



**SPECIAL MEETING OF THE CITY COUNCIL  
CITY OF JACKSON, MISSISSIPPI  
APRIL 1, 2023  
AGENDA  
10:00 AM**

**AGENDA ITEMS**

- 1. ORDER AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND RELATED DOCUMENTS WITH RICHARD'S DISPOSAL, INC. TO PROVIDE SOLID WASTE COLLECTION AND HAULING SERVICES FOR A SIX (6) YEAR TERM COMMENCING APRIL 1, 2023 WITH FOUR (4) ONE (1) YEAR EXTENSION OPTIONS (ALL WARDS).**

**ANNOUNCEMENTS**  
**ADJOURNMENT**

**ORDER AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT AND RELATED DOCUMENTS WITH RICHARD'S DISPOSAL, INC. TO PROVIDE SOLID WASTE COLLECTION AND HAULING SERVICES FOR A SIX (6) YEAR TERM COMMENCING APRIL 1, 2023 WITH FOUR (4) ONE (1) YEAR EXTENSION OPTIONS (ALL WARDS)**

**WHEREAS**, the Solid Waste Division of the Department of Public Works first issued a Request for Proposals for Solid Waste Collection Services to replace the existing Agreement for Solid Waste Services that was set to expire on September 30, 2020; and

**WHEREAS**, the results of the Request for Proposals issued in 2020, were that it would be less expensive for the City to exercise the remaining one-year optional renewal in its existing Agreement for Solid Waste Collection Services; and

**WHEREAS**, consequently, the Mayor presented to the City Council and the City Council approved a one-year extension to the Agreement for Solid Waste Services with Waste Management of Mississippi, Inc.; and

**WHEREAS**, in early 2021, the Solid Waste Division issued another Request for Solid Waste Collection Services; and

**WHEREAS**, the evaluation committee recommended the proposal of FCC Environmental Services as the most qualified proposal; and

**WHEREAS**, the Solid Waste Division of the Department of Public Works negotiated an agreement with FCC Environmental Services and presented the agreement with FCC to the City Council for approval on August 9, 2021; and

**WHEREAS**, the City Council voted against awarding an agreement for solid waste collection services to FCC Environmental Services at two different meetings on August 9, 2021 and August 19, 2021, and did not express any interest in further negotiating an agreement with FCC Environmental Services; and

**WHEREAS**, after August 19, 2021, the Mayor approached both remaining proposers, Richard's Disposal, Inc. and Waste Management of Mississippi about negotiating an agreement; and

**WHEREAS**, the time to perform the services was approximately one month away and Richard's Disposal, Inc. stated that it would not have sufficient time to begin providing garbage collection services on such short notice; and

**WHEREAS**, the Mayor attempted to negotiate an agreement with Waste Management of Mississippi for a term shorter than the maximum six years, but Waste Management of Mississippi refused to negotiate any term shorter than the maximum; and

By: (R. Lee, Lumumba)

**WHEREAS**, as a result of litigation filed by the City Council against the Mayor in September 2021, the Mayor and the City Council eventually reach an agreement to approve a six-month emergency agreement with Waste Management of Mississippi to provide solid waste collection services at a monthly cost of \$808,035.00, an increase of \$239,178.36 per month from the prior monthly cost of \$568,856.64; and

**WHEREAS**, on October 21, 2021, the City began soliciting proposals for solid waste collection and hauling services, with four options: 1) once per week collection without a cart; 2) twice per week collection without a cart; 3) once per week collection with a 96-gallon cart; and 4) twice per week collection with a 96-gallon cart; and

**WHEREAS**, on November 8, 2021, the City Attorney presented to the City Council during its work session and later provided the City Council with a memorandum explaining the Request for Proposal time-line, which was critical given the six-month emergency contract, and the weighting of the RFP factors as follows:

- Technical Proposal (**30%**)
  - o Innovative approach to encourage and maintain a sustainable solid waste system- 10%
  - o Plan for performing the required services- 20%
- Service Provider's Presentation/Interview: (**25%**)
  - o Experience in providing similar services- 10%
  - o Qualifications and Key Personnel- 10%
  - o References- 5%
- EBO Plan and commitment to exceeding MBE and FBE participation goals (**10%**)
- Fee proposal (**35%**)
  - o How cost compares to other proposals in this algebraic equation: ((Lowest Priced Proposal divided by Service Provider's Price) multiplied by 35) equals the number of points/percentage assigned. Lowest priced proposal gets 35 points; and

**WHEREAS**, the November 8, 2021 memorandum also explained how the technical proposals would be evaluated through a blind-scoring process, and

**WHEREAS**, the weighting of the Fee proposal at 35% and its weighting as the most important factor was based on the requirements for State of Mississippi governmental units, Miss. Code Ann. § 31-7-413(2)(a), and is considered a best practice for municipal governments; and

**WHEREAS**, on or after November 8, 2021, no City Council members recommended amendments to the RFP process; and

**WHEREAS**, the Mayor held town halls between November 8, 2021 and December 2, 2021 following the issuance of the RFP to explain the process to the public and to receive input regarding preferences for garbage collection services; and

**WHEREAS**, in response to the solicitation, on November 23, 2021, the City received proposals from: Waste Management of Mississippi, Inc., FCC Environmental Services, LLC, and Richard's Disposal; and

**WHEREAS**, an Evaluation Committee consisting of three City of Jackson Public Works Department employees and three members of the City's executive team reviewed the proposals submitted; and

**WHEREAS**, the Evaluation Committee reviewed and scored the technical proposals without knowing the identity of the proposers, which accounted for thirty percent (30%) of the total score; and

**WHEREAS**, the Evaluation Committee then heard presentations from the proposers and rated their experience in providing similar services, their qualifications and key personnel, and their references, which accounted for twenty-five percent (25%) of the total score, and evaluated each proposer's Equal Business Opportunity ("EBO") Plan, which accounted for ten percent (10%) of the total score; and

**WHEREAS**, the Mayor reviewed the results of the Evaluation Committee's scores and rankings for each service option, along with the pricing provided by the vendors without knowing the order in which the vendors ranked for each service option; and

**WHEREAS**, on January 4, 2022, the Mayor presented the City Council with an Order that allowed the City Council to recommend to the Mayor its preferred service option; and

**WHEREAS**, the City Council amended the Order to eliminate the once per week collection options; and

**WHEREAS**, the City Council further amended the Order to express its preference that the Mayor review the two remaining service options, twice per week with a 96-gallon cart and twice per week without a 96-gallon cart, and the most advantageous proposal received for those options, then select the proposal he wished to pursue in negotiations; and

**WHEREAS**, the Mayor selected the lowest priced most qualified proposer of the two highest scored options for twice per week collection and the company providing this proposal with whom to negotiate; and

**WHEREAS**, negotiations were conducted with Richard's Disposal, Inc., which was also less expensive than the highest rated proposal for twice per week collection without a cart; and

**WHEREAS**, as a result of the RFP evaluation scores and the January 4, 2022 recommendations from the Jackson City Council, a contract with Richard's Disposal, Inc. was presented for approval January 18, 2022 and February 1, 2022; and

**WHEREAS**, at its February 4, 2022 Special Meeting, the City Council voted to retain outside counsel, Roy Campbell of the law firm of Bradley Arrant Boulton Cummings LLP, to determine if a conflict of interest existed between the City Council and Office of the City Attorney; and

**WHEREAS**, in response, the City Attorney provided Mr. Campbell the Request for Proposals, the Evaluation scoring sheets, relevant City Council Orders, and the state law and municipal ordinances upon which she relied in advising the Mayor and City Council; and

**WHEREAS**, Mr. Campbell met with the City Council at their Special Meeting on February 10, 2022 and provided them with a memorandum setting forth his opinion that he did not perceive a conflict of interest between the City Council and the Office of the City Attorney and that the City Council had been appropriately advised by the Office of the City Attorney; and

**WHEREAS**, the City Council continued to indicate that it would not award a contract to Richard's Disposal, Inc. pursuant to Miss. Code Ann. § 31-7-13(r) under the terms of the request for proposals process; and

**WHEREAS**, the Mayor determined that based on the requirements of awarding a solid waste collection contract pursuant to Miss. Code Ann. § 31-7-13(r) and the lack of a permanent agreement to provide garbage collection services, constituted an emergency that required the issuance of an emergency declaration; and

**WHEREAS**, the Mayor negotiated an emergency agreement for solid waste collection with Richard's Disposal on the same terms and at the same price as the existing emergency agreement with Waste Management of Mississippi; and

**WHEREAS**, since February 2022, much litigation has ensued amongst the City Council and Mayor about the emergency agreement with Richard's Disposal; and

**WHEREAS**, during the ensuing litigation, former Mississippi Supreme Court Justice Jess Dickinson, sitting by appointment of the Mississippi Supreme Court, issued a final judgment that held, in pertinent part, as follows:

- a. 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;
- c. The Mayor has the authority to find independent contractors/vendors who can provide necessary emergency services and present contracts to the Council for approval.
- d. Only the Mayor may negotiate a contract for solid waste disposal on behalf of the City

of Jackson.

- e. 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**, neither the Mayor nor the City Council appealed the final judgment of that court and the Mississippi Supreme Court cited the court's opinion in *Lumumba v. City Council*, 2022-CA-00855-SCT, ¶3 (March 9, 2023); and

**WHEREAS**, pursuant to later litigation in federal court, under an agreement between the City Council and Richard's Disposal, the City Council agreed to pay Richard's Disposal, Inc. the amount of \$808,035.00 per month for the months the garbage collections services had been previously provided and to pay \$808,035.00 per month through the end of the month the Mississippi Supreme Court decided litigation regarding the Mayor's power to veto a negative vote of the City Council or March 31, 2023, whichever happened earlier; and

**WHEREAS**, in *Lumumba v. City Council*, 2022-CA-00855-SCT, (March 9, 2023) the Mississippi Supreme Court issued a final judgment that held, in pertinent part, "[b]ecause the Mayor in a mayor-council municipality may not, in his limited legislative power, veto an action or measure not undertaken by the City Council and because no statutory authority exists allowing him to do so, we affirm the judgment of the trial court," and

**WHEREAS**, the agreement between the City Council and Richard's Disposal will expire on March 31, 2023; and

**WHEREAS**, on March 7, 2023, the Mayor sent correspondence to all three respondents to the October 2021 RFP, Waste Management of Mississippi, Inc., FCC Environmental Services, LLC, and Richard's Disposal requesting 1) confirmation of whether they would honor their prices for twice per week collection both with and without a garbage cart and 2) whether their prices for twice per week collection both with and without a garbage cart would decrease, remain the same, or increase if responding to an RFP from the City within the next six months; and

**WHEREAS**, both Waste Management of Mississippi, Inc. and FCC Environmental Services, LLC responded to the first question by stating: FCC Environmental Services, LLC cannot honor the pricing given in our response from October 2020....; and Waste Management of Mississippi, Inc. responded to the first question by stating: "It is our view that the 2021 RFP for the City of Jackson Solid Waste Collection is no longer in effect ..."; and

**WHEREAS**, Richard's Disposal, Inc. responded to the first question by stating "RDI will honor the prices for twice-per-week collection with and without garbage carts and related service

provided in its response to the City of Jackson's October 21 Request for Proposals for Solid Waste Collection Services..."; and

**WHEREAS**, consequently, as a result of the two other proposers stating that they would not honor their pricing from the October 2021 RFP and Richard's Disposal, Inc. stating that it would honor its prices, Richard's Disposal, Inc. is the only proposer who responded in the affirmative that it would honor the October 2021 pricing; and

**WHEREAS**, prior to the commencement of litigation and the Mayor's Emergency Proclamation, under the terms of the request for proposal process, Richard's Disposal, Inc. proposed to provide solid waste collection and hauling services consistent with the Request for Proposals, including twice per week collection and the purchase of and delivery to 45,000 sanitation customers of a 96-gallon trash cart for a monthly cost of \$756,000.00; and

**WHEREAS**, Richard's Disposal, Inc. will own the carts throughout the term of the Agreement and will transfer said carts to the City at the end of the initial term of the Agreement; and

**WHEREAS**, Richard's Disposal, Inc. will be responsible for replacing carts that are damaged through no fault of the customer and replacing up to one stolen cart; and

**WHEREAS**, Richard's Disposal, Inc. will charge customers \$90.00 to replace a cart they willfully damage or destroy, or more than one stolen cart replacement, which is the cost of the cart to Richard's Disposal, Inc.; and

**WHEREAS**, Richard's Disposal, Inc. also proposed to collect garbage from City facilities at a weekly cost of \$1085.00 and to provide roll-off containers for special events at a cost of \$250.00 per container and a delivery charge of \$50.00 and to remove illegal/noncompliant dumping on an as-needed weekly basis, not to exceed six (6) instances per month, at a cost of \$150.00 per hour or \$1,200.00 per day, whichever is less; and

**WHEREAS**, the cost of the services under the proposed contract will be indexed annually, beginning on October 1, 2023, either up or down, on the United States Bureau of Labor Statistics All Urban Consumers, Southern Region, Consumer Price Index, in a percent not to exceed 5% annually either up or down; and

**WHEREAS**, the initial term of the contract will be for six (6) years with four (4) one-year extension options, each at the sole discretion of the City.

**IT IS, THEREFORE, ORDERED** that the Mayor is authorized to execute a contract and related documents with Richard's Disposal, Inc. to provide solid waste collection and hauling services consistent with the terms set forth in this order, with the Request for Proposals, and Richard's Disposal, Inc.'s Proposal, twice each week with a 96-gallon cart, at a monthly cost of \$756,000.00, for an initial term of six (6) years commencing on April 1, 2021, with four (4) one-year extension options, each such option being at the sole discretion of the City; and further said

contract will provide for the collection of garbage from City facilities at a weekly rate of \$1085.00 and will provide roll-off containers for special events at a cost of \$250.00 per container and a delivery charge of \$50.00 and to remove illegal/noncompliant dumping on an as-needed weekly basis, not to exceed six (6) instances per month, at a cost of \$150.00 per hour or \$1,200.00 per day, whichever is less.



**AGREEMENT  
FOR SOLID WASTE SERVICES  
BETWEEN THE CITY OF JACKSON, MISSISSIPPI  
AND  
RICHARD’S DISPOSAL, INC.**

This Agreement made and entered into on this the \_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Jackson, Mississippi, hereinafter referred to as the “City” and Richard’s Disposal, Inc., hereinafter referred to as “Contractor”.

W I T N E S S E T H

WHEREAS, the City advertised for proposals for solid waste collection services, in accordance with Mississippi public purchasing law, Section 31-7-13 (r) of the Mississippi Code of 1972, as amended; and

WHEREAS, the City received three proposals in response to its Request for Proposals; and

WHEREAS, an evaluation committee consisting of City employees reviewed the three proposals submitted and ranked them on the basis of (1) Service Provider's innovative approach to encourage and maintain a sustainable solid waste system, which was reviewed without identifying the proposer; (2) Service Provider's experience, qualifications and references as demonstrated in similar engagements; (3) expertise of key personnel to be assigned to the project; (4) EBO Plan and commitment to exceeding MBE and FBE participation goals; and (5) fee proposal, which was scored objectively using the formula presented in the Request for Proposals; and

WHEREAS, without knowing the identities of the proposers, the Mayor reviewed the results of the evaluation and submitted for its recommendation the most advantageous proposals for the City based on the highest score for each of the four service options: (1) once-per-week collection without a 96-gallon cart; (2) once-per-week collection with a 96-gallon cart; (3) twice-per-week collection without a 96-gallon cart; and (4) twice-per-week with a 96-gallon cart; and

WHEREAS, without knowing identities of the proposers, the City Council recommended that the Mayor select between the two options that included twice-per-week collection services and attempt to negotiate a final contract for solid waste collection services with that vendor; and

WHEREAS, the Mayor chose to negotiate with the vendor providing the most advantageous proposal to the City for twice-per-week collection services with a 96-gallon cart, which was Richard’s Disposal, Inc.; and

WHEREAS, the City and Richard’s Disposal, Inc. having negotiated and agreed upon the terms and conditions, and the compensation for Richard’s Disposal, Inc. providing solid waste collection services consistent with the Request for Proposals and the proposal of Richard’s Disposal, Inc.; and

WHEREAS, the City and Richard's Disposal, Inc. are each desirous of entering into an agreement on the terms and conditions, and the compensation negotiated.

NOW, THEREFORE, it is hereby agreed as follows:

**1. AGREEMENT DOCUMENTS**

The agreement between the City and Contractor shall consist of this Agreement, the Request for Proposals, which is attached hereto as Exhibit "A", the Technical Proposal of Contractor, attached hereto as Exhibit "B", the EBO Plan of Contractor, attached hereto as Exhibit "C", the City Facilities Collection Schedule, attached hereto as Exhibit "D". The Agreement shall also include the transition plan and education plan required in the Request for Proposals, which shall be incorporated herein upon its submittal and approval by the City.

**2. TERM**

The term of this Agreement shall begin April 1, 2023, (the "Commencement Date") and continue through March 30, 2029 (the "Initial Term"); provided however, that the Agreement may be extended for up to four (4) additional periods of one (1) year solely at the City's discretion and expressed in writing before the end of the Initial Term or each one-year extension term, as applicable.

**3. COMPENSATION AND PAYMENT**

**3.1 COMPENSATION FOR SOLID WASTE SERVICES**

As compensation for the solid waste services, including, but not limited to collection, as offered in Contractor's Proposal under Option 3, as modified by the terms of this Agreement, the City shall pay to Contractor the sum of seven hundred fifty-six thousand dollars (\$756,000.00) per month. Such compensation includes the cost of purchasing and delivery of up to 45,000 carts to Customers. Such monthly compensation does not include the cost of disposal charged by the Solid Waste Disposal Sites, which shall be billed in accordance with section 3.3.

**3.2 PAYMENT TO CONTRACTOR**

The City will be responsible for billing its customers and collecting all payments for collection, transportation and disposal of the materials collected. Invoices submitted to the City will be paid on a monthly basis, reduced by any liquidated damages, within forty-five (45) days of receipt, pursuant to the requirements of Section 31-7-305 of the Mississippi Code of 1972, as amended. If the City fails to pay the undisputed amount of a monthly invoice, interest shall accrue on the outstanding balance at a rate of one and one-half percent (1 ½ %) each month or any portion thereafter.

**3.3 DISPOSAL CHARGES**

The City shall be responsible for all disposal charges applicable to the disposal of waste at the Solid Waste Disposal Sites identified in Section 5.8 or otherwise designated by the City, and any

such charges paid by the Contractor, will be billed to the City separately from the compensation set forth in Section 2.1 and will be paid by the City.

### **3.4 RATE ADJUSTMENT**

On July 1, 2024, and annually on or before July 1st thereafter, the parties shall determine the increase or decrease in the monthly compensation based upon a pricing index over the previous 12- month period based on the Annual CPI for All Urban Consumers for the South Region. The annual amount of such increase or decrease shall not exceed 5%. The effective date of the increase or decrease shall be on October 1, 2024 and annually on or before October 1st thereafter.

## **4. GENERAL TERMS AND CONDITIONS**

The Contractor shall maintain a local office, which should be located in the City of Jackson. The hours of operation shall be 7:00 AM - 7:00 PM and office Staff should be available during these hours. An answering service shall be linked to the telephone line for after-hours issues.

The Contractor shall assign qualified, competent, and skilled personnel, who will serve as project manager(s) to oversee this Agreement. The City shall be notified in advance of any changes with key personnel. Within one (1) year of the commencement of the Agreement, seventy-five percent (75%) of personnel performing services for this Agreement shall be considered full-time employees of the Contractor working on average at least thirty (30) hours per week or one hundred thirty (130) hours per month.

At no time shall the Contractor's personnel solicit, request, or receive gratuities of any kind. The Contractor shall inform its personnel that profane language is prohibited at all times during the performance of their duties. Any personnel of the Contractor, who engage in misconduct or in negligence in the performance of their duties, shall not continue providing services to the City under this Agreement. The City may request the reassignment of any personnel of the Contractor who violates the provisions of this Agreement, or who is determined to be wantonly negligent or discourteous in the performance of their duties while working for the Contractor performing services under this Agreement.

The Contractor shall pick up all blown, littered, and broken material occurring at the point of collection resulting from its collection and hauling operations. Each truck shall be equipped with the necessary tools to clean up any spilled material from the City streets, rights-of-way, sidewalks, or Customer's property when spillage is caused by the Contractor. The Contractor will use due care in handling all Carts or Containers.

The Contractor shall not enter into any subcontracts, leases, or agreements pertaining to the provision of services under the Agreement without the written consent of the City. The Agreement may not be assigned, in whole or in part, in any way without prior written consent of the City.

### **4.1 DEFINITIONS**

For the purposes of this Agreement, unless the context clearly indicates that another meaning is intended, the following terms have the meaning ascribed to them in this section:

- **Approved Container:** means the Cart provided by the Contractor to the Customer or Customers' other sturdy containers of no more than a 35-gallon capacity.
- **Annexed Area:** means any area contiguous to the Agreement Area that is added to the boundaries of the City of Jackson by any method of annexation following the Effective Date of the Agreement.
- **Bulk Waste:** means furniture and other waste materials (excluding White Goods, commercial construction debris, Hazardous Waste, and Yard Waste) with a shape or volume that exceeds the capacity for Carts.
- **Cart:** means a Container with wheels and a tight-fitting lid, designed for the purpose of curbside collection of refuse.
- **City:** means the City of Jackson, Mississippi.
- **City Employee:** mean an employee of the City subject to its personnel policies.
- **Collection Schedule:** means the defined days of collection designated by the City.
- **Container:** means a container the Contractor provides for Residential Solid Waste services or an Approved Container. All Containers provided by the Contractor will be maintained in good repair and appearance. The Containers will remain the property of the Contractor until the end of the initial term and Contractor will be responsible for replacing faulty or damaged containers to the household.
- **Contract Area:** means the area(s) of the City, including any Annexed Areas, within which services will be provided by the Contractor, during the term of the Agreement and any extensions, if granted.
- **Contract Technical Representative:** means a City employee(s) who observes the operations of the Contractor to ensure that the services are performed according to the Agreement and City Code.
- **Curbside:** means that location, with respect to a residence, which is most immediately adjacent to a City street or State or Federal highway
- **Customer:** means a resident of a Residential Unit, who will be provided curbside collection services through this procurement, specifically referring to a resident in the Contract Area.

- Disposal Site: means a refuse depository including, but not limited to, sanitary landfills, transfer stations, and waste processing/separation centers licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.
- Drop Box: means an all metal container, with lidded or non-lidded cover, of not less than ten cubic yards not more than fifty cubic yards in capacity.
- Effective Date: means the date that the Agreement between the City and the Contractor is in effect.

Garbage: means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products, and excepting such materials that may be serviced by garbage grinders and handled as household sewage.

- Hazardous Waste: means materials (whether solids, liquids or gases) which constitute a hazard to health or safety, including, but not limited to, poisons, acids, caustic materials or solutions, chemicals, Freon gas, polychlorinated biphenyls (PCBs), asbestos, lead-based paints, infectious or infected wastes, radioactive materials and petroleum products, offal, fecal matter, explosives, radioactive materials, flammable substances, and any waste, substance, or material that under any federal, state or local environmental law is deemed hazardous, toxic, a pollutant, or a contaminant, including, without limitation, any substance defined or referred to as a "hazardous waste," a "hazardous substance," a "toxic substance," or similar designation under any federal, state or local environmental law.

- Holidays: means holidays observed as listed in the City personnel rules and regulations, which are:

- New Year's Day
- Martin Luther King, Jr. Day
- Thanksgiving Day
- Christmas Day
- Independence Day

- Landfill: means a Disposal Site for disposing of Residential Solid Waste
- Missed Collection: means any properly prepared Refuse, Yard Waste, or Bulk Waste not picked up on the scheduled collection day.
- Refuse: means "municipal solid waste" as defined by Mississippi law. Municipal solid waste (MSW) is any waste resulting from the operation of residential, commercial and industrial,

governmental, or institutional establishments or units, as the case may be, unless the context otherwise requires.

- Request for Proposals (RFP): executed documents, including documents attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures and instructions set forth herein.
- Residential Unit: means a habitable dwelling unit such as a home or trailer, or a habitable dwelling unit in a multifamily dwelling of four or less units, not including hotels or motels. Any Solid Waste, Yard Waste, or Bulk Waste placed outside a Residential Unit that complies with the requirements for collection in this Agreement shall be collected by the Contractor.
- Roll-Off Containers: means a container to be used where dumpsters are not of sufficient capacity or materials are not suitable for dumpster usage. Container sizes are 20, 30, and 40 cu. yd., either open top or enclosed compactor type.
- Residential Solid Waste or Solid Waste: means Refuse generated by a Residential Unit, City facility, or community activity. It excludes commercial and industrial Refuse, sludge from a wastewater plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, but does not include solid or dissolved materials in domestic sewage, solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- Staff: means all employees of the Contractor who perform services for the City.
- Street: means a public road in a city or town, typically with houses and buildings on one or both sides.
- White Goods: means any large household appliance including refrigerators, stoves, dishwashers, water heaters, washers, dryers, or other similar appliances.
- Yard Waste: means grass, weeds, leaves, tree and shrubbery pruning and other similar materials generated in the maintenance of lawns and gardens, which are separated from other Solid Waste.

## **5. SCOPE OF SERVICES**

### **5.1 GENERAL INFORMATION**

The Contractor shall collect all Residential Solid Waste, Yard Waste, and Bulk Waste that complies with the requirements for collection from each Residential Unit on the designated

collection day. Collections will occur at the curb unless an accommodation is necessary to comply with the Americans with Disabilities Act, as amended.

The Contractor shall handle all serviced collection Containers in a manner that avoids damage to them. Containers will be returned to the designated setout location at each residence, standing upright, and will not be thrown or placed in areas where they become obstructions to pedestrians or traffic flow. The Contractor will make collections with a minimum amount of noise and disturbance to the householder between specified hours. Contractor's employees will pick up Refuse or Yard Waste spilled by the Contractor immediately. All areas where glass has been broken or dropped will be swept clean and glass deposited in the truck. All Solid Waste hauled by the Contractor shall be so contained, tied, covered, or enclosed such that leaking, spilling, or blowing are prevented.

Any materials set out for collection that are not in an approved Container will be left at the curb along with instructional materials educating the customer about the City's residential collection services. The Contractor will be free to establish routes to achieve the maximum efficiency of operation. The Contractor will notify the public of the Collection Schedule at the time service is established. All route changes must be communicated to both the City and Customers, in writing, ten (10) days in advance of the Effective Date.

The Contractor will maintain City facilities (Dumpsters) and administrative buildings in the same physical condition as before implementing their collection program.

## **5.2 REGULAR SERVICE PROVISION**

The Contractor will be required to pick up twice-weekly, Monday through Saturday, all Residential Solid Waste generated at the Residential Unit, provided the Solid Waste is placed in an Approved Container. The Contractor agrees to collect Residential Solid Waste of a volume not to exceed one 96-gallon Cart, plus a 35-gallon Customer Container.

## **5.3 BULK WASTE**

The Contractor must provide once-weekly, Monday through Saturday, curbside collection of Bulk Waste items.

## **5.4 COLLECTION OF YARD WASTE**

The Contractor will collect Yard Waste from each Residential Unit weekly, Monday through Saturday. The Contractor will notify the public of the Collection Schedule at the time service is established. Yard Waste may be disposed with the Residential Solid Waste or kept separate from Residential Solid Waste by Customers.

All vehicles used for collection of Yard Waste will be either covered or secured so as to prevent trimmings from being scattered or spilled. All Yard Waste collected must be managed according

to city approved standards.

The Contractor shall collect all Yard Waste such as tree limbs not larger than four (4) inches in diameter nor longer than four (4) feet. Customers will be required to stack limbs in piles not to exceed three (3) feet in height and four (4) feet in width. Contractor will not be required to collect tree trunks larger than four (4) inches in diameter.

The Contractor will be responsible for properly disposing of all Yard Waste collection bags at no additional cost to the City. Each bag or Container placed out for collection may weigh no more than sixty (60) pounds.

In the event Yard Waste set out at a Residential Unit in the Contract Area does not meet the specifications above, the Contractor shall leave a clear, explanatory printed or written notice for the Customer and provide City with notice of the non-compliant Customer print-out within eight (8) working hours.

## **5.5 SUSPENSION OF CURBSIDE COLLECTION**

Curbside collection service may be suspended due to extreme or declared emergencies. The Contractor will stop all work when so directed by the City during severe weather. The Contractor will complete the work as soon as authority has been granted to proceed. If collection is suspended, Contractor will perform collection on the next regular collection day.

Pickup days will not be reduced by Holidays but may be combined. Pickups normally scheduled on Holidays will be rescheduled on the next regular collection day. Contractor will advertise, to all customers, a minimum of three (3) times the schedule changes due to Holidays at least ten (10) days before any observed Holidays. The City must approve any changes in the Collection Schedule.

## **5.6 SPECIAL SOLID WASTE COLLECTION PROJECTS**

The City wishes to sponsor community cleanup and illegal dumping removal events. The Contractor will be responsible for providing collection assistance, collection containers, and collection services for the following:

- Monthly litter pickups and illegal dumping removal (collection assistance with bags and bulk items along City roads and disposal services).
- Fall Cleanup Event (one 40 yd. container and disposal services).
- Christmas Tree Recycling Campaign
- Spring Cleanup (two 40-yd. containers and disposal services).



- Monthly Dumpster Day event (one 40-yd. container for each ward), schedules and sites to be determined by the City's designee.

**5.7 DISPOSAL REQUIREMENTS**

All Residential Solid Waste collected shall be delivered to a permitted solid waste disposal facility operating in compliance with applicable federal, state, and local laws. Unless otherwise directed by the City, the Contractor shall deliver all Residential Solid Waste collected to the Waste Management of Mississippi, Inc. transfer station located in the City of Jackson or the Clearview Sanitary Landfill located in Scott County, Mississippi, which is owned by Waste Management of Mississippi, Inc.

**5.8 MUNICIPAL BUILDINGS AND FACILITIES**

Contractor shall collect Solid Waste from municipal buildings and facilities in accordance with the City Facilities Collection Schedule set forth in Exhibit “D”, which shall identify (i) the municipal buildings and facilities to which collection services will be provided; (ii) the frequency of collection; and (iii) the number containers to be provided to each municipal building and facility for collection of Solid Waste. The cost of this service will be \$1085 per week.

**5.9 ROLL OFF SERVICES AND ILLEGAL/NONCOMPLIANT DUMPING**

In addition to the services described in section 5.6, on two-weeks’ notice to Contractor, the City may request roll-off containers for special events according to the following pricing:

20 Cubic Yard Per Haul	\$250.00/unit
30 Cubic Yard Per Haul	\$250.00/unit
40 Cubic Yard Per Haul	\$250.00/unit
Delivery and Exchange	\$50.00/unit

On an as-needed weekly basis, not to exceed six (6) instances per month, the Contractor may provide knuckle boom trucks/cranes to remove illegally dumped and noncompliant debris within the city limits at a cost of \$150.00 per hour or \$1,200 per day, whichever is less.

**5.10 STORM DEBRIS**

Following events of flood, hurricane, and similar or different acts of God over which the Contractor has no control, Contractor shall remain responsible for the collection of all Solid Waste, Yard Waste, and Bulk Waste placed on the street for collection that complies with the usual collection requirements of this Agreement. Contractor shall not be responsible for the collection or disposal of any excessive volumes of waste resulting from a flood, hurricane or similar or different acts of God over which Contractor has no control that do not meet the requirements of this Agreement. In the event of such a flood, hurricane or other act of God, Contractor and the City may negotiate any payment to be made to Contractor for additional services, if Contractor and City agree that the excessive volumes are to be handled by Contractor.

## 5.11 HOURS AND DAYS OF OPERATION

Residential route collection shall not begin prior to 7:00 a.m. each day or continue after 9:00 p.m. Exceptions to collection hours shall be affected only upon the mutual agreement of the City and Contractor, or when Contractor reasonably determines an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances. Contractor will not be responsible for providing service on the following holidays:

New Year's Day	Dr. Martin Luther King's Birthday
Thanksgiving Day	Independence Day
Christmas Day	

Contractor is not required to provide a make-up day to collect solid waste or from Residential Units affected by the cancellation of services on the foregoing holidays. Without limiting the foregoing, Contractor shall be responsible for publicizing (and the expense of publishing) any changes in collection schedules due to holiday observance. Proper publicizing will include the placement of advertisements or public service announcements serving the affected area.

## 5.12 SERVICE INQUIRIES

All complaints shall be made directly to Contractor. Contractor shall give all complaints prompt and courteous attention. In the case of an alleged missed schedule collection, Contractor shall investigate and if such allegations are verified, shall arrange for collection within twenty-four (24) hours of the time the complaint was received.

Contractor shall maintain forms or a log indicating the time a complaint or request is received, the nature of the complaint or request, and the disposition of same. Such records shall be available for the City's inspection at all times during normal working hours.

Contractor shall furnish to the City on a monthly basis:

- A. A report of the service locations not served on the regularly scheduled service day during the preceding month and the reason service could not be provided.
- B. A report of complaints received during the preceding month and the resolution of these complaints. The City may require Contractor to make personal supervisory contact to resolve a service complaint.

## 5.13 NOTIFICATION OF CUSTOMERS

Contractor shall notify all customers about complaint procedures, changes in services, days of collection and other information regarding the services provided by the Contractor under this Agreement. Except for holiday service changes, Contractor and City shall agree on all service changes thirty (30) days prior to any change in service. Except for holiday changes, the Contractor shall notify all affected customers thirty (30) days prior to the change. The method of customer

notification shall be a combination of door hanger, mailing and/or media advertising approved by the City. To the extent there are services changes from the existing service, within ten (10) days of the execution of this Agreement, the Contractor shall deliver printed information about its services under this Agreement to every Residential Unit pursuant to the methods of notification set forth herein.

## **6. COLLECTION EQUIPMENT**

### **6.1 GENERAL TERMS**

Contractor will keep all equipment in safe operating condition and in proper repair, in a clean, sanitary, and presentable condition. Vehicles must be painted uniformly with the name of the Contractor, the vehicle identification number and Contractor's telephone number printed on all four sides in letters not less than 9 inches in height.

No advertising will be permitted on vehicles. All vehicles will be secure and prevent the leakage of any fluids or littering of materials collected. All vehicles used for the collection of Residential Solid Waste will have a fully enclosed metal top. All loading doors and cab doors will be closed before a vehicle is placed in motion. Vehicles will not be overloaded as to scatter refuse, but when refuse is scattered for any reason, it is the responsibility of the Contractor to immediately pick up scattered matter. Drivers of vehicles which break hydraulic hoses and leak on City rights-of-way will be required to immediately stop operation, clean up fluid with either a compound or cover area with sand to soak up this leakage and sweep up the soak-filled compound or sand and place in truck. A call for a replacement vehicle or repair of leaking hydraulic hose will be required before proceeding with the scheduled route. All clean ups must be reported immediately to the Contract Technical Representative. The report will include the address(es) of the area the spilled occurred. If an address is not readily available, the Contractor will, by its vehicle's GPS device, produce an area ID number. When, in the opinion of the Contractor, the damaged area is cleaned, the Contractor will contact the Contract Technical Representative who will be responsible for approving that the clean-up was satisfactory and accepted.

Vehicles are to be washed and maintained in a clean and sanitary condition. Vehicles are not to interfere unduly with vehicular or pedestrian traffic and vehicles are not to be left standing on Streets and alleys unattended, except as made necessary by loading operations.

Contractor will promptly repair any damage or injury to any City property, road, right of way, bridge, or highway caused by the Contractor except through normal wear and tear. Such repair will restore the City property, road, right of way, bridge, or highway to a condition at least equal to that, which existed immediately prior to infliction of damage.

## 6.2 VEHICLES USED IN COLLECTION

All vehicles used for collection shall be registered with the Hinds County Tax Collector, and shall be kept in a clean and sanitary condition and a state of good appearance and repair, and shall be painted in a uniform manner.

Collection vehicles shall be painted in Contractor's color or colors subject to approval by the City, and shall have painted in a contrasting color, at least four inches high, on each side of each vehicle and on the rear of the vehicle, a four-digit vehicle number. Collection trucks shall be numbered consecutively. Collection vehicles must be registered with the City prior to use.

No advertising shall be permitted other than the name of the Contractor. The Contractor shall place a City-approved sign, which will include a City customer service telephone number, on all collection trucks used for residential collections. All vehicles shall be kept in a clean and sanitary condition, and shall be thoroughly washed at least once each week.

The number of collection vehicles (including spares) shall be sufficient to service all Residential Units at the frequency of collection specified.

All vehicles used by management personnel, including route supervisors, shall be equipped with cell phones with voice mail so that they can be contacted by the City.

All such vehicles shall be operated in conformity with Mississippi State traffic laws and where applicable the City of Jackson Code of Ordinances.

The Contractor's primary collection vehicles shall be used only on this Agreement. The Contractor may use collection vehicles from other sources, or use Agreement vehicles for other operations, only with the approval of the City.

The Contractor (and subcontractors) shall not park or store any collection vehicles on City property for more than a two-hour period, regardless of the signage, without the permission of the City.

All collection equipment used under this Agreement shall meet all applicable state and federal safety standards and Contractor shall obtain all required operating permits. All collection trucks used on this Agreement shall meet existing street weight limits in the City. The Contractor shall not exceed any collection truck weight limit at any time. The Contractor's monthly report shall include the date, time, truck number, total weight and weight exceeding weight limits for any overweight truck.

All collection vehicles shall be equipped with ambient noise back-up alarms, GPS locating units, park at idle compaction, engine idle time limiter, automatic transmissions, retarders, arm dampeners, larger than industry standard and low-copper compliant brake lining and synthetic or semi-synthetic fluids. Primary collection trucks shall be equipped with side guard flaps or tanks to improve pedestrian and bicycle safety.

Contractor shall provide smart fleet management that at a minimum shall provide reporting on service verification, reporting of non-compliant pick-ups, route sequence compliance, and

collections per hour per route. The smart fleet management technology shall also provide notice of non-compliant solid waste, including Yard Waste, by photograph or GPS, automatically to the City to enable the City to monitor collections and non-collections based on non-compliance and to enable City to communicate with Customers about non-compliance. The smart fleet management technology shall also provide a process by which the City may review collection vehicle camera footage to investigate Customer complaints.

The Contractor shall purchase and/or lease, and maintain and repair, all vehicles and equipment necessary to maintain its collection services and schedules and to comply with all requirements of this Agreement promptly and efficiently. The Contractor's vehicles and equipment shall be appropriate for, and compatible (in size, weight, and service capability) with, the area(s) where they may be utilized.

Collection vehicles shall not leak from the power train or the body of the truck, nor shall they leak from the collection vessel. All collection vehicles shall have waterproof seals and shall be watertight to a depth sufficient to prevent the discharge or leaking of accumulated water during loading and transport operations. The collection vehicles shall have solid metal sides and a fully enclosable metal top.

Contractor's vehicles used to collect Roll Off containers and Drop Boxes shall be equipped with a tarpaulin or a net cover with mesh openings not greater than one and one-half (1½) inches in size. The cover shall be kept in good mechanical order, without holes. The cover shall fully enclose the Contractor's load at all times.

Prior to use, a tare weight shall be established for all of the Contractor's collection vehicles. At the City's discretion, the tare weight of any collection vehicle may be checked at any time, by the City Technical Representative.

Except for extraordinary circumstances, as determined by the City, all collection vehicles and equipment shall be empty and devoid of all Solid Waste prior to the commencement of daily collection service.

### **6.3 RESERVE VEHICLES AND EQUIPMENT**

The Contractor shall have sufficient reserve vehicles and equipment available to complete daily collection routes according to the schedules and hours of collection established in this Agreement. The use of reserve vehicles and equipment shall include, but not be limited to, occasions when front line vehicles and equipment are out of service, or delays prevent front line vehicles and equipment from completing their daily collection route(s) within the established hours of collection. The reserve vehicles and equipment shall be readily available for service within two (2) hours of any breakdown. The reserve vehicles and equipment shall be similar in size and capacity to the vehicles and equipment they are replacing.

### **6.4 VEHICLE MAINTENANCE AND CONDITION**

At a minimum, all Contractor's collection vehicles and equipment shall be operated and maintained in compliance with the manufacturer's specifications, and all applicable laws and

regulations. The Contractor's collection vehicles and equipment shall be kept in good repair and appearance, and in a sanitary, clean condition, at all times. Vehicles shall be washed thoroughly on the outside, and sanitized with a suitable disinfectant and deodorant, a minimum of once-per-week (or more frequently if necessary or as requested by the City).

The Contractor shall monitor, maintain and repair its collection vehicles and equipment to prevent fuel and lubricant spills. The Contractor shall keep its collection vehicles and equipment in good repair and condition to prevent leaks from oil and hydraulic systems, as well as waterproof seals and enclosures.

All collection vehicles used within the Contract Area shall identify as a valid hauler for the City and bear signage as a City Contractor, and any other City messaging required. The City will provide the content, form and format of the vehicle identification, signage, and messaging. The collection vehicle shall not display any vehicle identification, signage or messaging other than that approved by the City. Vehicle serial numbers shall be displayed at all times, in letters at least nine (9) inches high, on all four (4) sides of all collection vehicles.

#### **6.5 CITY'S RIGHT TO INSPECT VEHICLES**

The City may inspect the Contractor's vehicles, equipment, licenses, registrations, and Contractor fleet records at any time at its own discretion. The City reserves the authority to require the Contractor to immediately remove any collection vehicle or equipment from service, for reasons deemed by the City including but not limited to, leaking or spilling of fluids and escaping of Solid Waste. The City also may require any collection vehicle or equipment to be washed within one (1) business day of a City request. In such cases, the Contractor shall immediately notify the City Technical Representative of the remedial action that will be taken to correct the problem, and document in writing that the corrective action was taken. When the City conducts any inspection, Contractor staff shall fully cooperate with City staff. The Contractor shall state names and titles of all Contractor staff present. At the end of the inspection, Contractor staff shall sign an inspection report stating that they were present.

#### **6.6 STORAGE AND REPAIR**

The Contractor shall provide a garage and maintenance facility for its vehicles and equipment that enables all weather, year-round maintenance operations. The Contractor shall not use City property to store, house, or repair any vehicle or equipment without the written consent of the City Technical Representative. The Contractor shall not store, house, or repair any vehicle or equipment in the public right-of-way.

#### **6.7 VEHICLE MAINTENANCE AND INVENTORY**

The Contractor shall provide to the City, by April 1, 2023, a complete inventory showing each vehicle (type, capacity) used for performing the Agreement. The Contractor may change equipment from time-to-time but shall notify the City of new or temporary replacements prior to their use on this Agreement. The Contractor shall maintain a vehicular fleet during the performance of this Agreement at least equal to that described in the inventory.

## **6.8 CART STANDARDS**

Containers for Residential Solid Waste curb collection shall be [color to be decided by City prior to time of Agreement] 96-gallon Carts bearing the City of Jackson watermark branding. The City shall review and approve the Cart models, including the specific shade of color proposed prior to Cart ordering and delivery by the Contractor. All new Containers shall be equipped with attached lids, have wheels to aid in movement, be a minimum 15% post-consumer recycled content, meet ASTM container standards, and have minimum 10-year warranty.

Containers will include Contractor-provided, and City-approved, instruction labels or in-molds for with customer instruction on Cart use, excluded and included materials, City logo, and contact information. Instructions will include Cart safety, including customer actions that would void manufacturer warranties, placement of hot ashes that could cause Cart to melt, and procedures to minimize potential fire problems.

The Carts will be the property of the Contractor until the end of the initial contract term. Under this Agreement, the cost of 45,000 Carts is included in the monthly rate to be paid during the initial term of the Agreement. Should the City require in excess of 45,000 Carts, the City may elect to have Contractor order additional carts at the actual cost, including delivery, to the Contractor or the City may elect to purchase carts itself to be provided to the Contractor, but which shall remain the property of the City. The Contractor will replace any damaged Carts without charge to the City or customer, except that a customer shown to have willfully removed or damaged a Container/Cart may be charged a fee to repair or replace the damaged Container/Cart not to exceed the actual cost, including delivery, to the Contractor of the Container/Cart, which is set at \$90.00. The Contractor will collect any such charge. If the Contractor uses a cart purchased by the City, the Contractor shall remit the charge to the City. Contractor also agrees to replace up to one stolen Cart at no cost to the City or Customers. The Customer shall be responsible for the cost of replacing any further stolen Carts, such cost not to exceed the actual cost, including delivery, to the Contractor, which is set at \$90.00. The Contractor will collect any such charge. If the Contractor uses a cart purchased by the City, the Contractor shall remit the charge to the City.

Contractor will be solely responsible for all costs of operating and maintaining collection equipment.

## **7. PERFORMANCE STANDARDS**

### **7.1 MISSED COLLECTIONS AND COMPLAINT HANDLING**

If a collection from a subscribing address is missed, the Contractor will notify the City when they will return to collect the materials. In all cases, the Missed Collection will be handled within 24 hours of notification or during the next scheduled work shift, whichever is sooner. In the case of complaints regarding collection service or any related activities, the Contractor will, upon being

notified of the complaint either in writing or by phone, resolve the complaint with the Customer or City personnel submitting the complaint. The City of Jackson uses City Works to document all solid waste issues. The Contractor will receive an email from the City Works system which will provide documentation of the issue. The Contractor will work cooperatively with the Customer or City to resolve the complaint in a timely manner.

The Contractor will be accessible to the citizens who wish to register a complaint through local telephone service. The Contractor will provide for prompt handling of complaints from the City or its citizens by maintaining a physical office and office Staff that can receive, record, and resolve complaints. Such Staff will be available during regular business hours, Monday through Friday. After hours, weekends, and Holidays, the Contractor must make available a local message service to record citizen complaints. The Contractor will see to it that its employees serve the public in a courteous, helpful, and impartial manner. For each complaint received, the Contractor is expected to maintain a log for all complaints and file with the City, on a weekly basis, a notice of the complaint and the actual or planned resolution. It shall be submitted monthly to the City's Technical Representative within ten days of the end of the month for which the data has been collected. The report format is to be approved by the City's Contract Technical Representative prior to April 1, 2023.

Should the Contractor fail to make collections on a scheduled day for causes within the Contractor's control, the Contractor shall make a special make-up collection by the end of the business day, if notification of the miss is received by 2:00 pm that business day, or by the end of the business day following notification by the City, if the notification is received after 2:00 pm. The City will transmit to the Contractor missed collections and other collection complaints no later than the second business day following collection for customers receiving curb/alley service. The City will transmit missed collections for backyard customers no later than the third business day following collection. A make-up collection shall pick up excess material accumulated during the interval between the scheduled collection day and the special make-up collection.

Solely for the purposes of this Section, the "business day" for the Contractor includes Saturday. "Business days" for the City are Monday through Friday, excluding any City holidays. Therefore, all miss complaints transmitted to the Contractor after 2:00 pm on Friday must be collected by the end of the day Saturday.

Notwithstanding the foregoing, the City may authorize the Contractor to do the following:

1. Authorize the Contractor to defer the collection and authorize the customer to place a proportionally larger amount out for collection on the customer's next scheduled collection day without any additional charge, and to allow the customer to use a bag or temporary receptacles as well as additional bundles for those additional volumes; or
2. Authorize the Contractor to forego collection for the interval altogether and make a compensatory reduction in the billing to the customer, and an equal reduction in the amount payable to the Contractor.



It shall be a defense to a Residential Unit missed collection that the customer had not made timely placement of his or her material out for collection; that the placement did not comply with provisions of this Agreement provided that the Contractor shall have left a printed or written note on all material left because it was not prepared properly, it was overweight, or for other reasons.

The Contractor must notify the City, within 2 hours of the collection attempt, of any Residential Unit collections the Contractor has refused or been unable to make. This notification shall include the service address and the reason of the non-collection. This notification shall be referred to as the Exception List “(EL)”.

If the City transmits a miss complaint which is on the EL, and it is a miss which the Contractor should not collect due to the fact that the Cart is overweight or contains material that should not be collected due to Unacceptable Wastes, the Contractor's office Staff shall note on the miss that the address is on the EL and note the reason that it was not collected and return the miss complaint to the City within four (4) business hours of its receipt, and the miss shall not be collected.

If the Contractor's collection personnel return to collect a miss and the Contractor has reason to refuse the miss consistent with this Section, the Contractor shall leave a printed or written note, explaining why the material was not collected. The Contractor shall also inform the City by the end of the business day of the addresses that were not collected and the reason for the non-collection.

This section applies to omitted collections of a single Residential Unit, a row of Residential Units, or an entire route.

## **7.2 SPILLAGE AND LITTER**

The Contractor shall not cause or allow any Solid Waste or other material to be spilled, released, or otherwise dispersed in the City as a result of the Contractors' activities under this Contract. When hauling or transporting any material over public roads in the City, the Contractor shall use a covered or enclosed vehicle or other device that prevents the material from falling, blowing, leaking or otherwise escaping from the vehicle. Failure to properly cover material during transportation will be subject to the associated Performance Fee.

If any other material escapes from or is littered by Contractors' vehicle or spilled from Containers for any reason, Contractor shall respond and pick up such material, as it is safe to do so, as soon as practicable and consistent with applicable environmental laws, or be subject to the associated Performance Fee.

Overfilled or material placed outside Containers shall not be considered spillage by the Contractor. The Contractor shall immediately clean up any oil, hydraulic, or other fluid that leaks or spills from Contractors' vehicles. Upon notification of any leaks or spills the Contractor shall initiate its clean-up activities within two (2) hours and shall complete its clean up before the end of the day and consistent with applicable environmental laws, or be subject to the associated Performance

Fee. The Contractor shall assume all costs associated with cleanup activities.

### 7.3 PERFORMANCE FEES

The City may deduct the following performance fees from the monthly payment for the service delivery omissions or acts as described below. Deductions for misses will not be applied for collections prevented by weather or holiday rescheduling or collections missed due to labor disruptions during the first week of the disruption. Performance Fees will be reasonably applied and may be appealed using the procedures outlined in the Operations Plan. The individual deductions for Performance Fees will be documented and will be applied with consideration of the specific circumstances and related events as well as the Contractor's overall performance, including the Contractor's efforts to mitigate impacts and maintain service levels during labor disruptions.

#### Performance Requirement

#### Penalty

#### Collection Failure

Missed Collection means any properly prepared Refuse, Yard Waste, or Bulk Waste not picked up on the scheduled collection day. This excludes collections prevented by weather and holiday rescheduling. The excludes non-compliant Customer placements documented by Contractor.

1. Missed collection of more than 15 dwelling units per day	\$100 each Residential Unit
2. Missed collection of <b>whole block</b> . A whole block miss is defined as missing 3 or more houses on the same side of the street or alley between two streets.	\$2500 per whole residential block
3. Missed collection of more than 200 units per month.	\$2500 per first non-consecutive incident
4. Missed collections of more than 200 units per month in consecutive months.	\$5,000 per first consecutive month. Increased by \$5,000 for each month consecutively exceeding

#### Manner of collection

5. <b>Collection</b> outside of the <b>hours</b> as specified.	\$250 each incident, to a maximum of \$1000 per truck per day
6. Collection on <b>other than the scheduled collection day</b> , including early collection due to a holiday.	\$100 per Residential Unit, to a maximum of \$1000 per truck per day

7. Failure to place Containers and lids back in <b>original location</b>	\$50 per incident \$500 per route per day
8. Unsatisfactory performance by Contractor after two (2) notices to correct specific <b>incidences involving the same address or collector</b> in any six (6) month period, e.g., abusive language to customers, failure to return Containers to their original location after collection, failure to perform collections, violation of noise statutes, or similar violations.	\$300 each incident
9. False collection records submitted to the City	\$5000 each incident

Carts

10. Failure to deliver Containers for new Garbage Residential Solid Waste service within 3 business days.	\$50 per Cart per day
11. Failure to <b>deliver, pick-up or replace Carts</b> within 5 business days of notification, including any identified needing repair or replacement.	\$50 per Cart per day
12. Failure to remove or repaint graffiti on Containers within five (5) business days of notice.	\$50 per Cart per day (after 5 business days)

Contractor Operations

13. Failure to properly cover material in collection or hauling vehicles	\$500 per occurrence
14. Failure to correct, upon notification by the City, leakage of fluids from a collection or hauling vehicle prior to resuming use of the vehicle in the City	\$500 per occurrence
15. Failure to clean up spillage or litter occurring during collection at time of collection	\$500 per occurrence
16. Failure to have a vehicle properly licensed and registered	\$500 per vehicle
17. Exceeding vehicle weight limits as set forth in the State of Mississippi Code	\$1,000 per vehicle per occurrence

18. Failure to clean collection and hauling vehicles once per week, or within 1 business day of request from the City	\$100 per occurrence
19. Failure to report known vehicle accidents to the City	\$100 per day not notified
20. Failure to maintain property, facilities, and equipment in a clean, safe and sanitary manner, as determined by the City	\$100 per day
21. Failure to provide proper staffing for a Residential Solid Waste Collection Vehicle (driver and two (2) hoppers)	\$1,000 per vehicle per occurrence

#### Reporting

22. Failure to provide required reports at the time specified	\$500 per report per day
23. Failure to provide ad hoc requested reports within the time specified	\$250 per report per day

### 8. PUBLIC EDUCATION

Contractor shall provide public education materials and services on a not less than quarterly basis. The educational materials will include, but not be limited to, the Collection Schedule, and specifications for accepting Solid Waste, Yard Waste and Bulk Waste.

Public Education and Community Outreach Programs will be developed and implemented in partnership with the City and the Contractor and other appropriate parties including, but not limited to the local Keep Mississippi Beautiful affiliate. The public education program shall include information on waste reduction, in support of the City, County, and State waste reduction programs and goals. To ensure message consistency, all materials must be pre-approved by City. It is the Contractor's responsibility to coordinate production and dissemination schedules to allow for reasonable review time by the City as well as for revisions and coordination of messages, as well as meeting City publication deadlines as applicable.

### 9. PERSONNEL

Contractor will assign a qualified person or persons to be in charge of its operations within the City and will provide the name, address and telephone numbers of such person to the City. The person in charge of the Contractor's operations within the City cannot be changed without the written approval of the City's Contract Technical Representative whose approval will not be unreasonably withheld. However, the City retains the right to approve or disapprove of any replacement manager(s).

The Contractor shall staff all its Residential Solid Waste collection vehicles (rear-end loaders) with a driver and two hoppers at all times.

## **9.1 NON-DISCRIMINATION**

The Contractor shall comply with the applicable non-discrimination provisions of the laws of the United States of America, the State of Mississippi, and the City. In performing this Agreement, the Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by Contractor, to the extent allowed hereunder, shall include a like provision for work to be performed under this Agreement. Failure of the Contractor to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including but not limited to, termination of Contractor's Agreement with the City. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

## **9.2 EQUAL EMPLOYMENT PRACTICES**

A. During the performance of this Agreement, the Contractor agrees and represents that it will provide Equal Employment Practices and the Contractor and each Subcontractor hereunder will ensure that in his or her Employment Practices persons are employed and employees are treated equally and without regard to, or because of, race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.

3. The Contractor agrees to post a copy of Paragraph A., hereof, in conspicuous places at its place of business available to employees and applicants for employment.

B. The Contractor will, in all solicitations or advertisements for employees placed by, or on behalf of, the Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

C. At the request of the governing authorities, the Contractor shall certify in the specified format that he or she has not discriminated in the performance of City Contracts against any employee or applicant for employment on the basis or because of race, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

D. The Contractor shall permit access to, and may be required to provide certified copies of, all of his or her records pertaining to employment and to employment practices by the governing

authorities for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of City Contracts. Upon request, the Contractor shall provide evidence that he or she has or will comply therewith.

E. The failure of any Contractor to comply with the Equal Employment Practices provisions of this contract may be deemed to be a material breach of City Contracts. The failure shall only be established upon a finding to that effect by the governing authorities, on the basis of its own investigation or that of the Department Director. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to the Contractor.

F. Upon a finding duly made that the Contractor has failed to comply with the Equal Employment Practices provisions of a City Contract, the Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the governing authorities, and all monies due or to become due hereunder may be forwarded to, and retained by, the City. In addition thereto, the failure to comply may be the basis for a determination by the governing authorities or the Department Director that the said Contractor is a non-responsible bidder or proposer. In the event of such a determination, the Contractor shall be disqualified from being awarded a Agreement with the City for a period of two years, or until the Contractor shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this Agreement, the City shall have any and all other remedies at law or in equity for any breach hereof.

H. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

I. By affixing its signature on a Agreement that is subject to this article, the Contractor shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of City Contracts.

J. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with employment practices, including, but not limited to:

1. hiring practices;
2. apprenticeships where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
3. training and promotional opportunities; and
4. reasonable accommodations for persons with disabilities.

K. All Contractors subject to the provisions of this section shall include a similar provision in all subcontracts awarded for work to be performed under the Agreement with the City, and shall impose the same obligations including, but not limited to, filing and reporting obligations, on the Subcontractors as are applicable to the Contractor. Failure of the Contractor to comply with this requirement or to obtain the compliance of its Subcontractors with all such obligations shall subject the Contractor to the imposition of any and all sanctions allowed by law, including, but not limited to, termination of the Contractor's Agreement with the City.

### **9.3 HIRING PREFERENCE**

For initial hiring under this Agreement, the Contractor and subcontractors shall give hiring preference to any Residential Solid Waste collection workers who have been displaced from the awarding of this Agreement. All displaced collection workers that meet basic hiring requirements (including commercial driver license, safe vehicle report, drug screening, physical exam, and background check) shall be hired for a minimum ninety (90)-day trial period.

### **9.4 OSHA COMPLIANCE**

The Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and the standards and regulations issued there under and certifies that all services under this Agreement will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against the City as a result of the Contractor's failure to comply with the acts and standards there under and for the failure of the services furnished under this Agreement to so comply.

### **9.5 MISSISSIPPI EMPLOYMENT PROTECTION ACT**

Contractor shall comply with the provisions of the Mississippi Employment Protection Act, Miss. Code § 71-11-3 (1972, as amended) in the hiring of personnel.

## **10. REPORTING**

Before disposal, all Residential Solid Waste collected from Residential Units in the City will be weighed and recorded. The Contractor will provide the City with a monthly tonnage report that is to be delivered to the City's designated representative within ten days of the end of the month for which the data was collected. The Contractor will maintain, for a period of five (5) years, copies of weight tickets which are to be made available for City inspection.

The Contractor shall be responsible for maintaining and submitting reports on an ad hoc, monthly, and annual basis. Reports are to be delivered by email to the designated City staff person using the approved form.

### **10.1 Required Daily Reports**

Daily reports must be submitted within two (2) business days of service collection days. Contractor and City shall agree upon the format and file type of the reports prior to April 1, 2023.

The following daily reports are required:

- Missed Pickup Report—Includes any missed pickups reported to the Contractor and those reported to Contractor by City. Report must include location information, route, and driver.
- Non-compliant Pile Report—Includes documentation of non-compliant piles Contractor identified by route. Report must include location information, route, and access to photo/video evidence.
- Route Sequence Compliance Report—Documents the daily route plan compared to actual route driven based on GPS data. This report should also include start and stop times for pickup.

## **10.2 Required Monthly Reports**

Monthly reports must be submitted to the City by the fifteenth (15th) day of the month following the end of the previous calendar month. Contractor and City shall agree upon the format and file type of the reports prior to April 1, 2023.

The following monthly reports are required:

- Complaint and Resolution Report—Includes all complaints received by Contractor from Customers or City and their resolution status. The report must include location information, route, resolution type, reporting entity, date, time, and any documentation disputing the complaint, if applicable
- Missed Pickup Report—Compile daily missed pickup reports into monthly report
- Safety Report—Total Recordable Injury Rate and Vehicle Accident Rate
- Staffing Report—Staff roster including tenure and status as full-time/part-time. Report should identify if employee is temporary/staff agency placement or full-time employee
- Monthly Tonnage Report—Should include tonnage summary for month, daily tonnage per truck, and disposal site weight tickets.

## **10.3 Annual Report**

The Annual Report must be submitted to the City no later than thirty (30) days following every twelve (12) month period of the Agreement. Contractor and City shall agree upon the format and file type of the reports prior to April 1, 2023. The Annual Report must consolidate all Daily and Monthly reporting into summary reports for the year. Each subsequent year must be compared to



the current year after the initial contract year. Contractor should include highlights, problems, and additional information that demonstrates service quality. The obligation to submit an Annual Report shall survive the termination or expiration of this Agreement. The City may withhold payment of balances due the Contractor at the end of the Agreement until such final report is received and accepted by the City.

#### **10.4 Ad Hoc Reports**

Ad Hoc Reports shall be submitted to the City upon request. The reporting period shall be defined at the time of the request. Ad Hoc reports may be requested on vehicle condition, vehicle status, labor, operations, or any other identified part of this Agreement.

#### **10.5 Vehicle Footage**

Prior to April 1, 2023, Contractor and City shall agree to a process by which the City may review collection vehicle camera footage to investigate complaints. This process and the camera footage provided will be treated as a reporting function.

### **11. OTHER TERMS AND CONDITIONS**

#### **11.1 OPERATIONS PLAN**

A schedule of activities and detailed procedures related to the effective implementation and operation of the Agreement will be developed by the Contractor and the City after the Agreement is signed and prior to beginning collections under the Agreement. This plan shall include the procedures and activities listed below and shall include completion dates for each activity:

1. Procedures for notifying customers of new collection days;
2. Procedures for transmitting collection and billing information to and from the City to the Contractor;
3. Procedures for City monitoring of Contractor collection activities;
4. Procedures for measuring and applying penalties for Contractor activities;
5. Process for customer appeals to services;
6. Process for Contractor appeals of payments;
7. Protocol and communications for service interruptions due to weather, construction and other factors;
8. Standards for the transfer of electronic information and for data quality control and accuracy;
9. Designation of implementation leads by both City and Contractor;
10. Procedures for orientation of collection staff including route coordination/cooperation with

City staff; and

11. Other items identified by the parties.

The Operations Plan shall not contain procedures, activities, or schedules that conflict with any terms of the Agreement.

## **11.2 SECURITY; LIABILITY; DAMAGES**

### **11.2.1 Performance Bond**

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond ("Bond") for thirty percent (30%) of the estimated annual compensation to the Contractor under the Agreement. The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the renewability of the current bond at least ninety (90) calendar days before it expires.

The initial Bond must be in place prior to or before April 1, 2023, and documentation evidencing the Bond shall be produced within thirty (30) days of execution.

The Bond shall be conditioned upon full performance of all obligations imposed upon the Contractor in this Agreement. The Bond shall be subject to approval by the City Attorney as to the company, form and sufficiency of surety. If the instrument is found by the City Attorney to be flawed, the Contractor must correct the flaw promptly prior to contract execution or the award may be terminated.

The Bond must be executed by a company that is included in the U. S. Department of the Treasury's Listing of Approved Sureties (Circular 570), is included on the Mississippi State Insurance Commissioner's Authorized Insurance Company List, and is acceptable to the City.

The Bond shall be in full force effect and shall be the obligation of the surety unless the Contractor shall faithfully perform all of the provisions of this Agreement and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Agreement. The Bond shall contain appropriate recitations that it is issued pursuant to this Section of this Agreement, that it shall be construed to meet all requirements specified herein and that any condition or limitation in the Bond which conflicts with the conditions and requirements of this Section is void.

Failure of the Contractor to furnish and maintain the Bond shall be considered a material default of this Agreement and grounds of its immediate termination at the option of the City.

### **11.2.2 Default of Contractor**

This Section is independent, notwithstanding any other provisions of this Agreement. Except as provided in the last paragraph of this Section, the Contractor may be held in default of the Agreement in the event the Contractor:

1. Fails to perform ninety percent (90%) of the collections required by this

Agreement and appears, to the City, to have abandoned the work, or to be unable to resume collections within forty-eight (48) hours;

2. Has failed on three (3) or more occasions of three (3) working days duration each, in any year, or fifteen (15) days in a calendar year to perform the collections required by the Agreement; except for service disruptions due to extreme weather;
3. Underpays federal minimum wage, including the provision applicable to overtime pay;
4. Fails to comply with the terms of any of the Employee Sections of the Agreement;
5. Fails to furnish and maintain a Performance and Payment Bond;
6. Fails to furnish and maintain the Insurance requirements; or
7. Repeatedly neglects, fails, or refuses to comply with any of the terms of the Agreement, after having received notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven (7) calendar days of a meeting with the Director of the Department of Public Works at which the Contractor will be given the opportunity to correct the deficiency within fourteen (14) days and to show cause why it should not be declared in default or why it should be given the opportunity to cure said default. In the event the Contractor fails to show, to the reasonable satisfaction of the Director of the Department of Public Works, why the Contractor should not be declared to be in default of this Agreement, the Director may recommend to the governing authorities of the City that they make a declaration of default. In evaluating whether to make such a recommendation of a declaration of default, the Director shall, in their discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Agreement.

In declaring the Contractor to have defaulted on the Agreement, the governing authorities also may order the Contractor to discontinue further performance of work under the Agreement and transfer the obligation to perform such work from the Contractor to the surety on the Contractor's performance Bond and take any other action it deems advisable.

Upon receipt of a notice that the work has been transferred to the surety without termination of the Agreement, the surety shall take possession of all materials and equipment described in the most recent inventory submitted to the City, for the purpose of completing the work under the Agreement; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefore. Such employment shall not relieve the surety of its obligations under the Agreement and the bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Agreement subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

In the event the surety on the Contractor's performance Bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is desired by the City, of the materials and equipment described on the most recent inventory submitted to the City, for collection purposes for a period of up to six months following the date of the declaration of default by the City without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such collection a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Agreement.

In the event the City secures the performance of work under the Agreement at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.

All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City by reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Notwithstanding the provisions of this Section, a delay or interruption in the performance of all or any part of the Agreement resulting from causes beyond the Contractor's control shall not be deemed to be a default and the rights and remedies of the City provided for herein shall be inapplicable; provided that labor disputes shall not be considered a cause beyond the Contractor's control.

### **11.2.3 Ownership of Equipment**

All vehicles, facilities, equipment, and property used in the performance of this Agreement shall be wholly owned by the Contractor; provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of vehicles, facilities, equipment and property may be allowed with the prior written approval of the City.

All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Agreement, the City, at its option, shall have the right to take possession of and operate vehicles, facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Agreement. No further

encumbrance shall be placed upon any such vehicles, facilities, or equipment without the prior written approval of the City.

#### **11.2.4 Commitment of Equipment**

Unless a replacement or substitute is provided, all vehicles, facilities, equipment and property identified in the Contractor's inventory for use in the performance of this Agreement (called "such property") shall be available for use in collecting Residential Solid Waste in the Contract Area. When provided, this Section applies to the replacement and substitute.

For the duration of this Agreement, any document (including a lease to or by the Contractor, financing contract, acquisition over time, mortgage, or other instrument establishing a security interest) that encumbers or limits the Contractor's interest in such property shall:

1. Allow the surety on the Contractor's performance bond to take over the Contractor's obligations and to continue the use of the equipment in service for performance of the Agreement;
2. In event the Contractor is in default, allow the City to use without further documentation all or a portion of such property and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, at the City's discretion, for a period of up to six months following the date of the City's declaration of default, to provide such collection services on the condition that the City pays to the City's lessor a market rental for the equipment or property actually used in an amount no greater than the monthly lease in event of a lease, the installment payment in event of a purchase contract, or the monthly interest and principal in event of a financing arrangement;
3. Exempt the City from liability during its usage of such property for arrearages, balloon payments, accrued interest, accelerated charges on account of a default, or other extraordinary payments, and not make satisfaction thereof a condition of the City's or the Substitute Contractor's interim usage; and
4. Forbid any foreclosure, trustee's sale or other dispossession of the Contractor's interest in such property without giving both the City and the Surety on the Contractor's performance bond sixty days' prior notice, and then make any termination of the Contractor's interest in such property pursuant to such action or the enforcement thereof subject to the requirements of subsections (1), (2) and (3) of this Section.

To assure compliance with this Section, the Contractor shall submit to the City for its review and approval or disapproval prior to execution all contracts, leases, or other documents for acquisition of, or encumbering or limiting the Contractor's interest in, such property or for replacements thereof and any proposed agreement that would encumber or transfer any interest of the Contractor in such property before the Contractor's execution of such agreement. The City's approval shall not be unreasonably withheld.

### 11.2.5 Insurance Limits

Within thirty (30) days of execution and at all times thereafter, inclusive of the term of this Agreement, the Contractor shall maintain in force the following minimum levels of coverage and limits of liability for insurance or self-insurance (“Insurance”):

1. COMMERCIAL GENERAL LIABILITY (CGL) Insurance including coverage for:

- Premises/Operations
- Products/Completed Operations
- Pollution – On-Site and Off-Site (Pollution Liability Insurance minimum limits of liability may be evidenced with separate coverage)
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

\$1,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
\$2,000,000	Products/completed operations aggregate
\$2,000,000	General aggregate
\$1,000,000	each accident/disease/policy limit

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, written on a form CA 00 01 or equivalent. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.

3. WORKERS’ COMPENSATION INSURANCE as required by the laws of the state of Mississippi.

4. UMBRELLA/EXCESS/BUMBERSHOOT LIABILITY INSURANCE over CGL and automobile liability minimum limit shall be \$5,000,000 CSL (\$6,000,000 total limits requirement).

The limits of liability specified above may be satisfied with primary limits of liability or any combination of primary limits and excess/umbrella limits.

### 11.2.6 Insurance Terms and Conditions

1. City of Jackson as Additional Insured: The CGL, Auto, and excess/umbrella insurance shall include “the City of Jackson” as an additional insured for primary and non-contributory limits of liability.

2. No Limitation of Liability: Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of the Contractor or any insurer for any claim that is required to be covered hereunder to less than the applicable limits of liability stated in the declarations. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by vendor, whether those limits are primary, excess, contingent or otherwise. The Contractor expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any agreement or statement of work between the City and the Contractor.

3. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: The Contractor’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. The Contractor’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Jackson from coverage or asserting a claim under the Contractor’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. The Contractor’s CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer’s Liability exclusion, (e) any “Insured vs. Insured” or “cross-liability” exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. The Contractor’s failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Jackson; or if applicable, and at the discretion of the City, shall serve as grounds for the City to procure insurance coverage with any related costs of premiums to be repaid by the Contractor or reduced and/or offset against the Agreement.

4. Claims Made Form: If any policy is written on a claims made form, the retroactive date shall be prior to or coincident with the effective date of this Agreement. Claims made coverage shall be maintained by the Contractor for a minimum of three (3) years following the expiration or earlier termination of this contract, and the Contractor shall provide the City with evidence of insurance for each annual renewal. If renewal of the claims made form of coverage becomes unavailable or economically prohibitive, the Contractor shall purchase an extended reporting period (“tail”) or execute another form of guarantee acceptable to the City to assure financial responsibility for liability assumed under the contract.

5. Deductibles and Self-Insured Retentions: Any self-insurance retention or deductible in excess of \$ 25,000 that is not “fronted” by an insurer and for which claims the vendor or its third-party administrator is directly responsible for defending and indemnifying must be disclosed on the certificate of liability insurance. The Contractor agrees to defend and indemnify the City under its

self-insured or deductible layer and upon City's request advise the full delivery address of the individual or department to whom a tender of a claim should be directed.

6. Notice of Cancellation: The City, as a certificate holder for the insurance requirements specified herein and an additional insured, has an interest in any loss which may occur; written notice of cancellation shall be actually delivered or mailed to the City not less than 30 days prior to cancellation (10 days as respects non-payment of premium). As respects surplus lines placements, written notice of cancellation shall be delivered not less than 30 days prior to cancellation (10 days as respects non-payment of premium).

7. Qualification of Insurers: Insurers shall maintain A.M. Best's ratings of A- VII unless procured as a surplus lines placement, or as may otherwise be approved by the City.

8. Changes in Insurance Requirements: The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Contractor. Should the Contractor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

9. Evidence of Insurance: The Contractor must provide the following evidence of insurance:

- a) A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein;
- b) An attached City of Jackson designated additional insured endorsement or blanket additional insured wording to the CGL/MGL (and if required Pollution Liability insurance policy).
- c) A copy of all other amendatory policy endorsements or exclusions of the Contractor's insurance CGL/MGL policy that evidences the coverage required.

In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, the Contractor shall also cause a complete copy of the requested policy to be timely furnished to the City.

### **11.2.7 Indemnity**

Contractor shall indemnify and save harmless 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 solely resulting from a willful or negligent act or omission of Contractor, its officers, agents, servants, and employees in the performance of this Agreement as determined by a court of competent jurisdiction; provided, however, that Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of the award of this Agreement or for a willful or negligent act or omission of the City, its officers, agents, servants and employees.



### **11.3 ASSIGNMENT OR PLEDGE OF MONEYS BY THE CONTRACTOR**

The Contractor shall not assign or pledge any of the monies due under this Agreement without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days' prior notice to the City of such assignments or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Agreement.

### **11.4 ASSIGNMENT; SUBCONTRACTING; DELEGATION OF DUTIES**

Except for the subcontracting identified in the Contractor's proposal, the Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Agreement without the prior written approval of the City, which approval may be granted or withheld in the City's sole discretion.

Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract.

The City's consent to any assignment or subcontract shall not release the Contractor from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract. In the event of an assignment, subcontract or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Agreement and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

### **11.5 AUDIT**

The Contractor shall maintain in its office in the City of Jackson full and complete accounting records, prepared in accordance with generally accepted accounting principles, reflecting the Contractor's work on this Agreement. The City may require an audit of such books and records at any reasonable time. Such audit will be conducted by City staff or by a certified public accounting firm with experience in auditing public service companies selected by the City.

Upon request, the Contractor shall permit the City to inspect and audit all pertinent books and records of the Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to this Agreement, at any and all times deemed necessary by the City, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in the City of Jackson or other such reasonable location as the City selects. The Contractor shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of the City is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

## **11.6 CONTRACT RIGHTS**

The parties reserve the right to amend this Agreement from time to time by mutual agreement in writing. Rights under this Agreement are cumulative, and in addition to rights existing at common law. Payment by the City and performance by the Contractor do not waive their contract rights.

Failure by either party on any occasion to exercise a contract right shall not forfeit or waive the right to exercise the right on another occasion. The use of one remedy does not exclude or waive the right to use another.

## **11.7 INTERPRETATION**

This Agreement shall be interpreted as a whole and to carry out its purposes. This Agreement is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

In the event of conflict between Agreement documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this contract to afford the City the maximum benefits.

## **11.8 LAW; VENUE**

The laws of the State of Mississippi and Ordinances of the City shall govern the validity, construction and effect of this Agreement. The venue for any claims, litigation, or causes of action between the parties shall be in a court of appropriate jurisdiction of the State of Mississippi for the First Judicial District of Hinds County.

## **11.9 NOTICES**

All official notices or approvals shall be in writing. Unless otherwise directed, notices shall be delivered by messenger or by certified or registered mail (return receipt requested) to the parties at the following respective addresses:

To the City:  
City of Jackson  
Attn: Mayor  
219 South President Street  
Jackson, Mississippi 39201  
Phone: (601) 960-1084

To the Contractor:

Also:  
Department of Public Works  
Attn: Director  
200 South President Street  
Jackson, Mississippi 39201

Phone: (601) 960-2091

Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the second business day after its mailing.

#### **11.10 SEVERABILITY**

Should any term, provision, condition, or other portion of this Agreement or its application be held to be inoperative, invalid or unenforceable, and the remainder of the Agreement still fulfills its purposes, the remainder of this Agreement or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

#### **11.11 NO PERSONAL LIABILITY**

No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

#### **11.12 DISPUTES**

The City and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Agreement concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the parties' representatives as listed "Notices," or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

Notwithstanding above, if the City believes in good faith that some portion of work has not been completed satisfactorily, The City may require Contractor to correct such work prior to the City payment. In such event, the City must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

#### **11.13 TERMINATION**

Notwithstanding any other provisions of this Agreement, the City may terminate this Agreement upon a material default under or breach of this Agreement by the Contractor, provided the Contractor has been provided written notice of the default by the City, and has been afforded an opportunity to cure as provided in section 11.2.2.

In the event that the governing authorities do not provide funding for this Agreement during any fiscal year after Fiscal Year 2024, which begins on October 1, 2023, this Agreement shall

immediately terminate on the later of September 30 of the end of the fiscal year or thirty (30) days after the City provides notice to the Contractor of its intent not to provide further funding of the Agreement.

City may also terminate the Agreement for convenience by providing written notice of its intent to terminate for convenience six months prior to the Agreement termination date set forth in the written notice.

This Agreement may be terminated in whole or in part by the City upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for the satisfactory work performed under this Agreement, but in no case shall said compensation exceed the total contract price.

#### **11.14 FORCE MAJEURE – SUSPENSION**

This section applies in the event either party becomes unable to perform its obligations under this Agreement as a result of a Force Majeure Event. A Force Majeure Event is an external event that is beyond the control of the party or its agents and that severely compromises the party's ability to perform its obligations under the Agreement. Such events may include, but are not limited to, a natural or man-made disaster, an act of war or terrorism, or a related action or decree of a superior governmental body, which prevents the party from performing all its obligations under the Agreement.

Should either party suffer from a Force Majeure Event, such party shall provide the other party with notice as soon as practical and shall act with speed and diligence to mitigate any potential damage that may result from the event and resume performance of all its obligations under the Agreement as soon as reasonably possible. When notice has been properly provided, the obligations of both parties shall be suspended to the extent that and for the period that the Force Majeure Event prevents the party from resuming performance of all its obligations under the Agreement.

#### **11.15 EMERGENCIES, DISASTERS – MAJOR SERVICE DISRUPTION**

This section applies in the event an emergency or disaster causes a major disruption to the Contractor's ability to maintain standard levels of service in the performance of its obligations under the Agreement. Such events may include, but are not limited to, a severe storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above (except as provided in Sections "Service Disruptions Due to Weather" and "Service Disruptions—Non-Weather"). In such an event:

1. The City shall notify the Contractor of the emergency or disaster, describing the relevant circumstances arising from the event, and request emergency and priority services from the Contractor.
2. Upon such notice from the City, the Contractor shall consult and work with the City to develop strategies and tactics to manage the emergency and provide services to restore the City to normal

operating conditions as soon as reasonably possible. Certain disaster scenarios will be modeled and planned for in advance, to the extent possible. The Contractor shall exercise its best efforts in providing the emergency and priority services as requested by the City in as timely a manner as possible.

3. The Contractor shall use commercially reasonable efforts to make the City's customers its first priority, and its efforts to provide City's customers with emergency and priority services shall, to the extent commercially reasonable, not be diminished as a result of the Contractor providing service to other customers.

4. If the Contractor is unable to respond in the time requested by the City, the Contractor shall respond as soon as practical. The Contractor shall immediately assist the City to the extent reasonable in providing services, which may include offering the City substitutions, provided that the Contractor obtains prior approval from the City for the substitutions.

5. The City shall compensate the Contractor for performing emergency and priority services under this section in a manner consistent with the compensation provisions of this Agreement, and any additional collections performed by Contractor shall be paid at the Special Collection Rate or as otherwise specified in the Contingency Plan.

The City and Contractor shall work in good faith to develop a mutually acceptable Contingency Plan addressing the above and incorporate this into the Operations Plan.

#### **11.16 ADJUSTMENT - CHANGE OF LAW OR DUE TO A FORCE MAJEURE EVENT**

This section applies in the event a change in federal, state, or local laws or a prolonged change in circumstances due to a Force Majeure Event results in a substantial increase (or decrease) in costs to the Contractor in the performance of its obligations under this Agreement. To qualify as a substantial increase in costs under this section, Contractor must demonstrate to the satisfaction of the City that the change in law or prolonged change in circumstances due to a Force Majeure Event has resulted in an increase of more than ten percent over the actual costs incurred by the Contractor for the same services provided under this Agreement. A change in law under this section shall not include changes in law with respect to property, income, business, payroll, franchise, employment, excise, sales or general use taxes, but does include fuel, carbon, or solid waste taxes or fees enacted or amended during this Agreement, provided such taxes or fees are not covered by the Fuel Index or passed through directly to the City or customers.

The Contractor may request an adjustment under this section. Any adjustment the City decides to grant under this section shall be prospective only. If the Contractor decides to request an adjustment under this section, the Contractor shall file with the City an adjustment request setting forth the Contractor's calculation of its increase in costs and documenting how the increase qualifies as a substantial increase in costs under this section. The burden of demonstrating that the Contractor has suffered a substantial increase in costs under this section rests with the Contractor. The Contractor shall provide the City with any and all documentation and data reasonably necessary to evaluate the request. The City shall act within 90 days of receipt of a properly filed request and may either grant, grant in part, or deny the request, which shall not be unreasonably denied.

In the event a change in federal, state, or local law or prolonged change in circumstances due to a Force Majeure Event results in a decrease of more than ten percent from the actual costs incurred by the Contractor for the same services provided under this Agreement, and upon 60 days prior notice from the City, the Contractor shall accept an adjustment to reflect such decrease in its costs. The burden of demonstrating that the Contractor has enjoyed a substantial decrease in costs under this section rests with the City. The Contractor shall provide the City with any documentation and data reasonably necessary to determine whether the Contractor has enjoyed a substantial decrease in costs.

#### **11.17 SERVICE DISRUPTIONS DUE TO WEATHER**

When snow or ice or other weather conditions prevents collection of all or a portion of the Contractor's routes on the scheduled day, the Contractor shall make collection on the next day. If such conditions continue for a second consecutive day or more, the Contractor shall, on the first day that regular service to a customer resumes, collect all the materials that the customer places out for collection, even if not scheduled that week, subject to reasonable limits to be agreed upon by the Contractor and the City and set forth in the Operations Plan. On the day that collections resume, the Contractor shall take bags, boxes and other secure material, and shall empty temporary receptacles that customers have used when the collection Containers have been filled. The Contractor is authorized to perform collection services after 5:00 pm during, or immediately after, disruptions due to weather in order to finish the collection routes.

The Contractor shall notify the City as soon as possible of any non-collection days due to snow or ice. The notification shall be made the previous day or by 6:00 a.m. of the collection day. The City will notify the media of such non-collection days.

The Contractor shall not be paid for non-collections due to snow or ice; the City shall deduct \$250 from the Contractor's regular monthly payment for each individual Curb Collection Residential Solid Waste route which is not 90% collected by the end of the day following the scheduled collection day.

#### **11.18 SERVICE DISRUPTIONS—NON-WEATHER**

When closure of roadways providing access, blocked alleys or streets or other disruption beyond Contractor's control prevents timely collection on the scheduled day, the Contractor shall make collection either later on that collection day, or the next business day. The Contractor must provide all the collections required during the collection week. If all collections are not performed during the collection week, the City will adjust the Contractor's payment for such non-collection. The Contractor must notify the City, within two (2) hours of the collection attempt, of any Residential Unit collections the Contractor has been unable to make under this Section.

The Contractor may directly contact City of Jackson Parking Enforcement to request assistance to clear streets or blocked alleys, notify them of illegally parked cars, or request other assistance.

When labor disruptions prevent collection on the scheduled day, the Contractor shall make collections on the next day. If such labor disruption continues for a second consecutive day or more, the Contractor shall resume collections on the customers' collection day the following week. On the day that collections resume, the Contractor shall take bags, boxes and other secure material,

and shall empty temporary receptacles that customers have used when the collection Containers have been filled. The Contractor is authorized to perform collection services after 5:00 pm during, or immediately after, labor disruptions in order to finish the collection routes.

The Contractor shall not be paid for non-collections due to labor disruptions. The City shall deduct \$400.00 from the Contractor's regular monthly payment for each individual Curb Collection Residential Solid Waste route which is not ninety percent (90%) collected by the end of the day following the scheduled collection day.

### **11.19 TAXES AND SURCHARGES**

In the event that Contractor becomes liable for or is required to pay any governmental tax or surcharge in connection with the services provided for under the terms of this Agreement, such tax or surcharge shall be the responsibility of the City and shall be payable to Contractor in addition to Contractor's normal monthly compensation.

### **11.20 NEWLY DEVELOPED AND ANNEXED AREAS**

If additional territory is annexed into the City subsequent to the execution of this Agreement, the City shall provide written notice to Contractor of the addition of the annexed areas. Contractor will, within thirty (30) days of receipt of such notification from the City, provide the same frequency and quality of service to the annexed areas required by this Agreement. As new homes are constructed and occupied in the City, Contractor shall, after proper notification by the City, provide solid waste services as required by the Agreement on the next scheduled day of collection following notification. The compensation payable to Contractor shall be adjusted based on the per Residential Unit costs for services provided under this Section 5. Contractor shall be responsible for notifying the City of all locations being serviced which do not appear on the billing register.

### **11.21 MINORITY / WOMEN BUSINESS ENTERPRISE PARTICIPATION**

Contractor agrees that it will comply with the Equal Business Opportunity Plan attached hereto as Exhibit "C". Contractor shall provide monthly reports to the EBO Office, City of Jackson, in accordance with local ordinance.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate original on the day and in the year first above mentioned.

**THE CITY OF JACKSON, MISSISSIPPI**

**RICHARD'S DISPOSAL, INC.**

BY: \_\_\_\_\_  
ITS: Mayor

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

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Witness

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