

CONTRACT

THIS CONTRACT made and entered into April 6, 2021, by and between the City of Jackson, a Municipal Corporation of Madison County, Tennessee, (hereinafter called the "City"), and Waste Management, Inc. of Tennessee (hereinafter called "Contractor").

WITNESSETH:

Whereas, on October 9, 2020, the City issued a Request for Proposals for Solid Waste Collection Services,

Whereas, the Contractor and other waste services companies did on the 23rd day of December 2020, submit proposals in response to the City's request to provide Solid Waste Collection Services within the City and to perform such work as may be incidental thereto,

Whereas, after evaluation of the proposals received from the qualified respondents, the City selected Contractor as the successful respondent,

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. **Exclusive Contract**. The Contractor is hereby granted an exclusive contract for services within the territorial jurisdiction of the City, except as otherwise stated in this Contract and the Contract Documents. The Contractor shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide Solid Waste Collection Services as specified herein and to perform all of the work called for and described in the Contract Documents.
2. **Contract Documents**. The Contract Documents shall include the following documents, and this Contract does hereby expressly incorporate the same herein as fully as if set forth verbatim in this Contract. Additionally, the following order of precedence shall govern among the various Contract Documents, with the first listed having precedence over any documents listed thereafter:
 - a. This Contract instrument.
 - b. The Contractor's Proposal.
 - c. The City's Request for Proposals, including all Addenda issued by the City.
 - d. The Instructions to Proposers.
 - e. The General Specifications.

f. The Performance Bond and Material & Labor Bond.

3. **Amendments.** All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties, and approval of City Council which consent shall not be unreasonably withheld. No amendment shall be construed to release either party from any obligation of the Contract Documents except as specifically provided for in such amendment.

4. **Scope of Contract/Excluded Services.**

a. **Services.** The work to be done consists of furnishing all labor, tools, equipment and materials, supplies and services necessary to satisfactorily collect all garbage and refuse, as hereinafter defined, from all residential, commercial, and industrial locations within the corporate limits of the City of Jackson, Tennessee, transporting said collected garbage and refuse to the designated disposal location, and performing all other work or services incidental to refuse collection services in accordance with applicable sections of the Universal Garbage Ordinance of The City of Jackson, Tennessee, and in strict accordance with the terms and provisions of this contract. This Contract expressly excludes (a) temporary Roll-Off Container services placed on a jobsite to handle Construction Debris on any project under six (6) months, (b) collection of residential Bulky Waste which shall be performed exclusively by the City of Jackson, which includes excess Hand Piles material, (c) collection of loose leaves, which the City will perform using a leaf vacuum or other equipment; and (d) the collection of Dead Animals.

b. **Storms and Other Disasters-** The work under this Contract does not include the collection and disposal of any increased volume resulting from a flood, hurricane or similar or different act of God over which the Contractor has no control. In the event of such a flood, hurricane or other act of God, the Contractor and the City will negotiate the services to be performed, the charges for said services, and payments to be made to the Contractor. Further, if the City and the Contractor reach such agreement, then the City shall grant the Contractor variances in routes and schedules as deemed necessary by the Contractor.

5. **Term.** The Contract shall be for a five (5) year term beginning on August 1, 2021 (“Effective Date”) and ending on July 31, 2026. The Contract is renewable for four (4) additional one (1) year terms at the City’s option so long as the City provides Contractor with written notice of its intent to renew at least 100 days before the end of the then-current term.

6. **Definitions.** The following words have the meanings prescribed below:

a. **Applicable Law** - Any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced that relates to or affects the City, the Contractor, or the performance by a party of its obligations hereunder.

b. **Bags-** Plastic sacks designed to store Refuse with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a bag and its contents shall not exceed 50 pounds.

c. **Bulky Waste-** Used and discarded mattress and box springs, stoves, refrigerators (CFCs must have been removed by a certified technician), water tanks, washing machines,

furniture and other waste materials including Bags and other materials that exceed the limitations or specifications of a Hand Pile. Excluded is Construction Debris, Hazardous Waste, or Yard Waste with weights or volumes greater than those allowed for Containers.

- d. **City**- City of Jackson, Tennessee.
- e. **Commercial Waste**- All types of Solid Waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities located within the corporate limits of the City, excluding Residential Waste and Industrial Waste.
- f. **Commercial Hand Collection**: A retail or light commercial type of business, which generates no more than three (3) cubic yards of Waste per week for deposit in a Polycart or a downtown high-rise building near a fire zone that generates more than 3 cubic yards of Waste per week. Contractor determines needs to be serviced by using Polycart(s) provided by Contractor.
- g. **Commercial Unit** – All commercial businesses and establishments, including, but not limited to, stores, offices, restaurants, warehouses, and other non-manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the City and not classified as Residential or Industrial. Commercial Unit customers shall include apartments, condominium complexes, and trailer courts consisting of eight (8) or more residential units serviced by Containers that are 2 cubic yards in size or larger.
- h. **Construction Debris**- Waste building materials resulting from construction, remodeling, repair, or demolition operations that are directly or indirectly the by-products of construction work or that result from demolition of buildings or other materials.
- i. **Compactor**: Any container, regardless of size, which has a compaction mechanism, whether stationary or mobile.
- j. **Contractor**: Waste Management, Inc. of Tennessee.
- k. **Dead Animals**- All dead animals are picked up by the City and are not a part of this contract.
- l. **Disposal Site or Landfill**- The Landfill located at 550 Aaron Long Road, Jackson, TN.
- m. **Dumpster**: Metal receptacle designed to be lifted and emptied mechanically for use only at Commercial Units or Industrial Units.
- n. **Hand Pile**: A residential pile of Yard Waste or other Residential Waste that does not exceed 3 feet high by 5 feet long x 3 feet wide or a maximum of 10 Bags, which the resident must place curbside for collection. A Hand Pile may not contain any Bulky Waste, Construction Debris, or Unacceptable Waste.
- o. **Hazardous Waste**: Any waste identified or listed as a hazardous waste by the administrator of the Environmental Protection Agency under the Federal Solid Waste Disposal Act as amended by RCRA, 42 U.S.C. §6901, *et. seq.*, as amended or identified as hazardous under any state law, regulation, or rule.
- p. **Industrial Unit**: All industrial businesses and establishments, including manufacturing facilities, premises, locations or entities, public or private, within the corporate limits of the

City.

- q. **Industrial Waste**: Solid Waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.
- r. **Polycart or Cart**: A Contractor provided rubber-wheeled receptacle with a maximum capacity of 90 - 96 gallons constructed of plastic, metal and/or fiberglass, designed for automated or semi-automated solid waste collection systems, and having a tight-fitting lid capable of preventing entrance into the container by small animals. The weight of a Polycart and its contents shall not exceed 175 lbs.
- s. **Producer**- An occupant of a Residential, Commercial, or Industrial Unit who generates Refuse.
- t. **Refuse or Waste**- This term shall refer to Residential, Commercial, and Industrial garbage or waste consisting of putrescible or non-putrescible (except ashes) material, generated by or at a Residential, Commercial, or Industrial Unit unless the context otherwise requires. The term "Waste" or "Refuse" specifically excludes Unacceptable Waste and Construction Debris.
- u. **Residential Refuse or Waste** - All Garbage, Rubbish, and Yard Waste generated by a Producer at a Residential Unit.
- v. **Residential Door-to-Truck Service** – A special Residential Waste collection service provided only to residents who apply and qualify for disabled service status as determined by the City. Contractor will roll the Residential Unit's Polycart from the garage, carport, or front area of the home to the waste truck and then return the Polycart to the original set-out location so long as the customer places the Polycart no more than 150 feet from the curb line or edge of pavement.
- w. **Residential Unit**- A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of eight or less contiguous or separate single-family dwelling units, shall be a Residential Unit, except that each single-family dwelling within any such Residential Unit shall be billed separately as a Residential Unit. Multi-family housing with more than two units are considered commercial property, but the City reserves the right to designate certain multi-family properties with as many as 8 units to be served by individual polycarts for each unit as if they were single family residences upon Contractor's agreement and so long as such multi-family properties can be effectively and safely serviced using polycarts.
- x. **Roll-Off Container** – Metal receptacle container provided by Contractor and measuring 20, 30, or 40 cubic yards, intended for high-volume Refuse of Construction Debris generated at a Commercial or Industrial Unit or at a construction site, and capable of pickup and transport to a landfill by loading onto the rear of the transporting vehicles, but excluding a Compactor. The provision of temporary Roll-Off Container services for Roll-Off Containers placed on a jobsite to handle Construction Debris on any project under six (6) months is excluded from this Contract.
- y. **Special Waste**: Any waste that is non-friable waste, asbestos, and/or any other waste defined by Tennessee law, rules or regulations as special waste and that requires third party approval from the Tennessee Department of Environment and Conservation. Special Waste is excluded from the Contractor's scope of services under this Contract.

- z. **Temporary Roll-off Container Customer** - A person, entity, or any business, including without limitation a construction site, within the City that uses or rents a Roll-off Container(s) for a period of six (6) consecutive months or less at a time. The provision of Temporary Roll-off Container Customer services is excluded from this exclusive Contract and will be provided in the open market between the customer and the service provider.
- zz. **Unacceptable Waste:** Any waste, the acceptance and handling of which by Contractor would cause a violation of any permit, condition, legal or regulatory requirement, substantial damage to Contractor's equipment or facilities, or present a danger to the health or safety of the public or Contractor's employees, including, but not limited to, Hazardous Waste, Special Waste (except as otherwise provided herein), untreated medical waste, dead animals, solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit.
- zzz. **Yard Waste-** All tree trimmings, dead trees, or branches thereof, grass cuttings, garden trimmings, weeds and roots from which all dirt has been removed. Included in this item shall be loose brush, loose limbs, and similar items, excluding loose leaves. The term Yard Waste excludes limbs that are greater than 3 feet by 5 feet in length. Professional tree trimmers and contractors will be required by the City ordinance to pick up their own trash and Bulky Waste and dispose of same in accordance with the City ordinance.

7. Residential Services

- (a) The Contractor shall provide a Polycart for the deposit of Residential Waste to each Residential Unit. Residents are required to place their Waste in the Polycart and cannot substitute the Polycart with Bags or other customer provider trash cans or containers. Contractor will provide twice per week curbside collection of all Residential Waste properly placed into that Residential Unit's Cart. Residents shall not overload or overfill the Polycart such that the lid does not completely close.
- (b) Hand Pile(s). Contractor will provide twice per week curbside collection of a Residential Unit's Hand Pile. Any Residential Waste placed curbside that exceeds the required limits or specifications of a Hand Pile shall be considered Bulky Waste and shall be collected by the City. Contractor has no obligation to collect any Residential Waste that exceeds the limits or specifications of a Hand Pile. Residents must place all loose grass or leaves that do not fit within a Polycart in a Bag for such grass or leaves to qualify for curbside collection as part of a Hand Pile.
- (c) The Carts furnished by the Contractor hereunder shall remain the property of Contractor. The Carts shall remain at the location of the Residential Unit where delivered by Contractor. The Residential Unit customer shall be responsible for lost or missing Carts. Contractor will provide replacement Carts at no cost to replace those Carts that are damaged. Customers will contact the City if they need Cart repair or if they need a replacement Cart because theirs is lost or missing. The City will provide this information to Contractor to address the request. In the event a Cart at a Residential Unit should become lost or is missing, Contractor agrees to replace such lost or missing Cart with a replacement Cart, at a cost of \$50.00 to the Customer. An additional (i.e., second Cart) Cart is available for Residential Unit customers at an additional charge to be paid by the Customer as reflected in **Schedule A** attached.

- (d) Contractor will provide a special Residential Door-To-Truck Service to service Waste Polycarts for those residents who apply and qualify for disabled service status as determined by the City. A resident who qualifies for this special service cannot reside with any able-bodied person. The City has sole responsibility for determining which Residential Unit customers qualify for this Door to Truck Service, and the City will provide Contractor with a list of qualifying residential customer's addresses and whether the qualification is temporary or permanent. Contractor will roll the qualified Residential Unit customer's Polycart from the garage, carport, or front area of the residence to the waste truck and then return the Polycart to the original set-out location. To qualify, the resident must place the Polycart no more than 150 feet from the curb line or edge of pavement where the Contractor's truck will travel. Hand Piles are excluded from this Residential Door-To-Truck Service. Only Residential Waste placed in the customer's Polycart will be included in the service.
- (e) Commercial Hand Collection – Contractor will provide (i) a Polycart to retail or light commercial types of businesses that generate or produce no more than three (3) cubic yards of Waste per week and (ii) more than Polycart as needed to downtown high-rise buildings in or near a fire zone that generate more than three (3) cubic yards of Waste per week that the Contractor determines needs to use Polycarts for service. Contractor shall collect Waste placed in a Polycart by the retail or light commercial types of businesses twice per week. Contractor may provide Waste collection services up to six times per week for the downtown high-rise buildings described above.
- (f) The Contractor may provide for the special collection of household hazardous waste at Residential Units at its sole discretion and upon such terms and conditions as Contractor shall specify.
- (g) Curbside Location of Carts and Hand Piles for Residential Collection - Residents shall place the Polycart and any Hand Pile as close to the roadways as practicable without interfering with or endangering the movement of vehicles or pedestrians. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roads at the curb line or edge of the street in front of the residence. When construction work is being performed in the right-of-way, Polycarts and any Hand Pile shall be placed as close as practicable to an access point for the collection vehicle. Residences who have no choice but to receive Waste collection service from an alleyway will place their Polycart at the edge of the alleyway from which service is rendered.

8. Commercial and Industrial Services

a. Services Provided

- i. Contractor shall provide Dumpster and non-temporary Roll-Off Container service for the collection of Waste from Commercial and Industrial Units as currently exist or as required to properly service the activity in accordance with local ordinance and to maintain the public's health and safety.
- ii. Contractor shall provide non-temporary Roll-off Containers to Residential, Commercial, or Industrial Unit customers that need to use or rent a Roll-off Container for a period of six consecutive months or more at a time. Such Roll-off Container Customers must call the City to obtain collection of the waste or Refuse generated at such location. The City is responsible

for setting up the billing for such Roll-off Container Customers and for sending Contractor a ticket to deliver the Roll-off Container to the customer and to provide collection services.

iii. The Contractor shall provide for the special collection of Special Waste at Industrial and Commercial Units if such Special Waste has been approved by the Tennessee Department of Environment and Conservation for disposal and at such rates and terms agreed to by the customer and Contractor.

- b. **Location of Dumpsters for Collection** - Dumpsters and Roll Off Containers shall be placed in an accessible, outside location on a hard surface as agreed between the customer and the Contractor.
- c. **Collection** - Regular collection for Commercial and Industrial Units shall be provided from Monday through Friday and Saturday until noon of each week at a frequency agreed upon by Contractor and customer.
- d. **Containers** - The Contractor shall furnish a sufficient number of Dumpsters and Roll-offs Containers satisfactory to the City for use by Commercial and Industrial Units adequate to meet the demand requirements of the customers served for the monthly service charge. Industrial Customers may provide their own Compactors, but such shall be compatible with the equipment used by the Contractor.

The Contractor must provide universally accepted equipment so that existing Customers with compaction equipment may be serviced without the purchase of new Compactors.

- e. **Equipment** - The Contractor will furnish a sufficient number of automated side load and heavy-duty trucks to handle collection of Refuse from Commercial and Industrial customers as proposed and to handle Polycart or bagged Refuse pick up where the use of Dumpsters is impracticable and hand loading is required. Producers shall place loose leaves, grass, and other Yard Waste clippings and Refuse in qualified Carts or in Bags in a Hand Pile. Contractor has no obligation to provide grapple or knuckleboom trucks.
- f. Contractor shall be the sole and exclusive garbage and Refuse collection Contractor operating in the City, other than the City itself, and other than those services or equipment which are expressly excluded from this Contract. The City of Jackson has authority to designate the location of commercial front-load containers and the minimum number of weekly pickups at all locations.

9. Operations

- a. **Hours of Operation**- Collection of Refuse shall not start before 7:00 a.m. or continue after 7:00 p.m. on the same day, except that collection of Commercial or Industrial Customers' Refuse or waste collection may start at 6:30 a.m. Exceptions to collection hours shall be effected only upon the mutual agreement of the City and Contractor, or when Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.
- b. **Routes of Collection** - Collection routes shall be established by the Contractor, Contractor shall submit a map designating the collection routes to the City for their approval, which approval shall not be unreasonably withheld.

- c. **Holidays** - The following shall be holidays for purposes of this Contract: New Year's Day, Martin Luther King Day, Memorial Day, Independence (July 4) Day, Labor Day, Thanksgiving Day, Christmas Day.

Contractor may decide to observe any or all of the above-mentioned holidays by suspension of collection service on the holiday, but such decision in no matter relieves Contractor of its obligation to provide collection service as contracted.

- d. **Missed Collections** - The Contractor shall monitor the City's complaint system for missed units. All missed pickups reported to the Contractor before 3:00 p.m. will be picked up before 7:00 p.m. the same day. Missed pickups reported after 3:00 p.m. will be picked up before 10:00 a.m. the next business day.

- e. **Collections Equipment** - The Contractor shall furnish the number of new or used vehicles for regular collection services in numbers to provide the services required. All used equipment shall be of reasonable repair and appearance and will be subject to rejection by the City. Rejected vehicles shall be removed from service and replaced within 30 days, unless otherwise agreed to by the parties. All vehicles and other equipment shall kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the identity and telephone number of the Contractor, and a unique identification number.

Trucks, compactors and other equipment used for collecting Refuse shall have a tightly closed body to keep to a minimum the nuisance of leakage and odors. The Contractor shall maintain equipment and facilities for washing and cleaning its equipment and shall maintain all trucks and other equipment in a clean and sanitary condition at all times. The interior of each body shall be washed and cleaned regularly. All equipment shall be well painted at all times so as to present a pleasing appearance.

- f. **Facilities** - The Contractor shall maintain an office within the corporate boundaries of the City equipped with computers and telephone service. Attendants may be necessary to receive and handle complaints or to receive instructions and directions from the City between the hours of 7:00 a.m. and 5:00 p.m., Mondays through Fridays and 7:00 a.m. until noon on Saturdays, excluding holidays. Communication between the City and the Contractor will be by local telephone and radio whereby the Contractor can be contacted in case of emergency twenty-four hours per day. Local telephone numbers will be required in order that the City may communicate directly with the Contractor's local office, and so that the City's calls do not roll over to another city, except in Force Majeure situations. Customers with service requests or complaints must contact the City's Health and Sanitation Department at 731-425-8545 for all solid waste services. So long as the City notifies Contractor of the Customer name, address, and issue, the City may direct a Customer to contact the Contractor directly at Contractor's local Jackson office to resolve the issue.

The Contractor shall maintain garaging and maintenance facilities for all equipment in a condition acceptable to the City insofar as zoning, traffic and nuisance consideration are concerned.

The Contractor shall at all times keep the storage area and the premises used by it free from accumulations of waste materials and rubbish, and prior to completion of the work shall remove any waste materials and/or rubbish from and about the premises. Upon completion of the work, the Contractor shall leave the storage areas and premises in a condition satisfactory to the City.

- g. **Supervision of Work and Employees**-The Contractor shall provide a full-time resident manager to be in charge of the work done by the Contractor under this Contract, said manager to be someone experienced in this line of work, with authority to act on the behalf of the Contractor.

The Contractor agrees and covenants that supervision shall be maintained over its employees to the end that said employees are neat in appearance, courteous in demeanor, and as quiet as is consistent with their duties. The Contractor agrees to remove from service any employee who violates the provisions hereof and who is negligent or discourteous in the performance of his duty, subject to any collective bargaining agreement the Contractor might enter into or be a party to.

- h. **Electronic Messages**- The Contractor shall be interconnected with the City through email reporting and/or via an internet-based system, such as iWorQ.
- i. **Force Majeure**- Neither the Contractor nor the City shall be liable for the failure to perform or to suspend their duties or services if such failure or suspension is caused by a catastrophe, riot, acts of war or terrorism, ice storm, hurricane, tornado, flood, impositions of law or governmental orders, strikes, labor troubles, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the affected party.
- j. **Disposal Site**- All Refuse collected for disposal by the Contractor shall be hauled to the City's chosen designated Landfill at 550 Aaron Long Road, Jackson, TN. The Landfill shall bill the City directly for disposal of all Waste and Refuse collected under this Contract. The Landfill is open from 7:00 a.m. until 5:00 p.m., Monday through Friday, and 7:00 a.m. until 12:00 p.m. on Saturday. If the City's designated Landfill is closed or becomes unavailable, the City shall provide an alternate disposal facility for the Waste and Refuse collected by Contractor under this Contract and the City shall pay for all additional charges, costs, and expenses Contractor incurs in transporting and delivering the waste to the alternate facility.
- k. **Special Waste**- Special Waste that has been approved for hauling and disposal by the Tennessee Department of Environment and Conservation is included within Contractor's exclusive services under this Contract.
- l. **Unacceptable Waste**- Contractor shall not be obligated to collect Unacceptable Waste. Title to Unacceptable Waste shall not pass to Contractor, and liability for any Unacceptable Waste shall remain with the generator of such Unacceptable Waste.
- m. **Notification**- The City shall notify all Producers about complaint Procedures, rates regulations, and day(s) for scheduled Refuse collection.
- n. **Point of Contact**- All dealings, contacts, etc., between the Contractor and the City shall be directed to the Contractor: District Manager and/or Kim Harville, Public Sector

Representative (title of position or office) and to the City: The Director of Health and Sanitation, and the Mayor.

- o. **Reports & Data**- The Contractor shall maintain records as directed by the City for monthly reports. All reports shall include magnetic media as well as paper reports. The Contractor shall meet with the City and shall develop a report form to provide the following information:
 - 1. Number of Residential Unit customers and number of Commercial and Industrial Unit customer by Dumpster or Roll-Off size.
 - 2. Total weight of Waste from residential, commercial, and industrial customers.
 - 3. Serial numbers of container assigned to addresses.
 - 4. Others as may be specified.
 - 5. Listing of Complaints

- p. **Electronic Data Interchange/Compatibility**- The Contractor shall have capabilities for the electronic data interchange of account data for all active accounts and non-active accounts that were revised. This data shall be transferred either by email reporting or via an internet-based system, such as iWorQ, or on magnetic media in agreement with the EDI specification of the City. All monthly reports shall include magnetic media and paper reports, unless otherwise agreed.

10. **Basis and Method of Payment**

- a. **Rates** - Contractor is authorized to charge the rates set forth on **Schedule "A"** attached hereto and incorporated herein by reference ("Base Rates"). Such Base Rates shall be adjusted in accordance with the language set forth in this Contract.

- b. **Modifications to Base Rates** - The submitted prices for the first year of the Contract in all categories as reflected in Schedule A is firm. Contractor is entitled to an annual rate adjustment based on the Consumer Price Index-For All Urban Consumers ("CPI-U") published by the U.S. Department of Labor, Bureau of Labor Statistics. Base Rates charged by Contractor for services will remain fixed as set forth on Schedule "A" and will not be increased for changes in the CPI-U until the first anniversary of the Effective Date. Continuing annually on each anniversary of the Effective Date, Base Rates shall be adjusted by the average monthly percentage increase in the CPI-U over the twelve most recently published months. The CPI-U published on the first Monday of each month (or the first business day thereafter if such Monday is a Federal Holiday) shall be used to determine the monthly percentage increase change. The average will be computed by calculating the percentage change in the CPI-U each month during the applicable 12-month period. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the C.P.I., the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

- c. **City to Act as Collector**- City shall provide billing and bill collection services for Residential Units, Commercial Units, and Industrial Units, including all permanent Roll-Off Container Customers, for services and equipment provided by Contractor during the term of this

Contract.

- d. **Delinquent and Closed Accounts**- The Contractor shall discontinue all Refuse collection service at any Customer location as set forth in a notice sent to it by the City. If the Contractor receives a request to discontinue services from a customer, Contractor shall refer customer to the City for the proper work order request. Upon written notification by the City that collection for the Customer can resume, the Contractor shall resume Refuse collection on the next regularly scheduled collection day. If the City requests or directs Contractor to discontinue service at any location or for any customer, the City shall be responsible for any claims, suits, damages, costs and expenses resulting from Contractor's discontinuance of service.
- e. **Contractor Billings to City**- The Contractor shall bill the City for services rendered and equipment provided within ten (10) days following the end of the month and the City shall pay the Contractor in five (5) working days or before the 15th of such month, whichever is later. The Contractor shall be entitled to payment for services rendered and equipment provided irrespective of whether or not the City collects from the Customer for such service. All billing and payment shall be based on the rates and schedule set forth in Exhibit A. If the City fails to timely pay Contractor's invoice, Contractor has the right after providing 30 day's written notice to the City requesting payment of the overdue amount, to assess interest in the amount of 2.5% to the extent allowed by law.

(i) **Residential**

Payment for residential service shall be based on the unit rates set out in Exhibit A as modified hereunder and a total count of Residential Unit Customers made in conjunction with the City within the first 30 days of the Contract. The City and Contractor will use the Jackson Electric Authority's billing information, the City planning or other department data, and Contractor route sheets to determine a total agreed upon number of Residential Units Contractor will provides services to and then invoice the City each month. This total count of Residential Unit Customers shall be deemed correct for the next 11 months of the Contract and shall be adjusted up or down only in cases where the total increase or decrease in Residential Units exceeds 3% from the then-current established count during that year. In subsequent years of the Contract term, the total count of Residential Unit Customers shall be corrected to actual numbers based on the methodology described above on the yearly anniversary date of the Contract, August 1, and used the next 12 months, except that such count may be adjusted during that year if variations exceed 3%.

(ii) **Commercial & Industrial**

Payment to the Contractor for Commercial Unit and Industrial Unit services shall be based on the size and number of Dumpsters, Roll-Off Containers, Compactors or other equipment provided and the frequency of collection or hauls provided each month as set out in Exhibit A or modified per the terms of this Contract. Where a Customer owns a Compactor, the haul rate will be used for billing purposes.

11. Collection Requirements/Administrative Charges

- a. The parties agree that the prompt and efficient collection of Refuse within the City of Jackson is of the essence under this Contract, and to this end it is further agreed that a missed pickup (not picked up on a day scheduled) reported to the Contractor before 3:00 p.m. the same day shall be picked up before 7:00 p.m. the same day, and that missed pickups reported after 3:00 p.m. shall be picked up by 10:00 a.m. the next business day. In the event the Contractor fails to comply with the above provisions concerning missed pickups, the Contractor shall pay a penalty of \$100.00 for each violation.
- b. It is agreed between the parties that the repair and maintenance of Dumpsters used for commercial pickup is essential to the health of the community and it is further agreed between the parties that in the event the Contractor shall fail to keep a Dumpster in usable condition in the reasonable opinion of the City; the Contractor shall pay a penalty of \$100.00 for each occurrence.
- c. It is agreed that any request for extra services from a Commercial or Industrial Customer, such as special pick-up or request for container delivery, will be filled within twenty-four (24) to forty-eight (48) hours and in the event of failure to meet this requirement a penalty of \$100.00 per day shall be assessed for such failure.
- d. All Refuse hauled by the Contractor shall be so contained, tied, or enclosed that leaking, spilling or blowing are prevented. Failure to do so will result in a fine of \$100.00 per each incident.
- e. All inspections and the assessment of penalties will be done by the Director of Health and Sanitation or his/her appointed designee.
- f. The City and Contractor agree that no administrative charges set forth in this section shall be assessed if any Contractor deficiency is due to an event of Force Majeure or is caused by the Customer or City.

12. Compliance with Laws; Change in Law.

The Contractor shall conduct operations under this Contract in compliance with all applicable laws. If there are conflicts between the General Specifications and any ordinances or laws, the ordinances or laws will prevail.

In the event that a Change in Law occurs that materially affects either or both the City or Contractor's rights, benefits, or obligations under the Contract Documents, the Contract shall be modified as may be necessary to comply with, address, ameliorate, or prevent the effects of such change to either party. Either party adversely affected by a Change in Law shall so notify the other party and request amendment to this Contract accordingly, and the Parties shall engage in good faith negotiations for a period of not more than three (3) months after such request to enter into such amendment. If the parties cannot reach a mutually agreeable amendment, then either party has the right to terminate the Contract with no penalty upon 180 days' prior written notice to the other party.

"A "Change in Law" means (a) the adoption, modification, or elimination of any Applicable Law by

any federal, state, or local government or governmental agency after this Contract takes effect, (b) any order of judgment entered by any federal, state, or local court, administrative agency or governmental body after this Contract takes effect.

13. Nondiscrimination

The Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

14. Indemnification

Any indemnity or hold harmless language is inapplicable to the City as the state Attorney General has opined that such provisions nullify state immunity and appropriate public funds without legislative action. Each party will be responsible for its own acts or omissions.

15. Licenses and Taxes

The Contractor shall obtain all licenses and permits (other than the license and permit granted by the Contract) and promptly pay all taxes required by the City. The Contractor is liable for all taxes in the execution of the work required by this contract.

16. Insurance

The Contractor shall purchase and maintain the insurance outlined below to provide protection from the Contractor's negligent acts. The Contractor shall provide this insurance as required by the Contract Documents. The negligence by any subcontractor, by anyone directly or indirectly employed by any of them, shall be considered a negligent act of the Contractor.

- Commercial General Liability in the amount of \$2,000,000 per occurrence/\$3,000,000 aggregate and must include Products/Completed Operations, Explosion/Collapse/Underground Coverage and Coverage for Insured Contracts. As respects the services provided by Contractor under the Contract Documents, the City of Jackson must be named as additional insured and this must be noted on the Auto Liability Insurance in the amount of \$2,000,000 Combined Single Limit. The Certificate of Insurance as required by the Contract Documents.
- City must be named as Additional Insured and the insurance company agrees to waive their right of subrogation against the City and this must be noted on the Certificate of Insurance as required by the Contract Documents and by applicable law.
- Umbrella Liability in the amount of \$5,000,000 per occurrence - the terms and conditions of the Umbrella policy must be following form to the primary insurance. Limits may be satisfied by a combination of primary and umbrella liability insurance.
- Statutory workers' compensation with Employer's Liability limits of 100/500/100 – The insurance company agrees to waive its right of subrogation against the City and this must be noted on the Certificate of Insurance, as required by the Contract Documents and applicable law.
- The Cancellation Clause on the certificate of insurance is amended to read: Should any of the described policies on the attached Certificate of Insurance be cancelled, the issuing insurance company will mail 30 days written notice to City of Jackson c/o Purchasing Dept., 115 E. Main St., #204, Jackson, TN 38301, by registered mail, return receipt requested, except 10 days' notice is provided for cancellation due to premium non-payment. Contractor agrees to mail 30 days written notice to the City at the above address of any non-renewals

or reductions in coverage.

- All certificates should be issued with an insurance company (or companies) maintaining an AM Best Rating of A- or better and financial size of IX or greater. All insurance companies shall be authorized to conduct business in the State of Tennessee.

The Contractor shall maintain the above insurance through both final acceptance and any warranty period defined by the Contract Documents.

To the extent permitted by law, all or any part of any required insurance coverages may be provided under a plan or plans of self-insurance or by a combination of primary and excess insurance coverage. The coverages may be provided by the Contractor's parent corporation. The City of Jackson must be named as an additional insured.

17. Bond

- a. **Performance Bond**- The Contractor will be required to furnish a corporate surety bond as security for the performance of this Contract. Said surety bond must be in the estimated amount of the Contract for one year and shall be renewed and adjusted each year to the amount of the contract. The bond can only be extended with the express written consent of the Surety, and the total liability of the Surety shall not exceed the penal sum of the bond.
- b. **Materials and Labor Bond**- The Contractor will be required to furnish a material and labor bond in the same amount of the performance bond to ensure that prompt payments will be made to persons or firms supplying it with labor, materials, equipment, fuel or supplies in the prosecution of the work required to be done under this Contract or any amendment or extension thereof. Such bond shall be for the same terms as the performance bond.
- c. **General**- The premium for the bonds described above shall be paid by the Contractor. A certificate from the surety showing that the bond premiums are paid in full shall accompany the bond.

The surety on the bonds shall be a duly authorized corporate surety company authorized to do business in the State of Tennessee. All bond forms and conditions of such bonds shall be subject to the approval of the City.

- d. **Power of Attorney**- Attorneys-in-fact who sign performance bonds or Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

18. Delays, Damages, and Termination.

If the Contractor refuses or fails to comply with terms of this Contract and such failure continues for more than thirty (30) days after written notice thereof to the Contractor and bonding company, the City may terminate its right to proceed. In such event, the City by notice may require the bonding company to fully perform and complete the work in the manner required by the contract. If the bonding company does not take over such contract work within three (3) days following notice, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and its bonding company shall be liable to the City for any excess cost occasioned thereby. If the Contractor's right to proceed is so terminated, the bonding company or the City may take possession of all of the Contractor's materials, tools, appliances, plant, and equipment for use in

carrying out the purposes of this contract until the City and/ or bonding company is able to obtain other equipment, material, tools, appliances, and plant for such purposes.

Except as otherwise provided herein, if either party defaults in the performance of any of the covenants or conditions contained herein, and fails to cure such default within twenty-one (21) days after the non-defaulting party has given the defaulting party written notice of such default (or if such default is of a nature that it cannot be cured within such twenty-one (21) day period, and the defaulting party fails to thereafter diligently pursue the curing thereof) (the "Cure Period"), the non-defaulting party may: (a) terminate this Agreement so long as the termination date is at least twenty-one (21) days after the expiration of the Cure Period and/or (b) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right to all damages or losses suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default. Neither party has the right to terminate this Contract for convenience or without cause.

19. Transferability of Contract.

Other than by operation of law, no assignment of the Contract or any right accruing under this Contract shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld; in the event of an assignment, the assignee shall assume the liability of the Contractor.

20. Ownership

Title to Refuse that Contractor has agreed to accept shall pass to the Contractor when placed in Contractor's collection vehicle, removed by Contractor from a Container, or removed by Contractor from the Unit, whichever last occurs.

21. Reformation

In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Documents.

IN WITNESS THEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures on this the 6th day of April, 2021.

City of Jackson, Tennessee

Waste Management, Inc. of Tennessee

By: _____
Mayor

By: _____

Title: _____

And

City Recorder

ATTEST:

Secretary