

ORDINANCE 2023-10

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, REPEALING ORDINANCE 2018-10 EFFECTIVE JANUARY 14, 2024; PROVIDING A NEW EXCLUSIVE FIVE-YEAR FRANCHISE TO WASTE MANAGEMENT INC. OF FLORIDA EFFECTIVE JANUARY 15, 2024, FOR THE COLLECTION AND DISPOSAL OF ALL RESIDENTIAL AND COMMERCIAL TRASH, GARBAGE, AND OTHER REFUSE AND PROVIDING FOR THE COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS WITHIN THE CITY LIMITS; FURTHER PROVIDING FOR DEFINITIONS; GRANT OF FRANCHISE; LIMITS OF FRANCHISE; TERM OF FRANCHISE; FRANCHISE CONSIDERATION; ASSIGNMENT; BANKRUPTCY OR INSOLVENCY; DEFAULT; RATE CHANGES AND RIGHT OF FIRST REFUSAL; PUBLIC NOTICES AND EDUCATION SERVICES; RESTORATION; COMPLIANCE WITH LAWS; LIABILITY INSURANCE, HOLD HARMLESS, WORKERS COMPENSATION; PERFORMANCE BOND; RIGHT TO REQUIRE PERFORMANCE; DISPUTE RESOLUTION; OPERATIONS DURING DISPUTE; STANDARD OF PERFORMANCE; CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL; RECYCLING PROGRAM; COLLECTION SERVICES AND OPERATIONS; OFFICE HOURS; COLLECTION EQUIPMENT; DISPOSAL; ROUTES AND SCHEDULES; GRANTEE PERSONNEL; SPILLAGE AND LITTER; STORMS AND FORCE MAJEURE EVENTS; NONDISCRIMINATION PROVISION; RATES, CHANGES, BILLING AND AUDITS; COMPLAINTS & CHARGES FOR FAILURE OF PERFORMANCE; MISCELLANEOUS PROVISIONS; PUBLIC RECORDS LAW AND OBLIGATIONS; REPEAL OF SECTIONS IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fernandina Beach finds it in the public interest to ensure that all areas within its limits are adequately provided with high quality solid waste collection and disposal services; and

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

WHEREAS, the City of Fernandina Beach finds it in the public interest to retain control over the use of public rights-of-way by refuse collection to assure against interference with the public convenience, to promote aesthetic considerations, and to protect the public investments in right-of-way property; and

WHEREAS, the City of Fernandina Beach finds it in the public interest to utilize quality refuse collectors and that this can be accomplished by protecting capital investments of refuse collectors; and

WHEREAS, the City of Fernandina Beach finds that the granting of an exclusive franchise is the best means of assuring that the above described interests of the City of Fernandina Beach are promoted; and

WHEREAS, the City granted a solid waste franchise to Advanced Disposal Services Stateline, LLC, beginning January 15, 2019, and assigned the franchise to Waste Management Inc. of Florida January 4, 2022; and

WHEREAS, the City solicited proposals for collection and disposal of garbage, recyclables, and yard debris through RFP 22-08, and the evaluation committee recommended Waste Management Inc of Florida; and

WHEREAS, the City Commission authorized negotiations with Waste Management Inc. of Florida for a franchise agreement via Resolution 2022-219; and

WHEREAS, the City of Fernandina Beach finds it is in the best interests of the City to repeal Ordinance 2018-10 as of January 14, 2024, and to grant a new solid waste franchise for 5 years beginning January 15, 2024; and

WHEREAS, this Ordinance is adopted pursuant to the authority of Section 166.021, and Chapter 403, Part IV, Florida Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, THAT:**

**SECTION 1. DEFINITIONS.**

“Anniversary Date” means the date that is one year after the Effective Date of this Franchise Ordinance.

“Authorized Hours for Collection” means the hours that the Grantee is authorized to collect all types of solid waste and recyclables at customer locations within the City’s limits. The authorized hours for collection are between the hours of 6:00 am and 8:00 pm for residential collection inclusive, unless otherwise authorized by the City for a specific duration. The authorized hours for collection for commercial collection are between 3:00 am and 8:00 pm inclusive, unless otherwise authorized by the City for a specific duration. Special consideration will be given for certain commercial establishments that neighbor residential properties.

“Beach Accesses” mean accesses located along the 6 miles of beach located within the City limits. Accesses contain approximately 50 garbage carts that are serviced one (1) to seven (7) days per week depending upon the season. This service will be provided by the Grantee for a separate rate listed in Section 30.

“Bulk Waste” means large, discarded items generated from residences and commercial businesses within the City, such as pallets, furniture, e-waste, and abandoned and improperly placed dumps of the same. Loose construction or demolition debris is considered commercial. The Grantee has the right to charge for extra bulk waste pickup which is greater than 3 cubic yards.

“Cart” means:

- 1) A sixty-five gallon or ninety-five gallon container on wheels with attached lids, serviced by collection vehicles with a side-arm (or tipper) that mechanically collects and empties the container, provided by the Grantee for garbage/trash collection or service at residential and small commercial account locations;
- 2) All carts must have imprinted on each on each of the main body a City logo with City name, as approved by the City, and a serial number imprinted on another side of the main body. All carts with the City logo(s) with City name will automatically become the property of the City, at no additional cost to the City, on termination of the Grantee contract and the Grantee

inventory will be transported to the City location identified by the City at no additional cost to the City.

- 3) Selection of cart manufacturer and type/specifications and markings are subject to City approval prior to purchase by the Grantee.
- 4) The cost of purchasing providing, maintaining, and replacing of all carts to customer account locations is the responsibility of the Grantee at no additional cost to the City and will be - part of the collection and disposal costs in the Grantee unit price rates

“Change in Law” means:

1) The adoption, or modification after the date of this Franchise of any substantially increased federal, state or local fees or taxes, law, regulation, order, statute, ordinance or rule that was not adopted, promulgated or modified on or before the date of this Franchise, or

2) The imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Franchise, which in the case of either (1) or (2) establishes requirements affecting the Grantee’s operation under this Franchise in a substantial manner so as to make the performance of the requirements of this Franchise more burdensome than before the change of said law. Any change in tax law or workers compensation law will not be considered a change in law pursuant to this definition.

“City” means the City of Fernandina Beach, Nassau County, Florida, a municipal corporation, its government and the City Manager, and/or his authorized or designated representative(s); and may also be referred to as Grantor or Franchisor.

“Commercial” or “Commercial establishment” means any public or private place, building and/or enterprise devoted in whole or in part to a business enterprise whether nonprofit or profit making in nature, except where such place, building and/or enterprise constitutes a single-family residence or multifamily dwelling. Commercial establishments utilize commercial container units such as Grantee provided dumpsters or customer provided containers that are mechanically emptied by other means than cart collection vehicles. These consist of, but are not limited to, office buildings, stores, hotels and motels, restaurants, schools, churches, clubs, medical clinics and hospitals, assisted living facilities, and other service establishments.

“Commercial collection and disposal services” means garbage and trash collection and disposal service for commercial establishments utilizing containers other than those described as carts for collection of garbage/trash. These containers, such as dumpsters, roll-offs, compactors, etc., are mechanically emptied by means other than cart collection vehicles. The Grantee must provide the following collection and disposal services to each customer location – garbage/trash, recycling (at customer option) and bulk waste.

Commercial establishments in this service category may use, but are not limited to, any of the following for the accumulation of garbage/trash:

- 1) Carts as defined as above.
- 2) Dumpster containers, provided by the Grantee, *at no additional cost to the City or account holder*, in two (2), four (4), six (6), eight (8) cubic yard capacities, to include ancillary items, such as rollers and dumpster security devices (not enclosures or shoots). Provision, collection, disposal, and servicing are provided in the price per pull.

- 3) Roll-off containers, provided by the Grantee, *at no additional cost to the City or account holder*, to include ancillary items, such as rollers and security devices on roll-offs (not enclosures or shoots), as approved by the City, when permanent-use roll-off service is approved by the City, subject to transition from existing customer contracts for existing service. Provision, collection, disposal, and servicing are provided in the price per pull.
- 4) Commercial cardboard containers in the downtown district provided by the Grantee, *at no additional cost to the City or account holder*. Currently, there are approximately four (4) 8-yard cardboard recycle dumpsters for this purpose.
- 5) Locations, quantities and frequency of pickups, and quantities and sizes of dumpsters and specialty items such as gravity locks and rollers may change from time-to-time at the sole discretion/direction of the City.
- 6) Grantee-provided solid waste collection and disposal service for customer provided compactors and dumpsters, subject to transition from existing customer contracts for existing service. Collection and disposal are provided in the unit price per pull.

“Commercial trash” means any and all accumulations of such combustibles as paper, rags, wood, wooden or paper or cardboard boxes; non-combustibles such as metal, glass, stone and dirt; and any other accumulations not included within the definition of garbage, generated by the operation of stores, offices and other business places. Commercial trash includes all trash placed in public receptacles, on public streets, in parks and playground, and in other public places. Commercial trash includes bulk items or piles greater than 3 cubic yards.

“Company” refers to Waste Management Inc. of Florida, (“Waste Management”) which may also be referred to as the Grantee or Franchisee.

“Construction and Demolition Debris” means discarded materials generally considered not to be water-soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris. Collection of construction and demolition debris is to be accomplished via the open market and is outside this solicitation.

“Commission” means the City Commission of the City of Fernandina Beach, Florida.

“Curbside Collection Point” means that area on or adjacent to the driveway within five feet of, and in no case more than ten feet from, the street, roadway, or alley, behind the curb or edge of pavement and not by the driving surface of the street or roadway or in the drainage gutter or drainage swale or ditch, not on landscaping of any sort other than grass, and as may be specifically requested by the customer, subject to City review. For disabled and/or elderly customers properly acknowledged, this may mean the side door or other designated collection point. The Grantee is responsible to appropriately identify, subject to City review, the side door pickup customer premises, making the side yard pickup locations easily identifiable from the driving pavement by the collection route drivers. The Grantee will provide side door pickup at no additional cost to the City. This is also referred to as roll-out, roll-back service.

“Designated Recovery Facility” means the recycling/processing center(s) specifically agreed upon by the Grantee and the City for the recovery of recyclable materials.

"Disaster debris" means any rubbish or remnants, both combustible and noncombustible, resulting from storms or any emergency condition, requiring special handling and/or equipment for bulk removal of both natural and man-made material.

“Downtown” means the Fernandina Beach Historic Downtown area between South 8<sup>th</sup> and Front St. and Alachua St. and Ash St. Downtown area has approximately 55 ornamental cans that must be emptied daily up to seven (7) times per week, excluding select holidays, subject to City review.

“Franchise” means this Franchise Agreement.

“Effective Date” means January 15, 2024.

“Excluded waste” means any and all debris and waste products generated by land clearing, demolition, building construction or alteration and hauled away by the respective contractor (except do-it-yourself projects) as approved by City representatives; public works construction projects whether performed by a governmental unit or by contract; materials deemed by the City to be hazardous waste and items not allowed at the County landfill or other approved landfill. Yard waste produced by and hauled away by landscape maintenance contractors is also considered excluded waste.

“Franchise Fee” means the fees set forth in Section 5 of the Franchise.

"Garbage" includes and means all accumulation of animal, fruit or vegetable and any other matter, of any nature whatsoever which is subject to decay, which may serve as breeding or feeding material for flies and/or other germ carrying insects; bottles, cans, or other food containers which due to their ability to retain water may serve as a breeding place for mosquitoes or other water breeding insects, and does not include recycling; and abandoned and improperly placed dumps of the same.

"Grantee" means Waste Management Inc. of Florida, (“Waste Management”) or “Franchisee” who is granted this exclusive Franchise and hereby undertakes to perform each and every obligation assigned herein and hereby agreed to.

"Grantor” means the City of Fernandina Beach, Florida or “Franchisor”.

"Gross Revenue” means and includes any and all fees received by Grantee for service and disposal which were generated within the service area pursuant to this Franchise with the exception of those fees associated with storms and other emergencies as defined in Section 28.

"Hazardous waste" means wastes that are hazardous by reason of their pathological, explosive, radiological or toxic characteristics.

“Household trash” means any and all accumulations of waste material from the operation of a home, which is not included within the definition of garbage.

“Net revenue” means gross revenue less expenses directly and proximately related to the operation of the Franchise.

"Occupant" or "Resident" includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, syndicates, fiduciaries, corporations, and all other, groups or combinations permitted under Florida law.

"Plastic liner" means a plastic bag no larger than a thirty-five-gallon garbage can of sufficient strength to hold contents securely tied at top, not to exceed fifty pounds when full.

“Receptacle” is a general term meaning the container provided to or by the customer that is used by the customer for depositing garbage/trash or recycling and that is emptied by the Grantee such as a cart, dumpster, compactor, roll-off, etc.

“Recycling” refers to the collection, transportation, and recovery of recyclable materials by the Grantee from participating residential cart pickup accounts, small commercial cart pickup accounts (optional participation), unique commercial cart pickup accounts (optional participation) and Multifamily Dwelling collection accounts, and Commercial collection accounts (optional participation) in the recycling service area.

“Recycling carts” means the carts purchased and distributed by the Grantee on behalf of the City for the intended use as a receptacle for recyclable materials for Residential and Multifamily Dwelling customers. Commercial customers may also use Recycling Carts as receptacles for recyclable materials at the customer option. The purchase, provision, maintenance, and replacement of these carts shall be the responsibility of the Grantee at no additional cost to the City.

“Recycling Collection Service” refers to the collection, transportation, and recovery of recyclable materials by the Grantee from participating residential cart pickup accounts, small commercial cart pickup accounts (optional participation), unique commercial cart pickup accounts (optional participation) and multifamily dwelling collection accounts, and commercial collection accounts (optional participation) in the recycling service area.

“Recyclable Materials” mean newspaper, paper, aluminum and metal beverage and food cans, all colors of glass bottles/jars, and plastic bottles/containers, which previously held non-automotive, non-toxic liquid, and such other materials, as mutually agreed by the Grantee and the City, that are recyclable, source separated and co-mingled for single stream recycling collection. Section 20: Recycling Program contains a more detailed list of Acceptable and Non-Acceptable recycling items.

"Recycling service area" refers to the corporate limits of the City of Fernandina Beach, Florida as hereafter amended through annexation.

“Residential collection & disposal service”, also known as Residential Cart Pickup Service, means garbage and household trash collection and disposal service to one single family dwelling, or one living unit in a duplex or other multifamily dwelling utilizing cart pickup garbage/trash collection service. The Grantee will provide the following collection and disposal services to each customer location: garbage/trash, recycling, and bulk waste.

“Roll-out, Roll-back” service means the Grantee provides, at no additional cost to the City, roll-out, roll-back service for elderly or disabled residents. This service will be provided to elderly residents or those with short-term or long-term disabilities who are unable to bring their solid waste and recyclables to the curbside collection points. Residents who may have such difficulty putting out their refuse or recyclables may request roll-out, roll-back service by providing to the Utility Billing Department a physician’s note, detailing the duration of the disability. Upon the City’s approval, the resident is notified with the confirmed period of roll-out, roll-back service. The Grantee will collect, within the City-approved time period, the elderly/disability resident’s refuse and recyclables from their side door or designated locations on the property. The roll-out, roll-back service is available to all other City residents for an additional charge.

“Solid Waste or Refuse” includes and means all garbage, dead animals, bulk waste, household trash, construction and demolition debris, commercial trash, and abandoned and improperly placed dumps of the same.

"Special material" means large materials or other special wastes that are not stored in standard storage containers and cannot be picked up by a normally used collection vehicle. With the exception of major appliances, all wastes such as furniture, “do it yourself” building materials, non-containerized trash piles and any unusually large amount of refuse not suitable for containerization will be picked up at the curb as a special service of the Grantee at an additional charge. This service will be limited to materials that can safely be collected by the use of a rear-load vehicle with a helper.

All fees received by the Grantee for the collection of special materials are subject to the City’s Franchise Fee.

“Surety” means the party who is bound with and for the Grantee to insure the payment of all lawful debts pertaining to and for acceptable contract performance.

“White Goods” means refrigerators, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar household large appliances. Discarded major appliances will be collected by Grantee at a charge specified in Section 30.

“Yard Waste” means every accumulation of vegetative garden and yard trash which is the accumulation of leaves, grass cuttings, shrubbery cuttings, limbs, trunks, palm fronds or other refuse from the care of lawns, gardens, shrubbery, vines and trees, and improper/ abandoned dumps of the same.

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

A. Grantee is hereby granted an exclusive, mandatory residential and commercial Franchise, including every right and privilege appertaining thereto, to operate and maintain a residential recycling and residential and commercial trash, garbage and refuse collection and removal service in, upon, over and across the present and future streets, alleys, bridges, easements and other public places within the limits of this Franchise for the purpose of collecting and disposing of residential recyclables, residential and commercial trash, garbage and other refuse generated by the citizens, residents and inhabitants of the City of Fernandina Beach, Florida. Grantee is also hereby granted title to all such residential recyclables, residential and commercial trash, garbage and refuse generated within said boundaries, to the extent that the Grantor can establish its legal right to make such grant of title.

B. Grantee understands and agrees that Grantor has the right to use the services of another vendor/contractor for select recycling services such as recycling events and the operation of the City’s Recycling Center without breaching the exclusivity granted in Section 2(A) above.

C. Request for Proposals #22-08, including all addendums thereto of the City of Fernandina Beach, is herein incorporated by reference, as is the response to the Request for Proposals #22-08 and the rate proposal submitted by the Grantee.

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

This Franchise covers the corporate limits of the City of Fernandina Beach, Florida. Grantee agrees that the limits of the Franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

**SECTION 4. TERM.**

A. This Franchise will be for a period of five years through January 14, 2029, unless sooner terminated by reason of breach of the terms hereof by the Grantee, which result in the failure of the Grantee to provide effective and efficient service.

B. This Franchise may be renewed for additional term(s) of no more than five years, or portion of a term, on the same terms and conditions, upon the mutual written agreement of both the Grantor and Grantee. If either party is willing to renew, said party must give written notice to the other of its willingness to renew said agreement. Such notice must be given no later than six months before January 14, 2029. Either party will have sixty days to respond to the request of the other party, indicating their agreement or rejection with the proposed renewal. No response will be deemed to be a rejection of the request to renew. The Grantee may unilaterally extend this Franchise Agreement for one (1) renewal period of 120 days.

**SECTION 5. FRANCHISE CONSIDERATION.**

A. The consideration for this Franchise shall be as follows:

1. Garbage and Recycling
  - a. Residential Service: 10% of the rate established in Section 30
  - b. Commercial Service: 10% of the rate established in Section 30
  - c. Special/Roll off Services: 10% of the rate established in Section 30
2. Recycling: Additionally, the Grantee may appeal for a rate increase on an annual basis if the cost of recycling processing continues to increase beyond reasonable cost projections.

B. At the present time, this Franchise does not include construction and demolition waste removal service, and no Franchise Fee will be due for those services. Grantee is not required to collect Hazardous Waste, dead animals, yard waste, large branches, trees or bulky or non-combustible materials not susceptible to normal loading and collection in "load packer" type sanitation equipment used for regular collections from domestic households. This Contract does not include the collection and disposal of any increased volume resulting from a flood, hurricane, or similar or different acts of God over which the Company has no control.

C. The Franchise Fee for residential services will be assessed and collected by the Grantor and will be added to the Rates as set forth herein. The Franchise Fee for commercial and special/roll off services will be assessed and collected by the Grantee and will be added to the Rates as set forth herein. The Grantee will pay Franchise Fee on amounts billed from commercial and special/roll off services customers.

**SECTION 6. ASSIGNMENT.**

A. The Franchise rights herein granted to the Grantee may not be assigned by Grantee except with the express approval of the Grantor, which approval may not be unreasonably withheld, and which must be reflected by a resolution of Grantor. In the event of such an assignment, Grantee will cause its assigns to execute an Agreement of Acceptance, subject to the approval of the Grantor, evidencing that such assignee accepts the assignment subject to any and all terms, conditions and limitations imposed hereby, and which acceptance must include an affirmative statement evidencing such Grantee's intent to fulfill the obligations imposed by Grantee in contemplation hereof. Notwithstanding

the Grantor's approval of such an assignment and assignee's acceptance, Grantee must guarantee the performance of its assignee and such assignment will always be with full recourse to Grantee.

B. A transfer of more than 51% of the issued outstanding stock of Grantee constitutes an assignment for the purpose of this section. Likewise, any transfer of the voting rights amounting to 51% or more of the issued or outstanding stock of Grantee constitutes an assignment for the purposes hereof.

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

If the Grantee files a petition for the appointment of a receiver or a petition of voluntary or involuntary bankruptcy, this Franchise is automatically terminated as of the date of the filing of such petitions.

#### **SECTION 8. DEFAULT.**

A. Material failure on the part of the Grantee to comply in any material respect with any of the provisions of this ordinance is grounds for a forfeiture of this Franchise, but no such forfeiture may take effect until Grantor has served upon the Grantee written notice of default setting forth the nature and extent of said default and Grantee has been given a reasonable opportunity to cure such default. Following receipt of the notice of default, Grantee will have thirty days to correct, or to notify the City in writing, subject to City approval, how the Grantee intends to correct identified material defaults. If Grantee disagrees with the reasonableness or propriety of Grantor's notice of default, Grantee may protest such default by filing with the City Manager a written protest within twenty days of receipt of Grantor's notice for identified defaults.

B. If the Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's notice of default, then the issue will first be submitted to non-binding mediation, and then, if still not resolved, it may be addressed by a court of appropriate jurisdiction located in Nassau County, Florida pursuant to Section 16 of this Ordinance.

#### **SECTION 9. RATE CHANGES AND RIGHT OF FIRST REFUSAL.**

A. The rates set forth in Section 30 may be adjusted annually beginning on the Anniversary Date of this Franchise to include the Consumer Price Index –Garbage and Trash Collection Services, Series ID, CUUR0000SEHG02. All Items (base year 1997=100%), as published by the United States Department of Labor – Bureau of Labor Statistics. Such CPI change will be computed each year after the completion of the month of September and any change will be implemented and effective with January billings each year. The Grantee agrees that the rate increase will be limited to a maximum of 4% per year and a minimum of 0%.

In October of each subsequent year during the term of the Franchise, the Grantor will notify the Grantee of the Consumer Price Index— Water, Sewer and Trash Collection Services by which the rates set forth herein may be adjusted. The rate increase will be effective starting with bills issued after December 31 of that year.

B. Grantor and Grantee agree that certain Changes in Law, as defined herein, may have such a substantial effect that a rate increase may be required. Grantee may petition the Grantor to adjust its fees based upon increases in the cost of doing business due to said Change in Law. The Grantee's request must be made within 120 days of the occurrence of such change or cost and must contain reasonable proof and justification to support the need for the rate adjustment. The Grantor may request from the Grantee, and the Grantee must provide, such further information within its possession as may be reasonably necessary in making its determination. The Grantor must approve or deny the request,

in whole or in part, within sixty days of receipt of the request and all additional information required by the Grantor. The Grantor will make a reasonable and equitable determination based upon the documentation provided in reaching its decision provided however that Grantor may not unreasonably withhold consent to any request for fee increase which is based on a legitimate and documented increase in cost.

C. Grantee may petition the Grantor to increase the rates based upon unanticipated and unusual increases in the cost of doing business due to reasons outside the reasonable control of Grantee. A request for an increase may be made at any time such change occurs and must provide, such further information within its possession as may be reasonably necessary in making its determination. The Grantor must approve or deny the request, in whole or in part, within sixty days of receipt of the request and all additional information required by the Grantor. The Grantor will make a reasonable and equitable determination based upon the documentation provided in reaching its decision provided, however, that Grantor may not unreasonably withhold consent to any request for fee increase which is based on a legitimate and documented increase in cost.

#### **SECTION 10. PUBLIC NOTICES AND EDUCATION SERVICES.**

A. The Grantee will partner with the City in developing and implementing public education and community outreach programs. The public education program should emphasize recycling and waste reduction. The Grantee will coordinate with the City in the messaging, publication, and dissemination of such information. The City retains final approval of all program materials. The Grantee must have a social media presence with a texting platform that can be offered to customers in an expedient manner. The Grantee is responsible for all expenses associated with the notices and education services and social media required herein and provide the same at no additional cost to the City.

B. The FRANCHISEE further agrees to conduct presentations for civic groups, Homeowners' Associations and other appropriate citizens' groups as deemed appropriate. The FRANCHISEE will provide notices and educational services to help inform the public about the CITY's solid waste management system. The FRANCHISEE will be responsible for all expenses associated with the notices and educational services required herein.

C. Notices:

1. Notice for Commencement of Services: At least a sixty-calendar day notification before the coordinated Commencement (Residential, Multifamily Dwelling and Commercial Establishment) concerning the Grantee's Collection and Disposal Services. A 2nd Notice must be provided to Residential and Commercial customers approximately two weeks before the Commencement/Transition Start Date. The notices are to be mailed through the United States Postal Service, hand-delivered via door hangers and posted to social media. At a minimum, the notice to Residential and Small Commercial Customers must:

- a. Identify each of the Scheduled Collection Days for the Customer receiving the notice.
- b. Summarize the applicable Set-Out requirements and include other educational and promotional information coordinated between the Grantee and the City. The notice also may provide any other relevant information concerning the Grantee's services.
- c. The City will retain final approval of all program materials prior to printing and/or distribution.

2. Notices for New Customers: The Grantee will design and print upon the City's approval and mail or deliver appropriate informational materials for each new customer. At a minimum, the notice must include the same information that is contained in the annual notice to customers. The Grantee will use the social media format to expedite this information.

3. Notices Concerning Changes in Collection Schedules: The Grantee must deliver a notice to each Customer that will be affected by a change in the Scheduled Collection Days. Such Customers must receive notice approximately two weeks prior to the change. The City's decision on schedules, or changes thereof, is final. This Grantee will use the social media format for delivering this information immediately to the customer.

4. Notices for Holidays: The Grantee must provide notice to Customers that will be affected by a change in their Scheduled Collection Days because of a Holiday. The Grantee will use the social media format for delivering this information immediately to the customer.

#### **SECTION 11. RESTORATION.**

The Grantee agrees to repair all property, public or private, altered or damaged to the extent negligently caused by it, its agents or employees' negligence or misconduct in the performance of its duties herein in as good or better condition as it was before being damaged or altered. The Grantee is not responsible for damage to roads or pavement resulting from the weight of trucks or equipment, which weight (within legal limits) the Grantee cannot control. The Grantor must notify the Grantee at least monthly of damages caused by the performance of its operations on streets within the City limits. The Grantor will have at least fourteen (14) days (after receiving notice) to resolve any damage.

#### **SECTION 12. COMPLIANCE WITH LAWS.**

Grantee must conduct operations under this Franchise in compliance with all applicable laws. Grantee specifically agrees to be solely responsible for the enforcement, administration and compliance with all applicable provisions of Chapter 403, Part IV, Florida Statutes, and future amendments thereto.

#### **SECTION 13. LIABILITY INSURANCE; HOLD HARMLESS; WORKERS COMPENSATION.**

A. *INSURANCE.* Grantee must carry commercial general liability insurance in the amount of not less than \$3,000,000.00 for each occurrence combined single limit and \$5,000,000.00 general aggregate. Grantee will carry commercial automobile liability insurance coverage in the amount of \$1,000,000.00 combined single limit, covering all of the trucks or other vehicles used for carrying out the work called for in this Franchise. Grantee will also carry umbrella excess liability coverage with a limit of no less than of \$1,000,000. A certificate showing that the Grantee has in full force and effect the aforesaid insurance must be filed with the Grantor upon execution of this Franchise, and yearly thereafter endeavoring to provide said certificate at least thirty days prior to the date of the expiration of said policies or insurance for each year of said Franchise. The aforesaid insurance must be in such form and written by such companies whose A.M. Best rating is not less than A VII. All policies require thirty days advance notice of the cancellation of the insurance except as otherwise dictated by State law. Said policies of insurance shall name Grantor as additional insured for operations arising out of this contract. The Grantee must provide Grantor a separate written endorsement showing Grantor as additional insured for all lines of insurance required hereunder (other than workers compensation insurance). The insurance certificate is attached hereto as Exhibit "A."

B. *WORKERS' COMPENSATION COVERAGE.* Grantee must carry Workers Compensation insurance on all its employees and show proof of insurance to the Grantor, as requested. All such Workers Compensation policies shall provide for notice by the insurer to the Grantor at least thirty days prior to any termination or revocation thereof except as otherwise dictated by law.

C. *INDEMNIFICATION.* The parties recognize that Grantee is an independent contractor. Grantee agrees to indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, and employees (the "City Parties"), from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by any negligence, recklessness, or intentionally wrongful conduct of the Grantee, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Grantee in the performance of this Agreement; provided however, Grantee will have no obligation hereunder to indemnify, defend or hold harmless the City Parties for any such losses, damages, and claims of any kind arising out of, directly or indirectly, or in connection with the negligent and/or deliberate acts of omissions of the City Parties. Grantee's liability hereunder will include all reasonable attorney's fees and costs incurred by the City in the enforcement of this indemnification provision in the event the City prevails in such enforcement action. In the event the City does not prevail in its enforcement of this indemnification provision, the City will reimburse Grantee for all reasonable attorney's fees and costs incurred by Grantee to defend such enforcement action. The obligations contained in this provision will survive for a period of three years after termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. Nothing contained in the foregoing indemnification will be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

The City agrees to indemnify, hold harmless, and defend the Grantee, its officers, directors, employees and affiliates (the "Advanced Parties") from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of the City, its commissioners, mayor, officers, employees, agents, and representatives; provided however, the City shall have no obligation hereunder to indemnify, defend or hold harmless the Advanced Parties for any such losses, damages, and claims of any kind arising out of, directly or indirectly, or in connection with the negligent and/or deliberate acts of omissions of the Advanced Parties. The City's liability hereunder will include all reasonable attorney's fees and costs incurred by Grantee in the enforcement of this indemnification provision in the event the Grantee prevails in such enforcement action. In the event Grantee does not prevail in its enforcement of this indemnification provision, Grantee will reimburse the City for all reasonable attorney's fees and costs incurred by the City to defend such enforcement action. The obligations contained in this provision will survive for a period of three years after termination of this Agreement and will not be limited by the amount of any insurance required to be obtained or maintained under this Agreement or other contract or written instrument between the parties.

#### **SECTION 14. PERFORMANCE BOND.**

Grantee must furnish to the Grantor a performance bond, on a form approved by the Grantor, for the full performance of this Franchise and all of the obligations arising hereunder in the amount equal to the annual contract amount. Said bond must be executed by a surety company approved by

Grantor and licensed to do business in Florida. The Performance Bond is attached hereto as Exhibit“B.”

**SECTION 15. RIGHT TO REQUIRE PERFORMANCE.**

The failure of the Grantor at any time to require performance by the Grantee of any provision of this Franchise will not affect the right of the Grantor to enforce same; nor will waiver by the Grantor of any breach of any provision in this Franchise be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. The Grantor, in accord with the provisions of Section 8, will have the right to terminate this Franchise if Grantee fails to timely correct violations of this agreement as provided in Section 8.

**SECTION 16. DISPUTE RESOLUTION.**

This Franchise is governed by the laws of the State of Florida, and if any controversy arises between the parties either party may pursue all available legal remedies in the appropriate Nassau County, Florida, court.

**SECTION 17. OPERATIONS DURING DISPUTE.**

A. In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to the terms and conditions, performance or compensation requested under this Franchise, the Grantee will continue to render service in full compliance with all terms and conditions of this Franchise regardless of the nature of the dispute and Grantor will continue to pay Grantee for its services.

B. Grantee expressly recognizes the paramount right and duty of Grantor to provide adequate waste collection and disposal service as necessary governmental functions, and further agrees, in consideration for the execution of this Franchise, that in the event of a dispute, said Grantee will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment in the matter in dispute or present the matter to a court of competent jurisdiction located in Nassau County, Florida, in an appropriate suit instituted by Grantee.

C. If the term of this Franchise is not renewed, Grantee must continue to provide service for ninety days following expiration or until a substitute Grantee is in place, whichever comes first.

**SECTION 18. STANDARD OF PERFORMANCE.**

A. If the Grantee fails to collect the materials herein specified for a period in excess of three consecutive scheduled working days or materially breaches any other substantive provision of this franchise, and fails to cure said breach within three working days after receipt of written notice of said breach by the Grantor, the Grantor may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other causes beyond the reasonable control of Grantee): Enter into contract(s) or agreement(s) with any other qualified firm(s) to provide solid waste collection and disposal until such time as the Grantee is able to satisfactorily fulfill its responsibilities under this Franchise as determined solely by the Grantor.

**SECTION 19. CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL.**

A. Grantee is required to provide curbside recycling to all residential customers.

B. Grantee must collect all residential recycling materials within the corporate limits of the City, transport and provide for recovery of said residential recyclable materials at a designated recovery

facility. The Grantee must perform such services as are required to provide a complete residential recyclable materials program.

C. Collection of recyclable materials will be curbside, or other such locations as will provide ready accessibility to the Grantee's collection crew and vehicle. In the event an appropriate location cannot be agreed upon, the Grantor shall designate the location. Handicapped residents shall be accommodated at no additional fee.

D. The Grantee will pick up all recyclable materials which have been properly prepared for collection and placed in recycling carts placed at the curbside. The Grantee, at its own cost, will distribute one cart to hold recyclable materials to be collected to each single-family residence within the service area. Multi-family housing units interested in a recycle program will negotiate with Grantee directly to determine feasibility for implementation. The carts will be replaced by the Grantee as required. The Grantee must maintain an adequate supply of carts at all times.

E. The Grantee will collect all recyclable materials set out for the purpose of recycling from all single-family residences. The collection of recyclables will be conducted using a single cart, furnished by the Grantee, for a commingled/single stream system. As it becomes economically feasible, the Grantee will provide adequate containers to initiate a multi-material recycling program.

F. All refuse and recyclable materials hauled by the Grantee must be so contained, held or enclosed that leaking, spilling or blowing are prevented.

G. The Grantee will make collections with as little noise and disturbance to the residents as practicable and in conformance with the City's Noise Ordinance. Grantee will handle recycling carts with reasonable care and return them to the approximate curbside location from which they were collected. Any recyclable materials spilled by the Grantee must be picked up immediately. Recycling carts must be thoroughly emptied.

H. Grantee will collect recyclable materials within the service area one time per week. The day of collection will be the same day as the regular collection day for solid waste.

## **SECTION 20. RECYCLING PROGRAM.**

A. The Grantee is responsible for maintaining the information and records adequate to determine participation rates and weekly setout rates by percent for each material, volume of solid waste diverted from landfill by percent, weight by material of items recycled, neighborhoods above or below average participation and other information requested by Nassau County or the State of Florida to meet the requirements of the Solid Waste Management Act, any requirements of Florida House Bill 7243, or to obtain grant funds from the Solid Waste Management Trust Fund. The Grantee must furnish an annual report to the City containing the requested information. Reports should be on forms and in a format required by the Grantor.

B. To the extent possible, based on availability, capacity and market prices, the Grantee may market the recyclable materials through local business operations in the City of Fernandina Beach. At a minimum, the Grantee shall provide for taking, marketing or storing recyclables at a permitted landfill.

C. The Grantee may appeal for a rate increase on an annual basis if the cost of recycling processing continues to increase beyond reasonable cost projections.

D. *Acceptable and Non-Acceptable recycle items* . Acceptable items for recycle are as follows:

**Household Sized Containers – Must be empty and dry (1 gallon or 1 liter max)**

- (1) Plastic Resin Codes #1 thru #7 (Code is on the bottom of container)
- (2) Glass (All Colors)
- (3) Metal Cans (Aluminum & Tin)

**Household Paper Materials – Max single item size may not exceed 2ft. by 2ft**

- (4) Cardboard Boxes (Must be flattened and, if needed, cut to size.)
- (5) Brown or Grey Food Boxes (Cereal, Dry Food, Baking Ingredients, etc.)
- (6) Mailing Supplies (Junk Mail, Envelopes, Letters, etc.)
- (7) Newspapers (Inserts & Catalogs)
- (8) Brown Paper Bags
- (9) Office Paper (Copy & Print Paper, File Folders)
- (10) Brown or Gray Fiber Packages (Soda Cartons, dry food packages, etc.)

**NEVER Acceptable Items & Material**

- (1) Plastic Film (No Grocery Bags, Tarps, etc.)
- (2) Food (No Wet or Dry Food Waste)
- (3) Scrap Metal (No metal except household size containers)
- (4) Wood (No Yard Waste, Construction Material, etc.)
- (5) Fabric (No Clothes, Shoes, Blankets, Cloth, etc.)
- (6) Electronics (No Batteries, Computers, Phones, etc.)
- (7) Chemicals (No Paint, Oil, Aerosols, etc.)
- (8) Tires (No Tires of any size)

**SECTION 21. COLLECTION SERVICES AND OPERATIONS.**

A. Residential

1. Frequency of collection: Grantee will, on a regularly scheduled day, pick up solid waste at the curbside adjacent to each residence all household garbage one time per week; bulk waste will be collected one time per week on days agreed upon by the Grantee and Grantor. Pickups may not be reduced by holidays, and pickups normally scheduled to be made on a holiday must be rescheduled and occur in the same week as the holiday. Grantee, at its sole expense, must notify residences served of the holiday observed and regular pickup schedules at least five days in advance by publication in a local paper or other means approved by Grantor.

(a) Holidays: The following holidays may be observed by Grantee for purposes of this clause: Thanksgiving Day and Christmas Day.

2. Schedule: Regularly scheduled pick up days for household garbage will be as agreed upon between the Grantor and the Grantee. All schedules and routes are subject to rescheduling as mutually agreed to by the Grantor and Grantee. The Grantor, at the request of the Grantee or on its own, may extend, suspend, or modify these schedules in the event of a natural disaster, health hazard, or any other state of emergency requiring such action.

3. Quantity: Grantee is required to pick up all household garbage generated by residential premises, provided same is placed in the garbage cart. Only the content contained in the cart will be collected. Nothing placed outside the cart will be collected except for bulk waste as provided for in this agreement.

4. Collections. All collections will normally be made in residential areas no earlier than 6:00 am and no later than 8:00 pm, with no service on Sunday, except in declared emergencies. Grantee will make collections with minimal noise and disturbance and in conformance with the City's Noise Ordinance. Garbage carts must be handled carefully by the Grantee and thoroughly emptied and left where they were found at the curbside. All work must be done in a safe and sanitary manner. All waste spilled by Grantee must be picked up and removed by Grantee. Grantee will provide a single-axle truck for servicing certain compact residential areas, such as Amelia Park.

5. Special services: Services such as back door collection, removal of any refuse other than garbage or rubbish as defined herein, including white goods and appliances or additional pickups will be provided on a separate fee basis upon terms agreed to by the Grantee and the customer. Charges for special services will not be unreasonable or excessive. Household garbage services will be provided at the rear or side residence for handicapped persons approved by the Grantor at no extra charge.

6. Roll-out/Roll-back service: Those customers holding a Short-Term Resort Rental license are required to have Roll-out/Roll-back service, for which a fee will be charged.

7. Hazardous materials: Grantee will not be required to collect hazardous materials, including without limitation Hazardous Waste.

8. Location of Residential Waste for collection: Persons in occupancy of each residence must place their garbage carts at the curb no sooner than 6:00 pm the day before a scheduled pick-up and remove the garbage carts by midnight of the day of the pick-up, unless the occupant or resident has been approved for back door, side door, or roll-out/roll-back pickup or the occupant of resident has negotiated a special service collection at another location.

9. Customer restrictions: Grantee will not be required to collect Residential Waste when such waste is not generated on the residence served. Grantee has the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

#### B. *Commercial*

1. Frequency of collection: Grantee will, on a regularly scheduled day, pick up all garbage, rubbish, and wastes. However, pickups normally scheduled to be made on a holiday will be rescheduled with the approval by the commercial establishment.

(a) Holidays: The following holidays may be observed by Grantee for purposes of this clause: Thanksgiving Day and Christmas Day.

2. Schedule: Commercial collection will be on days agreed to by the Grantee and commercial establishment. The Grantor, or its designee, is authorized to extend, suspend, or modify these schedules in the event of a natural disaster, health hazard, or any other state of emergency requiring such action.

3. Quantity: Grantee is required to pick up all garbage and rubbish generated by a commercial establishment, provided same is placed in a Grantee provided waste receptacle.

4. Collections: All collections will normally be made at commercial establishments no earlier than 3:00 am and no later than 8:00 pm. These times may be adjusted by mutual agreement of the parties. Grantee will make collections with minimal noise and disturbance and in conformance with the City's Noise Ordinance. Waste receptacles must be handled carefully by the Grantee and thoroughly emptied and left where they were found. All work must be done in a safe and sanitary manner. All waste spilled by Grantee must be picked up and removed by Grantee.

5. Special services: For items requiring roll-off service or any special handling, removal of any refuse other than garbage or rubbish as defined herein or additional pickups, all charges are to be negotiated between the Grantee and the customer. Requests for pickups of special materials as defined herein will be considered requests for special pickup services. Charges for special services will not be unreasonable or excessive and are subject to the City's Franchise Fee.

6. Garbage and rubbish: Garbage and rubbish must be placed for collection within a commercial container.

7. Hazardous and biohazardous materials: Grantee will not be required to collect hazardous or biohazardous materials or Hazardous Waste.

8. Location of commercial waste for collection: All commercial establishments receiving service pursuant to this Franchise must keep waste receptacles, disposal containers and other such items at location(s) approved by the City.

9. Customer restrictions: Grantee will not be required to collect commercial waste receptacles containing garbage or refuse when such waste is not generated in the commercial establishment served. Grantee has the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

10. Removal of improper receptacles: Any container used for the collection and storage of commercial waste which fails to meet the standards prescribed by the Grantor must be clearly marked, specifying the manner in which the container fails to meet the requirements. Such marked, nonconforming containers will be removed from service by the Grantee.

### C. *Special Events*

1. In addition to regular residential and commercial collections, Grantee will be the service provider for collection services during and after City-sponsored special events. These events include, but are not limited to, the annual Shrimp Festival occurring the first weekend in May of each year. The Grantee will provide these services at an approved rate.

### **SECTION 22. OFFICE HOURS.**

The Grantee's office must remain open for residential and commercial establishment customers Monday through Friday from 8:00 am to 5:00 pm for the purpose of handling complaints, requests for new or replacement containers and to schedule bulk pick-ups, and for that purpose, there must be an adequate number of telephones and a responsible person in charge during the hours specified above. The Franchisee must maintain a local calling area phone number, to receive customer inquiries and complaints during the business hours stated in this section. These requirements do not apply on the legal holidays identified in Section 21.

### **SECTION 23. COLLECTION EQUIPMENT.**

The Grantee must always have on hand sufficient equipment in good working order and of the minimum weight necessary to permit Grantee to perform its duties hereunder fully, adequately and efficiently. Equipment must be purchased from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment must be kept clean, sanitary; neat in appearance, in good repair at all times, and be equipped with back-up warning lights and alarm. The Grantee must always have available reserve equipment which can be put into service and operation within two hours of any breakdown. Such reserve equipment must substantially correspond in size and capability to the equipment normally used by the Grantee to perform its duties hereunder.

### **SECTION 24. DISPOSAL.**

All garbage and solid waste must be hauled to sites or facilities legally empowered to accept it for treatment or disposal. The Grantor reserves the right to approve or disapprove of sites, taking into account all governmental regulations, routes within the Franchise area, and the rules and regulations of the governmental body having jurisdiction over said sites and facilities.

### **SECTION 25. ROUTES AND SCHEDULES.**

The Grantee must periodically provide the Grantor with schedules of residential collection routes and always keep such information current. In the event of changes in routes, schedules, or other program changes that will alter the day of pickup or the type of materials that are picked up, Grantee must notify each customer affected by either direct mail or door hangers which the Grantor must approve for such purpose. All such changes in routes, schedules, and programs will also be immediately communicated to Grantor at the time determined by the Grantee.

## **SECTION 26. GRANTEE PERSONNEL.**

Grantee will assign a qualified person to be in charge of operations under this Franchise and give the name, direct contact information, and qualifications of said person to the Grantor. Grantor requires that Grantee's collection employees wear clean uniforms bearing Grantee's company name. Each person employed to operate a vehicle must at all times carry a valid CDL driver's license for the type of vehicle being driven, and it is the Grantee's sole responsibility to assure that all drivers are properly licensed. Grantor may request the dismissal of any employee of Grantee who violates any provisions of this subsection or who is found to have been wanton, negligent, or discourteous in the performance of his or her duties. Grantee must provide operating and safety training for all personnel. Wages of all employees of Grantee must be equal to or exceed the minimum hourly wages for such employees established by local, state, or federal law. Grantee must supply a schedule of all employee wage scales to Grantor upon request.

## **SECTION 27. SPILLAGE AND LITTER.**

A. The Grantee may not litter on any premise in the process of making collections but will not be required to collect any waste material that has not been placed in supplied or approved containers or in a manner herein provided, unless previous arrangements have been agreed upon between the Grantor and the Grantee.

B. During hauling, all solid waste or liquids must be contained, held, or enclosed so that leaking, spilling, or blowing is prevented. In the event of spillage by the Grantee, the Grantee must promptly clean up the litter.

## **SECTION 28. STORMS, & FORCE MAJEURE EVENTS.**

A. The performance of any act by the Grantor or Grantee hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, pandemic, war, rebellion, terrorism, strikes, lockouts or any other cause beyond the reasonable control of such party, provided, however, in the event Grantee is delayed or suspended in its performance for more than forty-eight hours due to a condition of force majeure, the Grantor has the right to provide substitute service from third-party contractors or Grantee's forces and in such event the City will withhold payment due Grantee for such period of time (beyond 48 hours) in which service is not provided by the Grantee. If the condition of force majeure exceeds a period of thirty (30) days, the Grantor, after providing Grantee notice and a reasonable opportunity to cure, may at its option and discretion, cancel or renegotiate this Agreement.

B. In the case of a storm or disruption caused by other force majeure event (e.g., war, insurrection, riot, or act of God) not caused by the Grantee, Grantor may allow Grantee a reasonable variance from regular schedules. As soon as practicable after such storm or other emergency, Grantee must inform the Grantor of the estimated time required before regular schedules and routes can be resumed and, upon request of Grantor, Grantee will provide notice to residential premises and commercial establishments in the service area.

C. In the event of a declared disaster and/or any event requiring mass cleanup operations during the period of the Franchise, Grantee must, if requested and to the extent directed by the Grantor, participate in said cleanup. Grantee will be compensated by the Grantor in accordance with terms and conditions of a negotiated agreement.

D. The Grantee will have a disaster response plan for removal and disposal of excessive amounts of debris or refuse accumulated in the event of a storm of catastrophic proportions, any natural

calamity, riot or any severe domestic disturbance. The Grantee must have, at all times, written agreements with a subcontractor to supplement the collection, hauling and disposal of such wastes, in the event that the Grantee’s resources are insufficient to affect a timely clean-up. Such agreement must contain operational details and the add-on unit pricing for collection, hauling, and disposal cost. The subcontractor agreement must be reviewed and approved by the City. In the event of a small disaster, the City and the Grantee will meet and coordinate expeditiously to formulate and agree upon the specific clean-up plan. In the event of a natural disaster or a severe domestic disturbance, the City will have the option to utilize any combination of the Grantee’s services, the Grantee’s subcontractors, the City’s own contractors, or any adjacent municipality or County forces provided through mutual aid. In the event of a natural disaster such as a hurricane, the Grantee will be expected to continue with collection services and closely coordinate with the City when to cease operations within the City’s limits. Currently, the City’s Disaster Plan calls for the Grantee to resume and continue the collection schedule as soon as safely possible.

**SECTION 29. NONDISCRIMINATION PROVISION.**

The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability, military or veteran status, national origin, familial status, marital status, sexual orientation, gender identity, or gender expression. Said nondiscrimination policy applies to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request it will permit reasonable access by Grantor to its records of employment, employment advertisements, application forms, and other pertinent data and records for purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Franchise, provided, however, that Grantee will not be required to produce for inspection any record covering any period of time more than two years prior to the date of the Franchise.

**SECTION 30. RATES, CHARGES, BILLING AND AUDITS.**

*A. Rates:*

1. For the residential collection of garbage, recycling, and bulk waste/mixed piles, the fee paid to the Grantee by the Grantor shall be \$25.17 per month for one time per week service at the Effective Date and will remain until the next CPI rate adjustment provision specified in Section 9 is applied in 2025. A breakdown of the initial residential garbage, recycling, and bulk waste/mixed piles collection fees as of January 15, 2024, are shown below:

<b>Residential Rates</b>	<b>Fee Charged by City</b>	<b>Rate Paid to Waste Management</b>
Garbage – once a week	\$14.09	\$12.81
Recycling – once a week	\$9.84	\$8.95
Bulk Waste/Mixed Piles – once a week	\$3.75	\$3.41
<b>TOTAL</b>	<b>\$27.68</b>	<b>\$25.17</b>

Additional Optional Services Rates

<b>Residential Rates</b>	<b>Fee Charged by City</b>	<b>Rate Paid to Waste Management</b>
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Garbage – once a week, roll out roll back service	\$21.91	\$19.92
Recycling – once a week, roll out roll back service	\$17.46	\$15.87
Garbage – Additional Cart	\$10.57	\$9.61

\* Total combined monthly Residential Rate for residents who receive an additional garbage cart is \$34.78 paid to WM and \$38.26 charged to the resident by the City.

- no personal carts/containers may be used

2. For garbage collection during the initial term of this Franchise, the monthly rate for commercial establishments fees as of January 15, 2024, is shown below and will remain until the next CPI rate adjustment:

Commercial Rates							
Rates For:	1 pickup per week	2 pickup per week	3 pickup per week	4 pickup per week	5 pickup per week	6 pickup per week	7 pickup per week
95-gallon carts (max 10)	\$23.53	\$47.06	\$70.59	\$94.12	\$117.65	\$141.18	\$164.71
2-yard container	\$71.27	\$142.55	\$213.82	\$285.09	\$356.37	\$427.64	\$498.90
4-yard container	\$142.55	\$285.09	\$427.64	\$570.19	\$712.74	\$855.28	\$997.81
6-yard container	\$213.82	\$427.64	\$641.46	\$855.28	\$1,069.10	\$1,282.92	\$1,496.71
8-yard container	\$285.09	\$570.19	\$855.28	\$1,140.38	\$1,425.47	\$1,710.56	\$1,995.61
4-yard Vertipac Compactor*	\$570.20	\$1,140.36	\$1,710.56	\$2,280.76	\$2,850.96	\$3,421.12	\$3,991.24

- Vertipac Compactors are also subject to a \$550/month rental per unit.
- prices listed do not include 10% franchise fee provided for in Section 5
- no personal carts/containers may be used

3. The rates for other services as of January 15, 2024, are shown below and will remain until the next CPI rate adjustment:

Other Services	
10-yard roll-off price per haul	\$272.70
20-yard roll-off price per haul	\$272.79
30-yard roll-off price per haul	\$272.79
Garbage compactor price per haul	\$294.89
Special Clean-up of right-of-way	\$150/hour
White Goods (on call service)	\$23.35/per item
Special Cleanup (rear loader, driver & helper)	\$150/hour
Special Cleanup (grapple truck, operator)	\$150/hour
Beach Access Collection Service	\$4.30/per container

\*Prices listed do not include 10% franchise fee provided for in Section 5

4. During the term of this franchise no fuel surcharges may be applied or charged by the Grantee.

B. The Grantee is to provide solid waste removal and recycling services to all of the City's facilities, parks including parks, complexes, and recycle stations at no charge. The Grantee will provide six commercial containers of not less than six cubic yards each at no cost to the City for City sponsored events such as City-wide cleanups. Grantee will provide daily solid waste pickup in the Downtown Area, which has approximately 55 ornamental cans that must be emptied seven (7) times week (excluding holidays) at no additional cost to the Grantor.

C. *Billing for Services*

1. Residential and Special Services.

a. The Grantor will bill for residential collection services. The billing will be in conjunction with the other utility billings performed by the Grantor, or such other method as the Grantor may from time to time determine. Bills will be sent to the residential units, not less than monthly. Therefore, the Grantee will receive payment monthly, based on up-to-date active monthly Residential Units.

b. Requests for opening new residential accounts will be received at the City. The customer will then be referred to the Grantee to request new containers. Within 1 business day of receiving said requests from the new customer, the Grantee is required to provide a new garbage cart and recycle cart (if requested) and begin the service for the new customer on the next scheduled pick-up. At the time of delivery of the garbage cart and recycle cart, the Grantee must provide written notice to the new customer of the pick-up days for all service.

c. In consideration for the Grantor handling the customer billing for Residential Units, payment and related customer service functions related to billing, Grantee will pay to Grantor the sum of 1% of the previous month's net billing to Grantor. This payment will be due within fifteen days of the invoicing of such billing and payment processing fee by Grantor.

D. Billing for Commercial and Special Service

1. **Billing.** The Grantee will be solely responsible for billing Commercial Customers and collecting all rates, fees, and other charges from its Customers for the Commercial Collection Services the Grantee provides under this agreement. The Grantee also will be responsible for the payment of all Tipping Fees associated with the disposal of the Solid Waste and other material collected by the Grantee when providing its Commercial Collection Services. The Grantee may bill its Commercial Customers in advance for the Commercial Collection Services the Grantee will provide during the next Operating Month.
2. **Rates – General.** The Rates in Exhibit Section 30 are the maximum amounts to be charged for the Collection Services provided by the Grantee pursuant to this Agreement. The Rates must be applied uniformly to all Customers receiving Collection Services from the Grantee within the City after the Commencement Date. The Grantee must utilize the Rates in Exhibit Section 30 and no others, when billing its Customers or the City. These rates are subject to an annual adjustment as set forth in this Agreement in Section 9. An account will be delinquent once a service unit fails to pay the billed amount for Collection Services within a period of one (1) month. The Grantee may stop service for a delinquent account and may charge a re-start fee of one hundred twenty-five dollars (\$125.00) to resume service. The Grantor will not be held liable for Grantee’s failure to bill or collect for Commercial Collection Service. The Grantee will always be liable to the Grantor for any Franchise Fee or Administrative Fee that should be collected and remitted to the City monthly. Extra pickups will be charged at \$16.00/yard with a \$135.00 minimum charge. Customer invoice will also have a line-item billing charge of \$8.50. Customer invoice will also contain a line-item for the Franchise Fee that will be remitted to the City. Please refer to the below section E. C.L.E.A.N. Program for additional charges that may be applied to commercial customers.
3. **Payments for Special Collection Services.** The Rates for Special Collection Service will be paid in addition to the Rates for the routine Collection Service received by the Customer. The Grantee is solely responsible for billing its Customers and collecting the applicable Rates for any Special Collection Services the Grantee provides pursuant to this Agreement. In cases where there are no established Rates in this Agreement for the requested Special Collection Service, the Grantee and the Customer will negotiate a mutually acceptable Rate for the Grantees services. The Grantee will not be entitled to any compensation for a Special Collection Service unless the Customer agreed to pay the applicable Rate before the Grantee provided its service.
4. **Payments for Shared Mechanical Containers.** The Grantee may prorate its charges to accommodate Customers that share a Mechanical Container; however, the charges collectively will not be more than the amounts set forth in the approved Rates, unless the City Contract Administrator approves the Grantee’s charges in advance, based on special circumstances. Similarly, the City Contract Administrator may require a shopping center to receive and pay for Collection Service that is greater than the sum of the needs of the individual shops sharing a Mechanical Container, if the public also is using the Mechanical Containers in the shopping center.
5. **C.L.E.A.N. Program.** C.L.E.A.N. Program is a proactive program that takes action against overflowing containers in the commercial areas of the city to promote health, safety, and cleanliness in the city. The program is a proven approach to keeping communities clean,

reducing litter, and illegal dumping with the goal of having all customers on the correct level of service. The program will have a zero cost to the City with the following provisions:

- a) Thirty (30) days prior to the commencement of the CLEAN program in the City, Grantee will notify each of its Customers that receive or will receive their garbage service by Commercial Container of the implementation of the CLEAN program. For purposes of this section, all notices shall be provided to the address of record provided to the Grantee.
- b) Overfilling Commercial Containers present safety and health risks to the residents and businesses of the city. In the event Grantee determines a Customer's Container is overfilled with waste during a collection event, Grantee will take a digital photograph of the overfilled container in such a manner to present evidence of such Overfilling. For purposes of this section, overfilling is defined as a container overloaded such that the lid does not close securely and is displaced by at least ten (10) inches.
- c) Grantee will provide to the Customer, notice of such Overfilling on the Customers next invoice for each event of Overfilling. Grantee may charge the customer the amount of two hundred dollars (\$200) per event; however, overfilling charges may not exceed eight hundred dollars (\$800) per month, per Customer. Grantee will take reasonable steps to seek to increase the Customer's level of service by providing a larger container for the Customer and/or by increasing the frequency of service. If the Customer refuses the attempt to correct the Overflowing issue, Grantee will forward information to City code enforcement. Upon collection of the Overfilling charge from a customer, Grantee will remit twenty dollars (\$20) to the City as the Franchise Fee.

### **SECTION 31. COMPLAINTS & CHARGES FOR FAILURE OF PERFORMANCE.**

A. Grantee will have one business day (see also Section 8 above) to collect any Residential Solid Waste that was not collected at the regularly scheduled pick up time and have seven days to correct, or to notify the City in writing, subject to City approval, how the Grantee intends to correct other identified complaints. Grantee will supply Grantor weekly with copies of all complaints on a form approved by the Grantor and indicate the disposition of each. Each month such record must be available for inspection by Grantor during the business hours specified herein. The complaint record/form will indicate the day and hour on which the complaint was received and the day and hour on which the complaint was resolved. When a complaint is received on the day preceding a holiday or on a Sunday, it must be remedied the next working day. The Grantee must establish procedures acceptable to the Grantor to ensure that all customers are notified of the complaint procedure. To prevent misunderstanding and any litigation, the Grantor, will decide all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of performance, and the acceptable fulfillment of the contract on the part of the Grantee; and the Grantor will determine whether or not the amount, quantity, character and quality of the work performed is satisfactory, which determination will be final, conclusive and binding upon both the Grantor and the Grantee so long as such determination is not unreasonable or arbitrary. The Grantor must make such explanation as may be necessary to complete, explain or make definite the provisions of this Franchise; and its findings and conclusions will be final and binding upon both parties, provided such determinations are not unreasonable or arbitrary.

B. Upon the recommendation of the City Manager or his designee, and reasonable notice to Grantee (within thirty (30) days of the event giving rise to the administrative charge), administrative charges may be assessed against the Grantee should it be determined that:

1. Total residential complaints during any calendar month involve more than 4% of the total residential customers within the service area;
2. Total residential complaints during the Grantor’s fiscal year exceed more than 5% to the total residential customers with the service area;
3. Total commercial complaints during any calendar month involve more than 3% of the total commercial customers with the service area;
4. Total commercial complaints during the Grantor’s fiscal year exceed more than 6% to the total commercial customers within the service area; or
5. Where the lack of performance by Grantee is continuous and determined by the City Manager to constitute a threat to the health, safety or welfare of residents and commercial establishments. “Welfare” as used in this subsection includes the direct and indirect economic effects of Grantee’s failure to perform.

C. Administrative charges will be assessed only for verified complaints which indicate that the Grantee has failed to meet the minimum standards stated herein. Grantee is required to keep accurate records of complaints received, and must forward all complaints to the City Manager, or the City Manager’s designated representative. The City Manager may verify complaints through whatever means he deems to be appropriate, including field review or contact with the individuals filing the complaints. Complaints verified by the City Manager will be assessed administrative charges in accord with the following schedule:

**SCHEDULE OF ADMINISTRATIVE CHARGES**

1. Failure to clean up spilled refuse per incident	\$50 per incident
2. Failure to collect solid waste per location or special collection solid waste at any premises at or within the service area	\$50 per incident
3. Failure to complete each route on the regular scheduled pickup date	\$1,000 per route not completed
4. Failure to keep equipment in clean, safe and sanitary manner	\$100 per vehicle per day
5. Failure to have vehicle operator properly licensed	\$100 per day per incident
6. Failure to maintain office hours as set forth in Section 22	\$100 per incident
7. Failure to replace or repair any damage caused by Grantee or his personnel	\$25 per incident

D. Within five business days of the date of the City Manager’s action imposing such administrative charge, Grantee must be notified in writing by certified United States Mail, return receipt, of the assessment of administrative charges and the basis for such assessment. Grantee may contest such assessments by filing a written protest stating the reasons for disagreement within five business days of the receipt of the notice of an assessment. The protest will be acted upon by the City Commission at a regularly scheduled meeting.

**SECTION 32. MISCELLANEOUS.**

A. Notices. All notices required herein will be sent via certified mail, return receipt requested to the addresses contained herein.

For the Grantor:

City of Fernandina Beach  
204 Ash Street  
Fernandina Beach, FL 32034  
Attn: City Manager

With a copy to the City Attorney at the same address.

For the Grantee:

Attn: Larry Becker  
Waste Management Inc. of Florida  
450496 State Road 200  
Callahan, FL 32011

**SECTION 33. PUBLIC RECORDS LAW AND OBLIGATIONS.**

*Pursuant to Section 119.0701, Florida Statutes, Grantee must: (a) keep and maintain all public records as that term is defined in Chapter 119, Florida Statutes (“Public Records”), that ordinarily and necessarily would be required by the City in order to perform the work contemplated by this Agreement; (b) provide the public with access to Public Records, on the same terms and conditions that the City would provide the records and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining Public Records and transfer, at no cost to the City, all public records in possession of Contractor within thirty (30) days after termination of this Agreement, however terminated, and destroy any duplicate Public Records that are exempt or confidential and exempt from public records disclosure requirements and provide the City with a letter confirming that this has been done within thirty (30) days of the termination of this Agreement. All Public Records stored electronically must be provided to the City in a format that is compatible with the information technology of the City. If Contractor does not comply with a public records request, the City may pursue any and all remedies available in law or equity, including but not limited to specific performance.*

**SECTION 34. REPEAL OF SECTIONS IN CONFLICT.**

All ordinances or parts of ordinances and all resolutions in conflict herewith be and the same are hereby repealed.

**SECTION 35. SEVERABILITY.**

If any section, part of a section, paragraph, clause phrase or word of this agreement is declared invalid, the remaining provisions of this Franchise will not be affected.

**SECTION 36. EFFECTIVE DATE.**

This ordinance will take effect immediately upon its final adoption by the City Commission of the City of Fernandina Beach, Florida, and the signature of the Mayor, and upon filing of Grantee's written acceptance with the City Clerk.

PASSED AND ENACTED this 20th day of June, 2023, at public hearing on second and final reading.

CITY OF FERNANDINA BEACH

\_\_\_\_\_  
BRADLEY M. BEAN  
Commissioner-Mayor

ATTEST:

APPROVED AS TO FORM & LEGALITY:



\_\_\_\_\_  
CAROLINE BEST  
City Clerk

\_\_\_\_\_  
TAMMI E. BACH  
City Attorney

Date of First Reading: May 16, 2023  
Date of Advertisement: June 7, 2023  
Date of Second Reading and Public Hearing: June 20, 2023

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 20th day of June, 2023.

CITY OF FERNANDINA BEACH

\_\_\_\_\_  
Charles L. George  
Interim City Manager

\_\_\_\_\_  
Bradley M. Bean  
Mayor-Commissioner

ATTEST:

APPROVED AS TO FORM AND LEGALITY:



\_\_\_\_\_  
Caroline Best  
City Clerk

\_\_\_\_\_  
Tammi E. Bach  
City Attorney

WASTE MANAGEMENT INC. OF FLORIDA

WITNESS

\_\_\_\_\_  
Waste Management Representative

\_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_