

**EMERGENCY SPECIAL MEETING OF THE CITY COUNCIL
FRIDAY, APRIL 1, 2022 11:00 A.M.**

BE IT REMEMBERED that an Emergency Special Meeting of the City Council of Jackson, Mississippi, was called by a majority of the City Council Members and notices having been placed by the Clerk of Council at 10:00 a.m. Friday, April 1, 2022 in the Clerk of Council's Office, electronic notifications to all Council Members, on the City's website and on the public bulletin board in City Hall, relative to: (1) Order ratifying an emergency solid waste collection and hauling agreement with Richard's Disposal, Inc. for a term of (1) one year. The meeting was convened in the Council Chambers located at 219 S. President Street at 11:00 a.m. on April 1, 2022 being the first Friday of said month, when and where the following things were had and done to wit:

Present: Council Members: Virgi Lindsay, Council President, Ward 7; Angelique Lee, Council Vice President, Ward 2; Ashby Foote, Ward 1; Kenneth I. Stokes, Ward 3; Brian C. Grizzell, Ward 4; Vernon Hartley, Ward 5 and Aaron Banks, Ward 6. Directors: Chokwe Antar Lumumba, Mayor; Shanekia Mosley Jordan, Clerk of the Council; Constance White, Chief Deputy Clerk of the Council; and Catoria Martin, City Attorney.

Absent: None.

The meeting was called to order by **President Virgi Lindsay**.

ORDER RATIFYING AN EMERGENCY SOLID WASTE COLLECTION AND HAULING AGREEMENT WITH RICHARD'S DISPOSAL, INC. FOR A TERM OF ONE (1) YEAR.

WHEREAS, the City of Jackson previously had an Agreement for Solid Waste Collection Services that expired on September 30, 2021; and

WHEREAS, the City of Jackson issued a Request for Proposals for Solid Waste Collection and Hauling Services to obtain a new contract to provide residential solid waste collection services for the City; and

WHEREAS, the City received responses to that Request for Proposals (RFP), negotiated contracts with the vendors submitting proposals, but was unable to obtain approval of a new agreement for solid waste collection and hauling services; and

WHEREAS, on September 30, 2021, the Mayor proclaimed the existence of a local emergency, pursuant to his authority under Section 33-15-17 of the Mississippi Code of 1972, as amended; and

WHEREAS, following the emergency proclamation, the City entered into an emergency contract with Waste Management of Mississippi, Inc. for a term of six (6) months; and

WHEREAS, the City issued another Request for Proposals according to the statutorily-mandated requirements of Section 31-7-13 (r) of the Mississippi Code of 1972, as amended; and

WHEREAS, again, the City received responses to the RFP, negotiated a contract with the duly selected proposer, but was unable to obtain approval of a new agreement for solid waste collection and hauling services; and

WHEREAS, on February 17, 2022, the Mayor proclaimed the existence of a local emergency, pursuant to his authority under Section 33-15-17 of the Mississippi Code of 1972, as amended; and

WHEREAS, following the emergency proclamation, the City entered into an Emergency Agreement for the Solid Waste Services ("Emergency Agreement") with Richard's Disposal, Inc. for a term of one (1) year; and

WHEREAS, under Section 33-15-17 (b) of the Mississippi Code of 1972, as amended, the City “is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds...;” and

WHEREAS, on March 9, 2022, the Mayor filed suit against the City Council in the Fifth Chancery Court District of Hinds County (Cause No. 22-cv-281); and

WHEREAS, on March 31, 2022, Special Chancellor, Justice Jess H. Dickinson, issued a final Opinion and Judgment which states:

The Council has no authority to negotiate and/or execute a contract for the collection of residential solid waste, absent the existence of the exceptions in Miss. Code Ann. §21-8-19; The Council has no authority to amend the Mayor's order declaring a local emergency, and instead, after the Mayor declares a local emergency the Council is required to approve or disapprove the proclamation; and

The Mayor has the authority to find independent contractors/vendors who can provide necessary emergency services and present contracts to the Council for approval.

Only the Mayor may negotiate a contract for solid waste disposal on behalf of the City of Jackson. Whether a contract binding the City of Jackson for solid waste disposal is negotiated through the RFP process or pursuant to emergency authority under Miss Code Section 33-15-17(b), the contract is not a binding contract that is enforceable against the City of Jackson unless and until it has been properly approved by the Council; and

WHEREAS, the Emergency Agreement with Richard’s Disposal, Inc. provides the same services at the same cost as were being provided under the previous emergency contract that expired March 31, 2022; and

WHEREAS, the Emergency Agreement establishes a monthly rate of \$15.00 per residential unit beginning April 1, 2022 through March 31, 2023 based on a house count of 53,869 habitable residential units in the City of Jackson, which is the same price and house count as the previous emergency contract; and

WHEREAS, the Contractor will provide twice-per-week collection of garbage using the customer’s Approved Garbage Container, which under the Emergency Agreement means a bag (so long as it and its contents do not exceed sixty (60) pounds) or a metal or plastic can of not less than ten gallons nor more than 30-gallon capacity, fitted with a closely fitting cover, which are the same terms described in the previous emergency contract; and

WHEREAS, the Contractor will collect up to two (2) items of bulk waste from the curbside of each residential unit located in the City once each week, which are the same terms described in the current emergency contract; and

WHEREAS, the Contractor will collect all containerized yard debris and up to two (2) cubic yards of uncontainerized yard debris, excluding leaves and yard clippings, from the curbside of each residential unit located within the City of Jackson once each week, which are the same terms described in the previous emergency contract; and

WHEREAS, at no additional charge, the Contractor will collect solid waste from municipal buildings and facilities in accordance with the City Facilities Collection Schedule set forth in the Emergency Agreement, which are the same terms described in the previous emergency contract; and

WHEREAS, at no additional charge, the Contractor will provide monthly roll off services, which is the same term described in the previous emergency contract; and

WHEREAS, the Emergency Agreement may be terminated upon at least sixty (60) days written notice of procurement of a permanent contract for residential solid waste collection; and

WHEREAS, Contractor is required to furnish and provide a performance bond in the amount of One Million Dollars (\$1,000,000.00) to secure Contractor's performance of the Emergency Agreement; and

WHEREAS, the Emergency Agreement provides that Contractor shall bill the City for services rendered within ten (10) days following the end of the month in which services are rendered and the City shall pay Contractor on or before the 25th day following the end of such month, which is the same term described in the previous emergency contract; and

WHEREAS, the Emergency Agreement with Richard's Disposal, Inc. for the period of April 1, 2022 through March 31, 2023, which is attached hereto, should be ratified to ensure the continuance of residential solid waste collection for City of Jackson residents.

IT IS, THEREFORE, ORDERED that the Emergency Agreement for Solid Waste Services with Richard's Disposal, Inc., dated February 17, 2022, attached hereto and spread upon the minutes, is ratified.

Vice President Lee moved adoption; **Council Member Grizzell** seconded.

President Lindsay recognized **Catoria Martin, City Attorney** and **Mayor Chokwe Antar Lumumba** who provided a brief overview of said item.

After a thorough discussion, **President Lindsay** called for a vote:

Yeas – Lee, Grizzell and Lindsay.
Nays – Banks, Foote, Hartley and Stokes.
Absent – None.

Note: Said item failed due to lack of a majority vote.

President Lindsay recognized **Council Member Banks** who moved, seconded by **Council Member Hartley** to reconsider the previous item. The motion prevailed by the following vote:

Yeas – Banks, Foote, Hartley and Stokes.
Nays – Grizzell, Lee and Lindsay.
Absent – None.

President Lindsay requested that the Clerk read the order:

ORDER RATIFYING AN EMERGENCY SOLID WASTE COLLECTION AND HAULING AGREEMENT WITH RICHARD'S DISPOSAL, INC. FOR A TERM OF ONE (1) YEAR.

V E T O

WHEREAS, the City of Jackson previously had an Agreement for Solid Waste Collection Services that expired on September 30, 2021; and

WHEREAS, the City of Jackson issued a Request for Proposals for Solid Waste Collection and Hauling Services to obtain a new contract to provide residential solid waste collection services for the City; and

WHEREAS, the City received responses to that Request for Proposals (RFP), negotiated contracts with the vendors submitting proposals, but was unable to obtain approval of a new agreement for solid waste collection and hauling services; and

WHEREAS, on September 30, 2021, the Mayor proclaimed the existence of a local emergency, pursuant to his authority under Section 33-15-17 of the Mississippi Code of 1972, as amended; and

WHEREAS, following the emergency proclamation, the City entered into an emergency contract with Waste Management of Mississippi, Inc. for a term of six (6) months; and

WHEREAS, the City issued another Request for Proposals according to the statutorily-mandated requirements of Section 31-7-13 (r) of the Mississippi Code of 1972, as amended; and

WHEREAS, again, the City received responses to the RFP, negotiated a contract with the duly selected proposer, but was unable to obtain approval of a new agreement for solid waste collection and hauling services; and

WHEREAS, on February 17, 2022, the Mayor proclaimed the existence of a local emergency, pursuant to his authority under Section 33-15-17 of the Mississippi Code of 1972, as amended; and

WHEREAS, following the emergency proclamation, the City entered into an Emergency Agreement for the Solid Waste Services ("Emergency Agreement") with Richard's Disposal, Inc. for a term of one (1) year; and

WHEREAS, under Section 33-15-17 (b) of the Mississippi Code of 1972, as amended, the City "is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds..." and

WHEREAS, on March 9, 2022, the Mayor filed suit against the City Council in the Fifth Chancery Court District of Hinds County (Cause No. 22-cv-281); and

WHEREAS, on March 31, 2022, Special Chancellor, Justice Jess H. Dickinson, issued a final Opinion and Judgment which states,

The Council has no authority to negotiate and/or execute a contract for the collection of residential solid waste, absent the existence of the exceptions in Miss. Code Ann. §21-8-19; The Council has no authority to amend the Mayor's order declaring a local emergency, and instead, after the Mayor declares a local emergency the Council is required to approve or disapprove the proclamation; and

The Mayor has the authority to find independent contractors/vendors who can provide necessary emergency services and present contracts to the Council for approval.

Only the Mayor may negotiate a contract for solid waste disposal on behalf of the City of Jackson. Whether a contract binding the City of Jackson for solid waste disposal is negotiated through the RFP process or pursuant to emergency authority under Miss Code Section 33-15-17(b), the contract is not a binding contract that is enforceable against the City of Jackson unless and until it has been properly approved by the Council; and

WHEREAS, the Emergency Agreement with Richard's Disposal, Inc. provides the same services at the same cost as were being provided under the previous emergency contract that expired March 31, 2022; and

WHEREAS, the Emergency Agreement establishes a monthly rate of \$15.00 per residential unit beginning April 1, 2022 through March 31, 2023 based on a house count of 53,869 habitable residential units in the City of Jackson, which is the same price and house count as the previous emergency contract; and

WHEREAS, the Contractor will provide twice-per-week collection of garbage using the customer's Approved Garbage Container, which under the Emergency Agreement means a bag

**EMERGENCY SPECIAL MEETING OF THE CITY COUNCIL
FRIDAY, APRIL 1, 2022 11:00 A.M.**

(so long as it and its contents do not exceed sixty (60) pounds) or a metal or plastic can of not less than ten gallons nor more than 30-gallon capacity, fitted with a closely fitting cover, which are the same terms described in the previous emergency contract; and

WHEREAS, the Contractor will collect up to two (2) items of bulk waste from the curbside of each residential unit located in the City once each week, which are the same terms described in the current emergency contract; and

WHEREAS, the Contractor will collect all containerized yard debris and up to two (2) cubic yards of uncontainerized yard debris, excluding leaves and yard clippings, from the curbside of each residential unit located within the City of Jackson once each week, which are the same terms described in the previous emergency contract; and

WHEREAS, at no additional charge, the Contractor will collect solid waste from municipal buildings and facilities in accordance with the City Facilities Collection Schedule set forth in the Emergency Agreement, which are the same terms described in the previous emergency contract; and

WHEREAS, at no additional charge, the Contractor will provide monthly roll off services, which is the same term described in the previous emergency contract; and

WHEREAS, the Emergency Agreement may be terminated upon at least sixty (60) days written notice of procurement of a permanent contract for residential solid waste collection; and

WHEREAS, Contractor is required to furnish and provide a performance bond in the amount of One Million Dollars (\$1,000,000.00) to secure Contractor's performance of the Emergency Agreement; and

WHEREAS, the Emergency Agreement provides that Contractor shall bill the City for services rendered within ten (10) days following the end of the month in which services are rendered and the City shall pay Contractor on or before the 25th day following the end of such month, which is the same term described in the previous emergency contract; and

WHEREAS, the Emergency Agreement with Richard's Disposal, Inc. for the period of April 1, 2022 through March 31, 2023, which is attached hereto, should be ratified to ensure the continuance of residential solid waste collection for City of Jackson residents.

IT IS, THEREFORE, ORDERED that the Emergency Agreement for Solid Waste Services with Richard's Disposal, Inc., dated February 17, 2022, attached hereto and spread upon the minutes, is ratified.

Council Member Banks moved adoption; **Council Member Hartley** seconded.

President Lindsay, recognized **Mayor Chokwe Antar Lumumba**, who read an objection statement regarding action taken on Agenda Item No. 1: **ORDER RATIFYING AN EMERGENCY SOLID WASTE COLLECTION AND HAULING AGREEMENT WITH RICHARD'S DISPOSAL, INC. FOR A TERM OF ONE (1) YEAR.**

President Lindsay recognized **Vice President Lee** who called the question and **President Lindsay** seconded. The motion failed by the following vote:

Yeas – Grizzell, Lee and Lindsay.
Nays – Banks, Foote, Hartley and Stokes.
Absent –None.

V E T O

**EMERGENCY SPECIAL MEETING OF THE CITY COUNCIL
FRIDAY, APRIL 1, 2022 11:00 A.M.**

INTENTIONALLY LEFT BLANK

3911

VETO OF CHOKWE ANTAR LUMUMBA

MAYOR OF JACKSON

WHEREAS, I Chokwe A. Lumumba, Mayor, previously declared an emergency due to the expiration of the City's contract for the collection of residential solid waste which expired on September 30, 2021 as a result of the failure of this governing authority to approve a solid waste collection services and hauling contract for residents of the City of Jackson; and

WHEREAS, on September 30, 2021, I Chokwe A. Lumumba, Mayor, executed and entered into an emergency agreement with Waste Management of Mississippi, Inc. for the collection of residential solid waste for a period of six (6) months to provide for the continued collection of residential solid waste in the City of Jackson, while the Department of Public Works conducted a second procurement process, pursuant to Mississippi purchasing law, for a permanent contract; and

WHEREAS, the Department of Public Works issued a new Request for Proposals for Solid Waste Collection and Hauling that scored the technical portion of the RFP without the evaluators knowing the identities of the proposers, consistent with state law-approved criteria for best practices for soliciting requests for proposals, Section 31-7-417 (2) of the Mississippi Code of 1972, as amended; and

WHEREAS, also consistent with state law-approved criteria for best practices for soliciting requests for proposals, Section 31-7-413 (2)(a) of the Mississippi Code of 1972, as amended, price as an evaluation factor was the highest rated individual factor and assigned a weight of thirty-five percent (35%); and

WHEREAS, the Request for Proposals solicited service and pricing for four (4) service options based on preferences expressed by the Mayor and by City Council members: (1) Once-per-week collection without carts; (2) Once per week collection with 96-gallon carts; (3) Twice-per-week collection without carts; and (4) Twice per week collection with 96-gallon carts; and

WHEREAS, the Evaluation Committee blindly rated the technical proposals, heard presentations after scoring the technical proposals, and then the price proposals were evaluated according to the formula provided in the Request for Proposals; and

WHEREAS, I, without knowing the best evaluated proposal for each of the four (4) service options, presented the best evaluated proposals for each of the four (4) service options and the corresponding prices to the City Council without disclosing the names of the successful proposers; and

WHEREAS, I, in relinquishing a degree of the executive authority afforded me under the mayor-council form of government, requested in the order presented to the City Council that the City Council make a recommendation on which of the four (4) proposals they preferred; and

WHEREAS, the City Council instead amended the order to remove the once-per-week service options and directed me, the Mayor to choose between the two remaining twice-per-week service options; and

WHEREAS, the monthly cost of the proposal for twice-per-week collection with a 96-gallon cart was \$756,000.00 and the cost of the proposal for twice-per-week collection without a cart was \$858,060.00 monthly, which was \$102,060.00 more than the cost with a cart; and

WHEREAS, I, Chokwe A. Lumumba, Mayor, selected the less expensive of the two twice-per-week options, which was twice-per-week collection with a 96-gallon cart, at \$756,000.00 per month; and

WHEREAS, I Chokwe A. Lumumba, Mayor, presented the most qualified proposer under this option, Richard's Disposal, Inc., to the City Council for their adoption at the January 18, 2022 City Council meeting, who then voted down this option; and

WHEREAS, I, Chokwe A. Lumumba, Mayor, placed the residential solid waste collection contract on the agenda for discussion on January 25, 2022, requesting input from the City Council about their legitimate concerns regarding the adoption of the proposal for twice-per-week collection with 96-gallon carts; and

WHEREAS, based on the comments received from the City Council, I, the Mayor placed on the agenda a revised item seeking authorization to enter into a residential solid waste collection contract for twice-per-week collection with a 96-gallon cart, which the City Council again voted down; and

WHEREAS, at no point in the process has the City Council articulated a factual or legal basis for their rejection of a permanent contract with Richard's Disposal, Inc.; and

WHEREAS, in fact, four members of the City Council have consistently made their preference for Waste Management of Mississippi, Inc. known by their actions in repeatedly voting down a contract with Richard's Disposal, Inc. despite the fact that it is \$102,060.00 per month less than the option the City Council prefers and also provides less service, as the option from Waste Management of Mississippi, Inc. does not provide a garbage cart; and by repeatedly making statements to the effect that "if it isn't broken, don't fix it" and that the current vendor is performing well so why would the City want to change anything; and

WHEREAS, the City Council, acting through four of its members, has consistently abdicated its legislative duties by failing to enact a sanitation fee increase that would provide sufficient funding for the Sanitation Department and a new solid waste collection and hauling agreement, yet are willing to attempt to force the City of Jackson to enter into an agreement with Waste Management of Mississippi, Inc., whose pricing on twice-per-week collection without a garbage cart was more expensive than the pricing for the most qualified proposer on all of the other options; and

WHEREAS, in my opinion the actions by the four members of the City Council in repeatedly voting down contracts with a less expensive alternative offered by a vendor who has a

demonstrated ability to perform similar contracts and who is the most qualified proposer under the RFP process, constitutes arbitrary and capricious action and action that is contrary to law; and

WHEREAS, capitulating to the demands of these four City Council members to negotiate a solid waste collection and hauling agreement with their preferred vendor, Waste Management of Mississippi, Inc., would expose the City to liability for failing to adhere to State Purchasing Law and failing to follow the vendor evaluation and selection process set forth in the Request for Proposals; and

WHEREAS, the City's current emergency contract for the collection of residential solid waste expired on March 31, 2022; and

WHEREAS, I. Chokwe A. Lumumba, Mayor, have been unable to procure a new contract through the process required under Section 31-7-13 (r) of the Mississippi Code of 1972, as amended, by advertising a Request for Proposals due to the recalcitrance of four members of the City Council; and

WHEREAS, beginning April 1, 2022, the City will have no means by which to collect garbage from residences throughout the City, which garbage, if uncollected for the period of time that will be required to procure a permanent contract in accordance with Section 31-7-13 (r), will create throughout the City a risk of disease and cause unsanitary conditions contrary to the public health; and

WHEREAS, the failure to collect garbage and properly dispose of it at a permitted landfill will result in putrid, rotting food and other deleterious contaminants flowing into the City's municipal separate storm sewer system, which will cause water pollution to local creeks, streams, and waterways, including, but not limited to the Pearl River and Bogue Chatto Creek; and

WHEREAS, the failure to fulfill its statutory duty to properly collect and dispose of residential solid waste will expose the City to the risk of civil penalties at the rate of up to \$25,000 each day residential solid waste remains uncollected and to other legal action by the Mississippi Department of Environmental Quality; and

WHEREAS, in order to combat the dangers to the public health that will arise if residential garbage remains uncollected for six months or longer, while the City attempts to procure a contract for the collection of residential solid waste in accordance with Section 31-7-13 (r), I. Chokwe A. Lumumba, Mayor, previously proclaimed the existence of a local emergency on February 17, 2022 and thereafter signed an emergency solid waste collection and hauling agreement with Richard's Disposal, Inc. for the collection of residential solid waste beginning on April 1, 2022, continuing for period of one year or the procurement of a permanent contract complying with the requirements of Section 31-7-13 (r); and

WHEREAS, pursuant to the opinion issued by the Court in *Chokwe A. Lumumba, in his Official Capacity as Mayor of the City of Jackson vs. City Council of Jackson, Mississippi*, Civil Action No. 25CH1:22-cv-00281, Chancery Court of the First Judicial District of Hinds County,

EMERGENCY SPECIAL MEETING OF THE CITY COUNCIL
FRIDAY, APRIL 1, 2022 11:00 A.M.

5-D

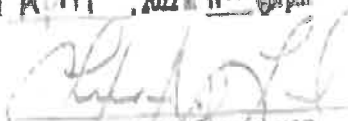
Mississippi, on March 31, 2022, I, Chokwe A. Lumumba, Mayor, presented to the City Council an order ratifying the emergency solid waste collection and hauling agreement with Richard's Disposal, Inc. at an Emergency Special Meeting of the City Council at 11:00 am on April 1, 2022, seeking the necessary approval of the emergency contract from the City Council; and

WHEREAS, without good cause and acting in an arbitrary and capricious manner set forth above and contrary to law, the City Council voted down the order ratifying the emergency agreement with Richard's Disposal, Inc.

NOW, THEREFORE, I, Chokwe Antar Lumumba, Mayor of the City of Jackson, Mississippi, pursuant to the authority vested in me by Section 21-8-17 (2) of the Mississippi Code of 1972, as amended, and in the public interest and for the general welfare of the City of Jackson, do hereby veto the action of the City Council of Jackson, Mississippi in failing to approve the following order brought forward by me:

ORDER RATIFYING AN EMERGENCY SOLID WASTE COLLECTION AND HAULING AGREEMENT WITH RICHARD'S DISPOSAL, INC. FOR A TERM OF ONE (1) YEAR

WITNESS MY HAND, on this 1st day of April, 2022 at 11:35 am pm


CHOKWE A. LUMUMBA, MAYOR
CITY OF JACKSON, MISSISSIPPI

EMERGENCY SPECIAL MEETING OF THE CITY COUNCIL
FRIDAY, APRIL 1, 2022 11:00 A.M.

After a thorough discussion, **President Lindsay**, called for a vote on the reconsidered item:

Yeas – Grizzell, Lee and Lindsay.
Nays – Banks, Foote, Hartley and Stokes.
Absent –None.

Note: Said item failed due to lack of a majority vote.

There were no reports/announcements provided during the meeting.

There being no further business to come before the City Council, it was unanimously voted to adjourn until the Special Council Meeting at 11:30 a.m. on April 5, 2022. At 11:49 a.m., the Council stood adjourned.

PREPARED BY:

Shanekia Mosley-Ojamba
CLERK OF COUNCIL

APPROVED:

Virgi Lindsay, 5.20.22
COUNCIL PRESIDENT DATE

ATTEST:

Angela Harver
CITY CLERK
