPECIAL WASTE, INFECTIOUS WASTE, HAZARDOUS WASTE, BIOHAZARDOUS WASTE AND BIOLOGICAL WASTE:

A. The Franchisee shall not be required to collect and dispose of Special Waste, Infectious Waste, Hazardous Waste, Biohazardous Waste or Biological Waste, but may offer such service in the service area. All collection and disposal of such waste, when performed by the Franchisee, shall be in strict compliance with all federal, state and local laws and regulations.

B. The Franchisee shall refuse to collect Solid Waste from a customer if the Franchisee believes that such Solid Waste contains Special Waste, Infectious Waste, Hazardous Waste, Biohazardous Waste and Biological Waste.

SECTION 21. MODIFICATIONS TO LEVEL OF SERVICE. The City may modify the level of collection services provided under the contract if it is determined to be in the best interest of the City or to comply with changes in laws and regulations. The City and the Franchisee agree to negotiate of the impact of any such modifications in good faith, shall reduce same in writing, and shall execute same as amendments to the Agreement.

SECTION 22. MODIFICATIONS TO SCOPE OF SERVICE. The City may modify the scope of the contract to include collection services not originally included in the Scope of Services specified in Section 9 of this Contract Agreement, if determined to be in the best interest of the City. The City and Franchisee agree to negotiate any impact of such modification of the Scope of Services in good faith, shall reduce same to writing, and shall execute same as amendments to the Agreement.

SECTION 23. COOPERATION/COORDINATION. The City and its authorized representatives shall be permitted reasonable access to every facility for the inspection of all work, equipment, and facilities of Franchisee. The Franchisee shall cooperate with the reasonable requests of any authorized representative of the City in order to facilitate the progress of the work contemplated under this Franchise.

SECTION 24. CONSUMER COMPLAINTS. The Franchisee shall maintain a register of all accounts and indicate the disposition of each complaint. Such record shall be available for City inspection at all times during business hours and shall indicate the day and hour on which the complaint was received and the day and hour on which it was resolved. Legitimacy of challenged complaints shall be determined on the basis of joint inspection by the City Manager, or his or her designee, and representative of the Franchisee. Disputes shall be referred to the City Manager and his or her decision shall be final.

SECTION 25. STORMS AND HURRICANES. In the event of a storm or hurricane, the City Manager, or his or her designee, may grant the Franchisee reasonable variance from regular schedules and routes. As soon as practicable after such storm, the Franchisee shall advise the City manager and the customer of the estimated time required before regular schedules and routes can be resumed. In the case of a storm where it is necessary for the Franchisee to acquire additional equipment and to hire extra crews to clean the service area of debris and refuse resulting from the storm, the Franchisee shall work with the City in all possible ways for the efficient and rapid cleanup of the service area. The Contract shall receive extra compensation, above that provided for by the Contract agreement, for additional personnel, overtime, and cost of rental equipment, provided it has first secured prior written authorization from the City Manager, or his or her designee. The total cost for such service shall be based on rates jointly agreed upon in advance by the City and the Franchisee. In the event of such storm or hurricane emergency, the City reserves the right to assign route or pick-up priorities as deemed necessary by the City Manager. Notwithstanding the above, the Franchisee shall not be responsible for nor have

an obligation to collect transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster unless the City enters into a written agreement with Franchisee specifying the terms and compensations for such services.

SECTION 26. FRANCHISEE'S REPRESENTATIVES. The Franchisee shall assign a qualified person or persons to be in charge of the operations within the service area, and he or she shall be responsible to the City Manager and be accessible at reasonable times of call. The Franchisee shall give the names and day and night telephone numbers of these persons to the City. Said supervisor(s) must be available for consultation with the City Manager and customers within a reasonable, practicable time after notification of a request for such consultations. The supervisor(s) shall operate a radio equipped vehicle.

SECTION 27. CONDUCT OF EMPLOYEES. The Franchisee shall ensure that its employees serve the public in a courteous, helpful and impartial manner. Franchisee's collection employees will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, nor shall the crossing of neighboring properties, unless residents or owners of both such properties shall have given permissions. Care shall be taken to prevent damage to property including cans, carts, racks, trees, shrubs, flowers and other plants. The Franchisee shall also be responsible for complying with the following terms and conditions:

- A. Each vehicle operator shall, at all times, carry a valid driver's license for the type of vehicle being driven.
- B. The Franchisee shall provide operating and safety training for all its personnel.
- C. The Franchisee's solid waste collection employees shall wear a uniform or shirt bearing the Franchisee's name.

SECTION 28. COMPLIANCE WITH STATE, FEDERAL AND MUNICIPAL LAWS. The Franchisee shall comply with all applicable Municipal, County, State and Federal laws relating to wages and hours, and all other applicable laws relating to the employment or protection of its employees, now or hereafter in effect.

SECTION 29. STANDARDS OF PERFORMANCE. If the Franchisee fails to perform as herein specified for a period in excess of fifteen (15) consecutive scheduled working days after written notice has been received, or fails to operate the system in a satisfactory manner, for a similar period, the City may proceed as necessary to continue the performance itself until such matter is resolved and the Franchisee is again able to carry out its operation under this non-exclusive contract. Any and all operating expenses incurred by the City in so doing may be charged to the Franchisee.

SECTION 30. DEFAULT AND DISPUTE OF THE AGREEMENT. It shall be the duty of the City Manager to observe closely the agreed-upon refuse collection and disposal services. In the opinion of the City Manager, there will have been a breach of the contract should any of the following occur:

A. The Franchisee takes the benefit of any present or future insolvency state, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or a petition or answer seeking re-adjustment of its indebtedness under the federal laws of the United States, or any state thereof, or consents to the appointment of a receiver or trustee, or liquidator of all, or substantially all, of its property; or

B. By order or decree of a court, the Franchisee shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Franchisee seeking its reorganization or the readjustment of its indebtedness under federal bankruptcy laws or under any law or statute of the United States or any state thereof; provided that, if any such judgement is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect; or

C. By, pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or government bond, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Franchisee and such possession or control shall continue in effect for a period of sixty (60) days; or

D. The Franchisee shall voluntarily abandon, desert, or discontinue its operation hereunder granted, for a period in excess of fifteen (15) consecutive scheduled working days, then such shall be considered a material breach of this contract and the City Manager shall notify the Franchisee in writing of the breach.

SECTION 31. PERMITS AND LICENSES. The Franchisee shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.

SECTION 32. TITLE TO MATERIALS. The City reserves the right at all times to hold title and ownership to all waste collected by the Franchisee.

SECTION 33. MODIFICATION. The terms and conditions of this contract may be modified from time to time by mutual agreement of the parties as evidenced by a written agreement duly executed by the parties hereto or their representatives. No modification or amendment of this contract shall be valid and effective unless evidenced by the required agreement in writing.

SECTION 34. REPEALER. All ordinances or code provisions in conflict herewith are hereby repealed.

SECTION 35. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this contract is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this contract, except that where the City finds the invalidated provision is essential to the contract as a whole the City may terminate said contract.

SECTION 36. EFFECTIVE DATE. This contract shall take effect on _____, 2022.

SECTION 37. FORCE MAJEURE. The performance of the Agreement may be suspended and the obligations of either party excused in the event of and during the period that such performance is prevented or delayed by a Force Majeure occurrence. “Force Majeure” shall mean:

- (a) An act of God, including hurricanes, tornadoes, landslides, lightning, earth-Quakes, weather conditions, fire, flood, explosion, act of terrorism, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot, civil disturbance, strike or other labor disturbances, governmental actions or regulations, governmental requests or requisitions for national defense or breakdown or injury to, or shortage in, facilities used for the handling, processing or transportation of Solid Waste or any other cause beyond the reasonable control of either party.
- (b) The order or judgement of any Federal, State, or local court, administrative agency or governmental body (excluding decisions of federal courts interpreting federal tax laws, and decisions of State courts interpreting State tax laws) if it is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order or judgement nor the failure to so contest shall constitute or be construed as a measure of willful misconduct or negligent action or inaction of such party;
- (c) The suspension, termination, interruption, denial, or non-renewal of any permit or approval essential to the operation of the Franchisee; or
- (d) A Change in Law. “Change in Law” means (i) the adoption, promulgation, or modification or reauthorization after the date of the contract of any law, regulation, order, statute, ordinance, rule or binding judicial or administrative ruling that was not adopted, promulgated, modified, or reissued on or before the date of this contract, or (ii) the imposition of any material conditions in connection with the

issuance, renewal, or modification of any permit, license, registration, notice of intent or approval after the date of this contract, which in the case of either (a) or (b) establishes requirements affecting a party's operation under this contract more burdensome than the requirements that are applicable to such party and effect as of the date of the contract. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, State or local entity imposes a fee, charge or tax after the date of this contract that applies to a party's operations per se, such fee, charge or tax shall be treated as a Change in Law.

ATTEST:

CITY OF WEWAHITCHKA, FLORIDA

Mayor Phillip Gaskin

Rachel Jackson
City Clerk

Franchisee

The form and legal sufficiency of the foregoing have been reviewed and approved by the City Attorney.

Michelle Jordan, City Attorney

Date: _____