

**FIFTH AMENDMENT TO
AMENDED AND RESTATED AGREEMENT
FOR RESIDENTIAL WASTE AND RECYCLING COLLECTION AND
TRANSPORTATION SERVICES
(Service Area III)**

This **FIFTH AMENDMENT TO AMENDED AND RESTATED AGREEMENT FOR RESIDENTIAL WASTE AND RECYCLING COLLECTION AND TRANSPORTATION SERVICES** (this "Fifth Amendment"), effective as of _____, 2023 (the "Effective Date"), is entered between the **CITY OF JACKSONVILLE**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the "City"), and **WASTE PRO OF FLORIDA, INC.**, a Florida corporation (the "Contractor").

WITNESSETH:

WHEREAS, the City and Contractor entered into the Amended and Restated Agreement for Residential Waste and Recycling Collection and Transportation Services dated March 1, 2013, as amended by the First Amendment dated July 1, 2014, as further amended by the Second Amendment dated August 1, 2017, as further amended by the Third Amendment dated July 29, 2020, and as further amended by the Fourth Amendment effective October 1, 2022 (collectively, the "Agreement"); and

WHEREAS, the City Council desires to amend the Agreement to (i) extend the contract for an additional six years in accordance with Chapter 382, Ordinance Code, (ii) adjust the annual CPI increase from a cap of 3% to 5%, and (iii) ensure that the Base Rate is not lowered as a result of the Rate Review process, all as provided herein; and

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

1. Incorporation of Recitals; Capitalized Terms. The above recitals are true and correct and are incorporated into and made apart hereof. Unless otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

2. Amendment to Section 1 (TERM). Section 1 of the Agreement is amended to extend the expiration of term by six (6) additional years from September 30, 2023, to September 30, 2029, and as amended shall read as follows:

The term of this Agreement shall commence on March 1, 2013 (the "Effective Date") and shall end on September 30, 2029, unless extended in accordance with Chapter 382, Ordinance Code, as amended, or terminated as provided in this Agreement.

3. Amendment to Subsection 7.2.2 (Rate Review) of the Agreement. Subsections 7.2.2.1 and 7.2.2.8 of Subsection 7.2.2 (Rate Review) of the Agreement is amended as follows:

A. Section 7.2.2.1 deleted in its entirety and replaced by the following provision:

7.2.2.1. The City shall perform Rate reviews during the City’s fiscal years 2012/2013, 2015/2016, 2018/2019, 2021/2022, 2024/2025, and 2027/2028. The Rate review shall be performed by a Rate review committee established by the Director and composed of, among others, the Chief of the Solid Waste Division or his/her designee and a staff member from the Office of the Council Auditor. The premise counts and service area rebalancing (if any) shall be implemented in conjunction with the Rate reviews.

4. Amendment to Subsection 7.2.2 (Rate Review) of the Agreement. The following provisions are added to the end of Subsection 7.2.2.8 of Subsection 7.2.2 (Rate Review) to read as follows:

For Fiscal Years FY2023/2024 and FY2024/2025, the Base Rate shall be set pursuant to the CPI Rate Adjustment provisions of Section 7.2.4.

For Fiscal Year FY2025/2026, the base rate adopted shall be the agreed upon expenses through the Rate Review process with a markup between 10% and 15%. However, if the agreed upon expenses with mark-up Base Rate is less than the Base Rate of FY2024/2025, the Base Rate shall remain unchanged from the previous fiscal year (i.e. the Base Rate shall not be lowered as a result of the Rate Review process).

For Fiscal Years FY2026/2027 and FY2027/2028, the Base Rate shall be set pursuant to the CPI Rate Adjustment provisions of Section 7.2.4.

For Fiscal Year FY2028/2029, the base rate adopted shall be the agreed upon expenses through the Rate Review process with a markup between 10% and 15%. However, if the agreed upon expenses with mark-up Base Rate is less than the Base Rate of FY2027/2028, the Base Rate shall remain unchanged from the previous fiscal year (i.e. the Base Rate shall not be lowered as a result of the Rate Review process).

5. Amendment to Subsection 7.2.4 (CPI Rate Adjustment) of the Agreement. Subsection 7.2.4 (CPI Rate Adjustment) of Section 7.2 (Rate) of the Agreement is deleted in its entirety and replaced by the following provision:

7.2.4 CPI Rate Adjustment:

During those years in which the City does not perform a Rate review, the Rate for compensating the Contractor shall be the previous fiscal year's Base Rate Component increased by an amount equal to 100% of the percentage change in the Consumer Price Index (“CPI”) during the twelve (12) consecutive month period beginning on May 1 and ending on April 30 immediately preceding the adjustment; provided, however, that: (a) no increase in the Rate shall exceed five percent (5%) and (b) there shall be no decrease in the Rate, regardless of the change in the CPI. For

the purposes of this Section 7.2.4, the Consumer Price Index means the Consumer Price Index--All Urban Consumers for the South Urban Area, All Items not seasonally adjusted, base period (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event that the U.S. Department of Labor, Bureau of Labor Statistics, ceases to publish the CPI, the parties shall substitute another equally authoritative measure of changes in the purchasing power of the U.S. dollar so as to carry out the intent of this Section 7.2.4. There shall be no CPI adjustment to the Rate (i) prior to October 1, 2023, or (ii) prior to the City's first full fiscal year after the October 1 effective date of a Rate review adjustment. The CPI Rate adjustment shall be applied on October 1, except as noted above. The CPI adjusted Base Rate Component shall be rounded up or down to the nearest cent.

The following paragraphs contain a sample calculation, using hypothetical values, that demonstrates how the provisions in this Section 7.2.4 should be implemented when calculating a CPI adjustment to the Base Rate Component:

Sample Calculation for CPI Adjustment

Step 1 Determine the point change in the CPI:

A. Current CPI (May of current year)	113.7
B. Previous CPI (May of prior year)	111.2
C. CPI point change (A-B)	2.5

Step 2 Determine the percent change:

A. CPI point change	2.5
B. Previous CPI	111.2
C. Percent change $[(A \div B) \times 100]$	2.248%

Step 3 Adjust monthly Base Rate Component:

A. Percent change in CPI	2.248%
B. Current monthly Rate per Premise	\$10.00
C. New Rate $[B \times (A + 1)]$	\$10.2248
D. New Rate rounded up or down	\$ 10.22

5. **Power and Authority.** Each party represents and warrants to the other that it is fully empowered and authorized to execute and deliver this Fifth Amendment, and the individual signing this Fifth Amendment on behalf of such party represents and warrants to the other party that he or she is fully empowered and authorized to do so.

6. **Effectiveness; Ratification of the Contract.** This Fifth Amendment is effective as of the date first written above. The provisions of the Agreement remain in full force and effect except as

expressly provided in this Fifth Amendment.

7. Counterparts; Electronic Signature. This Fifth Amendment may be executed electronically and in several counterparts by the parties hereto, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[The remainder of this page has been left blank intentionally by the parties.]

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to be executed and delivered on their behalf by their duly authorized representatives.

ATTEST:

CITY:

CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

James B. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor
Date: _____

Form Approved:

By: _____
Office of General Counsel

CONTRACTOR:

WASTE PRO OF FLORIDA, INC.

By: _____
Name: _____
Title: _____

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