

9165

AMENDED AND RESTATED AGREEMENT

**FOR RESIDENTIAL WASTE AND RECYCLING COLLECTION
AND TRANSPORTATION SERVICES**

Between

THE CITY OF JACKSONVILLE

and

ADVANCED DISPOSAL SERVICES JACKSONVILLE, LLC

TABLE OF CONTENTS

1.	TERM:	3
2.	DEFINITIONS:.....	3
3.	SERVICE AREA:.....	7
4.	COLLECTION:	8
5.	REPAIR DAMAGED PROPERTY.	14
6.	TREATING COMMERCIAL AND MULTIFAMILY AS RESIDENTIAL PREMISES: .	15
7.	RATE AND COMPENSATION:.....	16
8.	CHANGES IN THE WORK:	24
9.	OPERATIONS DURING DISPUTE:.....	26
10.	CONTRACTOR NOTIFICATIONS:.....	26
11.	PUBLIC AWARENESS AND EDUCATION:.....	26
12.	CONTRACTOR PERSONNEL:	27
13.	DELIVERY TO DESIGNATED FACILITIES:	28
14.	COLLECTION VEHICLES AND EQUIPMENT:	29
15.	OFFICE AND EQUIPMENT YARD:	32
16.	INSPECTION OF THE WORK:	32
17.	TIME OF THE ESSENCE:	32
18.	COMPLAINTS:.....	33
19.	LIQUIDATED DAMAGES:	33
20.	FORCE MAJEURE AND MAJOR STORM:.....	36
21.	PERMITS AND LICENSES:	37
22.	TAXES:.....	37
23.	EMPLOYEE WAGES AND BENEFITS:.....	37
24.	INSURANCE:.....	37
25.	INDEMNIFICATION:	38
26.	CONTRACTOR RECORDS - MAINTENANCE AND ACCESS:	39
27.	REPORTING REQUIREMENTS:	40
28.	REPRESENTATIONS:	41
29.	CONTRACTOR'S REPRESENTATIVE:.....	41
30.	NOTICE:.....	41
31.	CONTRACT TERMINATION:.....	42
32.	NONWAIVER:.....	43
33.	TITLE TO WASTE:	43
34.	GOVERNING LAW AND VENUE:	43
35.	COMPLIANCE WITH LAWS:.....	43
36.	SEVERABILITY:.....	43
37.	NO ASSIGNMENT OR SUBCONTRACT:	44
38.	INDEPENDENT CONTRACTOR:.....	44
39.	ENTIRE AGREEMENT:.....	44
40.	SECTION HEADINGS:	45
41.	PREPARATION OF AGREEMENT:	45
42.	INTEREST:.....	45
43.	DAMAGE FORMULAS:	45
44.	ELECTRONIC INFORMATION COMPLIANCE:.....	45

**AMENDED AND RESTATED AGREEMENT FOR
RESIDENTIAL WASTE AND RECYCLING COLLECTION
AND TRANSPORTATION SERVICES**

Amended and Restated Agreement for Residential Waste and Recycling Collection and Transportation Services is hereby made and entered into as of the 23rd day of October, 2015 (the "Agreement"), between the City of Jacksonville, a body politic and corporate, (the "City") and Advanced Disposal Services Jacksonville, LLC (the "Contractor").

WHEREAS, the parties hereto previously entered into that certain Agreement for Residential Waste and Recycling Collection and Transportation Services dated September 25, 2007, as amended (the "Prior Agreement"); and

WHEREAS, the parties desire to amend and restate the Prior Agreement to provide for, among other things, automated recycling collection and a City option for automated garbage collection.

Now, therefore, the parties agree that the Prior Agreement is hereby amended and restated in its entirety to read as follows:

1. TERM:

The term of this Agreement shall commence on October 23, 2015 (the "Effective Date") and shall end on February 28, 2023. The City shall have the option to extend the term until September 30, 2023 by written notice from the Director. In addition, as provided in Section 8.4, the term shall be extended to February 28, 2026, if the City Garbage Option is exercised. In addition, this agreement may be extended in accordance with Chapter 382, Ordinance Code, as amended, or terminated as provided in this Agreement.

2. DEFINITIONS:

To the extent any definition contained herein conflicts with similar definitions contained in any federal, state or local law, the definition herein shall prevail. Nothing contained herein, however, shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

Automated Service means collection of Residential Waste and Recyclable Materials from the Premises in the Service Area through means of collection vehicles with an automated arm that lifts a Cart and deposits the contents in the collection vehicle. Implementation of Automated Services means Automated Service is provided to at least 95% of occupied Premises in the Service Area.

Biomedical Waste means any solid or liquid waste which may present a threat of infection to human beings, including, but not limited to, non-liquid human tissues and body parts; laboratory and veterinary waste which contain human-disease-causing agents; discarded disposable sharps; human blood, human blood products and body fluids; and any other materials which have been determined by federal, state or local regulatory

agencies to present a significant risk of infection to persons outside the generating facility.

Biological Waste means waste that causes or has the capability of causing disease or infection including, but not limited to, Biomedical Waste, diseased or dead animals, and other wastes capable of transmitting pathogens to human beings or animals.

Bulky Waste means large items of Residential Waste, originating from the premise receiving residential collection service, which may, because of their volume, size, shape or weight cannot be placed for collection in a standard waste container, pursuant to Chapter 382, Ordinance Code. Bulky Waste includes, but is not limited to, toilets, sinks, bicycles, mattresses, carpet, fencing and other large household furnishings, car and boat seats and steering wheels and other interior car or boat components, but not including engines, tires or car bodies.

Cart means a Cart as defined in Section 14.7.

Cart Program means the distribution of Carts to at least 95% of occupied Premises in the Service Area, with one Cart for Residential Recyclable Material pickup service, and if the City Garbage Option is exercised, one Cart for Garbage and Rubbish pickup service, and pick up of those Carts from such Premises (recyclable Carts shall be distributed in 2016 and garbage Carts shall be distributed no later than nine (9) months after the exercise of the City Garbage Option.

Centroid means (i) 8500 Fort Caroline Road as to Service Area (II), (ii) 7500 Southside Boulevard as to Service Area (III), and (iii) 1800 Old Middleburg Road N., as to Service Area (I), or as amended.

City Garbage Option means the automated Garbage and Rubbish collection option described in Section 8.4.

Commercial Premise means a lot or parcel of land which is improved for occupancy, but excluding Residential Premises and excluding Multifamily Residential Premises.

Commercial Waste means the nonresidential solid waste collected and transported pursuant to Chapter 380, Ordinance Code, Nonresidential Solid Waste Collection and Transportation Franchise.

Construction and Demolition Debris means discarded materials originating from the premise receiving residential collection service which materials are generally considered to be not water-soluble and non-hazardous in nature including, but not limited to, steel, glass, brick, concrete, asphalt, roofing materials, 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 which 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

sites. 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.

Curbside means the area within five feet of the edge of the traveled portion of a public or private street affording reasonable access to waste collection vehicles, but only such portion as lies on the roadway side of a drainage ditch.

Director means the Chief of the Solid Waste Division of the Public Works Department, City of Jacksonville, or such other City official which the Director may designate, as the Contract Administrator for this Agreement. Division Chief or Chief means the Chief of the Solid Waste Division.

Duplex means a lot or parcel of land which is improved for occupancy by two single-family housekeeping units.

Force Majeure means an event (i) physically located or occurring on Contractor's route and having a direct, material and adverse effect on the Contractor's performance of the obligations and duties under this Agreement; and (ii) which prevents the Contractor from fulfilling its duties and obligations under the Agreement, so long as such event is not caused by the Contractor; is not the result of negligence or lack of reasonable diligence by Contractor; is not reasonably within Contractor's control and not reasonably foreseeable or, even if foreseeable, cannot be avoided. Force Majeure includes the following events: act of civil or military authority, war, riot, fire, explosion, tornado, flood or hurricane requiring evacuation of the area.

Garbage means every accumulation of animal, vegetable, or other matter relating to the storage, preparation and consumption of same and any other putrescible matter, including animal feces, and also including non-recyclable cans, containers, boxes or wrappers for storing such materials. Garbage shall not include Yard Waste, Hazardous Waste or Special Waste.

Hazardous Waste means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

Hazardous Substance means any substance which is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767, as amended.

Multifamily Residential Premises means a building or complex of buildings on a single parcel of land divided horizontally or vertically and designed for and occupied by more than four, up to and including ten, single-family housekeeping units. Each unit must pay the City in order to receive service from the Contractor.

Quadraplex means a lot or parcel of land which is improved for occupancy by four single-family housekeeping units.

Rate means the amount of money per month per Residential Premise in the Contractor's Service Area to be paid by the City to the Contractor for waste and recycling collection and transportation services to be rendered by the Contractor pursuant to this Agreement, which includes a Base Rate Component and the Fuel Rate Component, as reflected on the signature page of this Agreement, as such components are adjusted from time to time under this Agreement.

Recyclable Material(s) or Recyclables means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste, and specifically, those materials which the City of Jacksonville has designated to be diverted or removed from the solid waste stream including, but not limited to, newspapers, magazines, catalogs, paper bags, corrugated cardboard, telephone books, glass, aluminum cans, certain plastics, metal and bimetal cans and any other items agreed to be added or deleted by the Contractor and the Chief.

Residential Premise or Premise means a lot or parcel of land which is improved for occupancy as a single-family housekeeping unit or a Duplex, or a Triplex or a Quadraplex, and those lots or parcels treated as a Residential Premise under Sections 6.1 through 6.4.

Residential Waste or Waste means any combination of Garbage and Rubbish and other Solid Waste usual to housekeeping and generated solely by residents in the ordinary course of occupying a Residential Premise. It also includes Construction and Demolition Debris resulting from minor home maintenance and repair including, but not limited to, drywall, lumber, roofing material, concrete blocks and paneling of a volume, size and weight that complies with Chapter 382, Ordinance Code.

Rubbish means every accumulation of paper, rags, wooden and paper boxes or containers, sweepings and all other accumulation of materials, other than garbage, which are usual to housekeeping and to the operation of stores, offices, and other business places, and also any bottles, cans or containers.

Service Area means the area referred to in Section 3.1 of this Agreement.

Set Out has the meaning set forth in Section 4.10.

Single Stream Recycling means a system of recycling in which all Recyclables are placed, unsorted, into the Recyclable Materials Carts. The Recyclable Materials Carts are then collected by the Contractor from the Residential Premises in its Service Area and delivered to the Materials Recycling Facility (as defined in Section 13.1) without further sorting by the Contractor of the Recyclables into separate recyclable commodities.

Solid Waste means sludge unregulated under the Federal Clean Water Act or Clean Air Act; sludge from a waste treatment works, water supply treatment plant, or air pollution control facility; or Garbage, Rubbish, refuse, special waste or other discarded material,

including solid, semisolid or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Special Waste means Solid Wastes that can require special handling and management including, but not limited to, White Goods, tires, used oil, lead-acid batteries, Construction and Demolition Debris, ash residue, Yard Waste and Biological Wastes.

SWD and/or SWARM and/or ERMD each means the Solid Waste Division for the City of Jacksonville.

Tire means automobile tires or other tires from vehicles used for general transportation and excludes large commercial truck tires and heavy construction equipment tires.

Triplex means a lot or parcel of land which is improved for occupancy by three single-family housekeeping units.

Urban Services District (USD) means the territory within Duval County which, on September 30, 1968, was included within the corporate limits of the five municipalities then existing within the County, together with the area into which any one or more of them may be expanded or consolidated from time to time as provided in the Charter. The former City of Jacksonville is the First USD; the City of Jacksonville Beach is the Second USD; the City of Atlantic Beach is the Third USD; the City of Neptune Beach is the Fourth USD and the Town of Baldwin is the Fifth USD.

Waste Stream means any of the five types of waste (Residential Waste, Yard Waste, Bulky Waste, White Goods & Tires and Recyclable Material).

White Goods means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances originating from the Residential Premises.

Yard Waste means vegetative matter originating from the premises receiving residential collection services, resulting from landscaping maintenance and land clearing operations including, but not limited to, materials such as leaves, grass cuttings, palm fronds, shrubbery and tree trimmings, trees and tree stumps excluding trees and tree stumps generated by commercial entities.

3. **SERVICE AREA:**

3.1. The Contractor shall provide collection and transportation services in accordance with this Agreement for Residential Premises in the Service Area I, as set forth in the description attached as Exhibit I, and as provided in Chapter 382, Ordinance Code, for the collection and transportation of Residential Waste, Bulky Waste, Recyclable Materials, Yard Waste and White Goods & Tires. The Director and the Contractor may mutually agree to changes to the Service Area.

3.2. The Contractor shall be responsible for all costs associated with providing the scope of services pursuant to the terms and conditions of the Agreement

including, but not limited to, labor, supervision, vehicles, machines, equipment, supplies, insurance, bonds, permits and licenses, taxes and interest. The Contractor shall not be required to bill and collect from the Residential Premise. The Contractor shall not be charged any disposal or processing fee for transporting any of the five Waste Streams collected pursuant to this Agreement to the facility designated by the City.

3.3. Upon verifying the number of Residential Premises, pursuant to Section 7.3.1 of this Agreement, the City may adjust the boundaries of the Contractor's Service Area pursuant to Chapter 382, Ordinance Code, to be effective at the beginning of the next fiscal year of the City.

3.4. The City shall have the right to re-balance the Contractor's Service Area by either adding or subtracting Residential Premises to the Contractor's Service Area in an effort to allocate an equal number of Premises in each service area provided, in the City's judgment, overall contractor efficiency is improved. The City agrees to perform jointly with the Contractor Premise counts prior to each rate review and to re-balance the service areas, effective the beginning of the new rate period, provided the reallocation of all Premises is at least 4,000 Premises and, in the City's judgment, the resulting service areas improve contractor cost and efficiency. The City will also reallocate the fuel allocation in section 7.5 in the event of a service area re-balancing.

4. **COLLECTION:** Contractor shall provide collection services within its Service Area, as provided by this Agreement.

4.1. **Frequency:** Contractor shall provide (i) at least once a week, a separate collection service for Residential Waste, including Bulky Waste, (ii) at least once a week, a separate collection for Yard Waste, and (iii) a separate collection for Recyclable Materials at least once a week prior to Automated Service, and every other week thereafter. Contractor shall provide collection service on an as-needed basis for White Goods and Tires, but no later than the next regularly scheduled collection day after the item is placed for pickup. Each separate collection shall be on the same regularly scheduled day each week as determined by the Contractor. The City shall have the right, however, to direct Contractor to change collection days when the Director determines that Contractor's schedule creates a problem with commingling of Waste Streams, health problems, or when the Director determines that there are other concerns or that it is in the best interests of the City to do so.

4.2. **Holiday Schedule:** Contractor shall collect on every holiday except Thanksgiving and Christmas. The City shall determine the holiday schedule, which shall generally be as follows: Residential Premises scheduled for collection on Thanksgiving Day shall be rescheduled for the Saturday after Thanksgiving Day. Where Christmas Day falls on a weekday, Residential Premises scheduled for collection on Christmas Day shall be rescheduled after Christmas Day. The City shall provide notification by publication of the holiday schedule change.

- 4.3. Hours of Collection:** The Contractor shall perform Residential Waste collection services Monday through Friday, between 6:00 a.m. and 6:00 p.m. (unless extended by the Director) unless such days are changed by ordinance. The Contractor shall perform Yard Waste, Bulky Waste, Recyclable Materials, White Goods and Tires collection services Monday through Friday between 6:00 a.m. and 6:00 p.m., provided, however Yard Waste may be collected until 8:00 p.m., during the months of April through September. The Contractor shall not perform these services outside of the scheduled hours, or on Saturday or Sunday. The hours of collection may be temporarily extended due to extraordinary circumstances or other conditions, such as increased waste during the holidays, with the Director's prior approval, which approval shall not be unreasonably withheld. In the event of a dispute over hours of collection, the Director's decision shall be final.
- 4.4. Quantities:** Contractor shall collect all Recyclable Materials and Residential Waste placed for collection at Residential Premises. The Contractor is only required to collect up to five (5) cubic yards of Yard Waste and up to one (1) cubic yard of residential Construction and Demolition Debris per week. There is no maximum weight, volume or dimension for Bulky Waste or for White Goods & Tires, provided however, the Contractor and the Director may agree to limits on Bulky Waste and/or White Goods and Tires with respect to unusual circumstances at specific Residential Premises.
- 4.5. General Standards:** Contractor shall promptly collect all materials disposed of by the Residential Premise, provided the materials are prepared and placed in substantial compliance with the provisions of the Jacksonville Code of Ordinances (the "Ordinance Code") and the provisions of this Agreement. Any dispute as to the standards of substantial compliance shall be determined by the Director, whose decision shall be final. The Director has the discretion to direct the Contractor to rerun all or part of any route when the Director determines that the Contractor provided inadequate collection service.
- 4.5.1. Curbside:** Contractor shall provide curbside collection adjacent to each Residential Premise, unless required to collect elsewhere as provided under "Special Services" herein. In the event the residential structure is located in such a manner as to make curbside point of collection difficult or non-accessible to Contractor's crew and vehicle, an alternative location for container placement may be arranged between the Residential Premise customer and the Contractor at no additional cost to the customer or the City. The Director shall resolve any disputes between the customer and the Contractor relating to the point of collection and shall designate the location.
- 4.5.2. Handling:** The Contractor shall make collections with a minimum of noise and disturbance to the Residential Premise. Residential Waste and Recyclable Material containers shall be handled carefully by the

Contractor, shall be thoroughly emptied, and shall be returned Curbside to the point of collection in a standing upright position with covers placed adjacent to the containers, as applicable. The Contractor may transfer waste from the residential containers into tubs or other containers used by the Contractor in carrying waste to collection trucks. This work shall be done in a sanitary manner with all spillage cleaned up immediately and Contractor must set up tipped over cans or Carts, as the case may be.

- 4.5.3. Service Refusal:** The Contractor may decline to collect materials or to collect containers not in compliance with the Ordinance Code, and may decline to collect materials improperly commingled or materials which are inappropriate pursuant to the Ordinance Code. In the event Contractor has a legitimate reason to leave materials uncollected, the Contractor shall give notice to the customer and the City. The Contractor shall have the right to meet with the Director prior to the Director's final decision. Any dispute shall be resolved by the Director whose decision shall be final.
- 4.5.4. Spillage:** During the performance of this Agreement, the Contractor shall not litter or cause any spillage (Waste Streams, hydraulic fluid, oil, fuel or otherwise) to occur upon the Residential Premises, public or private roadways or the public right-of-way. During hauling, all Waste Streams shall be contained, tied, or enclosed so that leaking, spilling and blowing is prevented. In the event Contractor causes litter or spillage for any reason, the Contractor shall immediately clean it up. If the Contractor is notified of litter or spillage, the Contractor shall clean it up by the end of the day that notice is given, except where notice is given on the weekend or a holiday, it shall be cleaned up by close of business the next regular working day.
- 4.5.5. Commingling Prohibited:** The Contractor shall not commingle within the same vehicle for transportation to the City's designated facility, Residential Waste with Yard Waste, Recyclable Materials and/or Tires, White Goods or other inappropriate materials. Additionally, Contractor shall not commingle within the same vehicle, for transportation to the City's designated facility, waste materials collected from Residential Premises pursuant to this Agreement and other waste materials collected by Contractor pursuant to other agreements or arrangements, regardless of whether other waste materials are collected inside or outside the boundaries of the Contractor's Service Area.
- 4.5.6. Hazardous Materials:** Contractor shall not knowingly collect any items that are considered Hazardous Waste or Hazardous Substance or collect any Waste, Bulky Waste or Recyclable Material contaminated by hazardous materials including, but not limited to, Biomedical Waste, Biological Waste, household Hazardous Waste and other Hazardous

Waste. The Contractor shall give notice in accordance with Section 10, Contractor Notifications, of refusal to collect materials.

- 4.5.7. Recyclable Material:** The Contractor shall distribute, or ensure distribution to, each Residential Premise, recycling containers supplied by the City for Contractor's Service Area prior to the implementation of the Cart Program. The title to these recycling containers shall be vested with the City prior to the implementation of the Cart Program, and as provided in Section 14.7 thereafter. Prior to implementation of the Cart Program, (i) the City, at its expense, will supply to the Contractor, for distribution to the customer, replacement recycling container(s) for those originally provided by the City and lost or damaged by the Residential Premise customer; (ii) the Contractor shall replace the recycling container(s) within five (5) business days of the request by the customer or the City, provided that the City has a container available, and Contractor shall not be responsible for delays in container delivery due to the lack of containers in City inventory; and (iii) the Contractor shall also promptly deliver recycling container(s) as requested by the City, on behalf of the Residential Premise customer, for the purpose of collecting excess Recyclable Materials or for new residential customers within five (5) business days after a request by the customer or the City. Prior to implementation of the Cart Program, the Residential Premise may also use private recycling containers or paper bags that comply with container requirements of Chapter 382, Ordinance Code, so long as containers are clearly marked as recyclable materials. After implementation of the Cart Program, the Contractor shall deliver the Recyclable Materials to the Materials Recycling Facility (as defined in Section 13.1) without charge to the Contractor.
- 4.5.8. Replacing Damaged Containers:** Prior to implementation of the Cart Program, the Contractor shall replace, within five (5) business days, any waste container that is damaged through fault or negligence of the Contractor, at the Contractor's cost. The Contractor shall replace the Residential Premise customer's waste container with a similar style, material, quality and capacity. The Contractor shall notify the City immediately of any Recyclable Material container that Contractor damages. Prior to implementation of the Cart Program, the City shall provide the replacement Recyclable Material container, and the cost of such replacement container shall be deducted from the Contractor's monthly fee. This provision shall not apply to worn or deteriorated containers in need of replacement.
- 4.5.9. White Goods and Tires:** The Contractor shall immediately make arrangements to collect all White Goods and Tires already set out for collection, but which the Residential Premise customer did not make prior arrangements for collection. The Contractor shall provide a notice

pursuant to Section 10, Contractor Notifications, and shall collect the items by the next scheduled collection day.

4.5.9.1. Bulky Items, White Goods and Appliances, and Tires: After Automated Service commences, the Contractor shall collect smaller amounts and/or smaller sized Bulky Items, such as a chair or smaller grill, along with the Cart on scheduled garbage collection days, and shall provide customer with a flier to inform the customer on scheduling special Bulky Items collections by contacting Contractor's customer service center by telephone. If customer places Bulky Items too large or in larger quantities than the driver can load, the driver shall provide customer with the same notification and the driver shall contact customer service by radio to schedule special collection on the following business day. Customers requiring special collection for White Goods and Appliances or for used Tires, which require special handling and disposal, shall also contact the Contractor's customer service center to schedule special collection, and the driver shall also contact customer service by radio to schedule special collection for these type items.

- 4.5.10. Non-compacted Waste:** White Goods and Tires shall be collected separately from other Waste Streams and separately in a non-compacting vehicle.
- 4.5.11. Improper Container:** Contractor shall clearly mark any container which fails to meet standards prescribed by the Ordinance Code, including any container that exceeds 96 gallons of capacity. If the resident continues to use any container previously marked by the Contractor, the Contractor shall again mark the container and shall notify the Director.
- 4.5.12. Operating Vehicles:** Vehicles shall not stand unattended on roadways. The Contractor shall operate its equipment so as to minimize interference with vehicle and pedestrian traffic. The City reserves the right to deny the Contractor's vehicles access to certain roadways or alleys where, because of road condition or other circumstances, it is in the best interest of the general public to do so.
- 4.5.13. Yard Waste:** Yard Waste shall be collected in accordance with the Ordinance Code, Chapters 380 and 382. The Director of ERMD shall determine if this Section shall not apply during periods when the City, an area of the City, or an area including the City, has been or should be designed as a disaster area due to any damage resulting from any natural or manmade disaster.
- 4.5.14. Additional Carts:** After implementation of the Cart Program, the residential customer may purchase additional Carts at cost, plus delivery and handling. The Contractor shall collect garbage from the additional

Cart(s) as part of the normal garbage collection process at no added charge to the residential customer or to the City of Jacksonville.

- 4.6. **Physical Disability:** When a Residential Premise customer is physically unable to place the waste or recycling container curbside, and is certified by the City as physically unable to do so, the Contractor shall arrange, at no additional charge to the City or to the customer, an alternative location for placement of the container for collection. Annually, the Contractor shall submit a list by service address of all such service locations. Such alternative location need not be visible from the street but shall be accessible to the Contractor and not behind a gate or inside a fenced area. The Director shall resolve any dispute between the Contractor and the customer relating to point of collection and shall designate the collection location.
- 4.7. **Community Service:** Upon ~~nineseven~~ nine (9) days notice by the Director, the Contractor shall provide collection services for materials set out during neighborhood and community cleanups and other such similar community service events in the Contractor's Service Area. Any such services in excess of three events per year shall be compensated at a mutually agreed upon fee.
- 4.8. **Illegal Dumping of Waste in Public Right-of-Way:** Contractor shall notify the Director of any illegal dumping that the Contractor is aware of within the Contractor's Service Area. If the illegal dumping occurred on public property or Public Right-of-Way, the City may direct the Contractor to collect the illegally dumped material, in which case the Contractor will be compensated at a fee of \$105 per hour per truck.
- 4.9. **Special Services:**
 - 4.9.1. **Additional Services:** Except as otherwise provided herein, the Contractor is only required to provide Curbside service to a Residential Premise customer who is physically capable of placing containers curbside. A Residential Premise customer who is physically capable shall arrange directly with the Contractor for other than curbside service or for some other special service, such as additional pickups or pickups at times other than the regularly scheduled collection. The Contractor must bill and collect directly from the customer. In the event the customer and the Contractor cannot reach an agreement on the cost of such special services, the Director shall determine the cost.
 - 4.9.2. **Vacant Lots:** The Contractor is not required under this Agreement to service vacant lots or to remove materials resulting from the clearing of property for building purposes, or for any other type of residential collection from such properties.

4.10. Set Out and Collection: After the Cart Program commences, with respect to each of Recyclables and, if applicable, Garbage Rubbish, (i) all Garbage and Recyclables, as applicable, set out for collection by a resident must be placed inside the automated collection Cart (Garbage and Rubbish only for the garbage Cart, Recyclables only for the recycling Cart), and the Cart shall be set out for collection as directed by the Director, (ii) Contractor shall not be required to collect any Recyclables or, if the City Garbage Option is exercised, any Garbage and Rubbish or Recyclables unless (1) the material is placed in the Cart with the lid tightly closed; (2) the Cart is in working condition; (3) the Cart is properly placed at Curbside for collection; (4) the Cart is at or below its maximum weight, pursuant to the load capacity as embossed on or affixed to the Cart; and (5) all other requirements of the Ordinance Code are complied with, and (iii) no Recyclables, or, if the City Garbage Option is exercised, no Garbage or Rubbish of any kind shall be collected unless placed inside the Carts with the lids closed (i.e., no Garbage and Rubbish or Recyclables shall be collected from the ground or from any other type of container). Recycling Carts containing Garbage or Rubbish that the Contractor's truck operator notices during normal operations will not be collected. Garbage and Rubbish Carts containing unauthorized materials that the Contractor's truck operator notices during normal operations will not be collected.

"Set Out" shall mean the proper preparation and placement of Waste and Recyclable Materials Carts for collection at the Premises, in accordance with the requirements in this Agreement.

In connection with the implementation of the Cart Program, with respect to each of Recyclables and Garbage and Rubbish, (i) at the time of Cart delivery by Contractor, the Contractor will provide a brochure explaining how the Carts should be placed at curbside to provide access to the Garbage and Rubbish collection vehicle, and to the Recyclables collection vehicle, (ii) the Customer must place the Cart such that the collection vehicle and its automated arm, which must connect with and lift the Cart, has unobstructed lateral and overhead clearance, and access to the correct side of the Cart, which should be facing the street, (iii) only properly placed unobstructed Carts will be collected. Customers with questions may contact the Director or the Contractor. If the Customer and Contractor cannot agree upon an appropriate location to set out a Cart, the Director shall mediate the dispute and designate the location where collection shall occur.

5. REPAIR DAMAGED PROPERTY: The Contractor shall notify the Director immediately of any damage caused by the Contractor to a Residential Premise, or to other private or public property, and the Contractor shall repair or replace such damage as soon as is reasonably possible, but no later than thirty (30) calendar days, or such other time as agreed by the City.

5.1. In the event the Contractor fails to repair damage within the time period prescribed herein, the Director may make other arrangements for the repair or

replacement. The Contractor shall be liable for all reasonable costs associated with repair or replacement, excluding normal wear and tear on the pavement, but including all third party costs and all City administrative costs at the rate of \$100 per hour per City employee. The City may set off and deduct the costs and damages from amounts due, or to become due, to the Contractor under this Agreement. Should the Contractor dispute such deductions, the Contractor shall follow the dispute provisions under Section 19 within the time period provided; otherwise, the Contractor waives any right to dispute.

- 5.2. A dispute between the Residential Premise customer and the Contractor regarding a claim of damages shall be investigated by the City with the City making the final determination as to the Contractor's responsibility under the Agreement for repairing or replacing.
- 5.3. The Contractor shall notify the City immediately of any damage caused by the Contractor to City property or other public property. The City shall have the option of performing the repair or replacement itself or directing the Contractor to repair or replace.

6. TREATING COMMERCIAL AND MULTIFAMILY AS RESIDENTIAL PREMISES:

- 6.1. Certain small Commercial Premises and certain Multifamily Residential Premises of five (5) to ten (10) single-family housekeeping units may qualify, pursuant to Chapter 382, Ordinance Code, for treatment as a Residential Premise for purposes of waste and recycling collection and transportation services.
- 6.2. At the City's direction, the Contractor shall provide, to those qualifying Commercial and Multifamily Residential Premises, those services provided by the Contractor to a Residential Premise in accordance with the same terms and conditions under this Agreement. The Contractor shall continue to provide such services to qualifying Commercial and Multi-family Premises until notified by the Director to discontinue such services.
- 6.3. The Contractor shall be compensated for the services provided to these Commercial and Multifamily Residential Premises in accordance with the terms of this Agreement. For purposes of calculating compensation, each individual housekeeping unit and each individual business unit shall be considered as one Residential Premise.
- 6.4. Annually, by July 15 of each year, the Contractor shall provide the City a detailed list of each service address that the Contractor provides service under Section 6.1 of this Agreement and Chapter 382.501 of the Ordinance Code. The list should be for customers served as of June 30 of the current year and the list should reconcile to the City's June invoice for the same period. Future City invoices to the Contractor will be adjusted upward or downward to properly reflect the small commercial customers served. The Contractor is prohibited from serving any

**PUBLIC WORKS DEPARTMENT
SOLID WASTE DIVISION
Hauler Contracts**

FY15/16
REV: 6/22/2015
REV: 7/6/2015

Note: Rates and fuel gallons subject to change with rate review

	Estimated Hauler Rates from 10/01/2014 to 9/30/2015	CPI Adjustment 9/30/2015	Increase based upon CPI adjustment	Estimated Rate effective 10/1/2015
ADS	\$10.02	-0.003780	-\$0.04	\$9.98
Southland	\$11.03	-0.003780	-\$0.04	\$10.99
Waste Pro	\$11.83	-0.003780	-\$0.04	\$11.79

PROJECTED BASE RATE COMPONENT PER PREMISE:

(Includes YW Adjustment)

Haulers	Estimated Mid-Point Premises	Estimated Small Commercial Total Customers	Estimated Mid-Point Premises TOTAL	Est. CPI Adjusted Rate	Estimated Monthly Cost	Estimated Annual Cost
	Advanced Disposal	70,709	458	71,167	\$9.98	\$710,395
Southland Waste	73,678	476	74,154	\$10.99	\$814,826	\$9,777,912
Waste Pro	72,682	184	72,866	\$11.79	\$858,748	\$10,304,972
TOTALS	217,069	1,118	218,187		\$2,383,969	\$28,607,624

PROJECTED FUEL RATE COMPONENT PER PREMISE:

Haulers	Max. Gallons in Contract (Capped)	Projected Average Cost per Gallon 1	Projected Fuel Cost	Fleet Management Overhead per Gallon	Projected Fuel Overhead Cost	TOTAL FUEL COST
	Advanced Disposal	320,470	\$3.25	\$1,041,528	0.13	\$41,661
Southland Waste	397,706	\$3.25	\$1,292,545	0.13	\$51,702	\$1,344,246
Waste Pro 2.3	489,314	\$3.25	\$1,526,271	0.073	\$6,101	\$1,531,372
TOTALS	1,197,490		\$3,859,343		\$99,464	\$3,958,806

1. Index: Energy Information Administration (EIA) Department of Energy as stated per contract
2. Waste Pro to convert to CNG fuel - will not pay Fleet overhead
3. Waste Pro will be negotiated pursuant to contract terms

FY2014/15 MAYOR'S PROPOSED BUDGET for PMSW441COAD - 03407

Contract Haulers	\$28,607,624
Fuel	\$3,859,343
Overhead per gallon	\$99,464
TOTAL	\$32,566,431
	(\$250,000)

Consumer Price Index - All Urban Consumers

Area:	South urban	Not Seasonally Adjusted	Rate change based on last year's CPI adjustment. Rate will be adjusted with May CPI.
Item:	All items		
Base Period:	1982-84=100		
Years:	2000 to 2010		

Contract Hauler CPI Adjustment October 1st
May to May: lesser amount of 4.2% or 100% of change

May-14	231.762
May-15	230.886
	-0.876
Index point difference	-0.876
Divided by previous index	231.762
	-0.003780

commercial customer under this Agreement, unless the provisions of Chapter 382.501 of the Ordinance Code are followed.

7. RATE AND COMPENSATION:

7.1. Funding Appropriation:

The City shall pay Contractor for performance of this Contract for the period October 1, 2014 through September 30, 2015, subject to any condition or deduction provided for herein, from funds appropriated in fiscal year 2014/2015. Thereafter, the City shall pay Contractor such additional sums from year to year as provided for herein, subject to future appropriation of funds by City Council. In the event of non-appropriation, either City or Contractor may terminate this Agreement.

7.2. Rate:

7.2.1. The City shall pay Contractor a monthly Rate per Residential Premise in the Contractor's Service Area. The Rate shall be broken out into a Base Rate Component and a Fuel Rate Component. The monthly Base Rate Component was originally \$10.10, effective October 1, 2007 and the monthly Fuel Rate Component was originally \$0.84, effective October 1, 2007. Commencing October 1, 2015 through September 30, 2016, the Base Rate Component shall be \$9.98 and thereafter, as adjusted pursuant to this Agreement.

7.2.2. Rate Review:

7.2.2.1. The City shall perform Rate reviews during the City's fiscal years 2015/2016, 2018/2019, 2021/2022 and, if applicable, 2024/2025, with such adjusted rates becoming effective at the beginning of the following fiscal year. The Rate review shall be performed by a Rate review committee established by the Director and composed of, among others, the Manager of Administration and Finance for ERMD and a staff member from the Office of the Council Auditor. The premise counts and service area rebalancing shall be implemented in conjunction with the Rate reviews.

7.2.2.2. The Director shall determine the method for performing each Rate review, which shall require all depreciation to be done on a nonaccelerated straight line basis, and the information necessary for performing the Rate review, including, but not limited to: (a) reasonable actual audited expenses incurred year-to-date and projected expenses to be incurred by the Contractor in performing the services; (b) comparison of Contractor's operating expenses to gross revenues; (c) any anticipated substantial increase in operating expenses or capital investments; (d) a fair and reasonable profit margin based on the projected expenses, but

excluding interest and taxes; and (e) the Contractor's current list of all Residential Premises serviced and projected to be serviced during the next three fiscal years.

7.2.2.3. The City may request other financial statements or reports which it considers necessary to perform a Rate review. The Contractor shall provide such reports within thirty (30) days of the City's request. The Contractor's failure to comply with the City's request for information or reports shall extend the Rate review process and shall delay implementation of a new Rate until any such requested information is delivered.

7.2.2.4. The Rate review committee will begin the process the first week in February of each of years 2016, 2019, 2022 and, if applicable, 2025 during the term of this Agreement. The information that the Rate review committee may consider in determining the new Rate may include, but is not limited to, (a) audited and certified annual financial statements submitted to the City by the Contractor for the prior two years; (b) Contractor's projected operating expenses, including detailed projected depreciation expense and reasonable corporate management fees, but excluding interest, amortization of goodwill and federal and state income taxes; (c) operational information relevant to the Rate review process, including new and existing routes with premises served and quantities of materials collected, personnel, vehicles and equipment per route; (d) projected capital expenditures; and (e) an operating return or markup on cost. The Rate review committee will review its findings with the Contractor prior to making its recommendation to the Director and to the City Council as to the new Rate. The Rate change associated with only the rate review must be approved by City Council. The City will apply the new Rate beginning October 1 of the fiscal year following the Rate review.

7.2.2.5. The committee's recommendation to the Director and to the City Council for the new Rate shall be based on (a) reasonable projected operating expenses to be incurred by Contractor from efficient and productive operations, including depreciation, reasonable corporate management fees of not more than four percent of gross revenue under this Agreement, and (b) a gross profit margin determined by multiplying the Contractor's projected operating expenses times a factor of not less than 0.15 and not greater than 0.20. The committee's recommendation shall be reasonable, based upon reasonable good faith review and reasonable consideration of all financial and operational information provided by Contractor.

7.2.2.6. In the event that the City Council does not approve the new Rate until after October 1, the new Rate, upon approval, shall become effective

retroactively to October 1, except for delays caused by the Contractor's failure to provide information necessary for the Rate review.

7.2.2.7. Intentionally omitted.

7.2.2.8. Regardless of other contractual Rate provisions, the Contractor agrees to the Base Rate Cap provisions as follows:

The agreed Base Rate shall be determined by the 2016 rate review process and become effective 10/1/2016. It shall be increased pursuant to the contract CPI Rate Adjustment in Fiscal Years

2017/18 and 2018/19.

For Fiscal Year 2019/20 the Base Rate shall be set using the lower of the contractual Rate review process (Section 7.2.2.) or the CPI Rate Adjustment in Section 7.2.4. The Base Rate adopted for Fiscal Year 2019/20 shall be the lower of agreed expenses for FY 2019/20 with a markup between 15% to 20% or the 2018/19 rate as adjusted by the contractual CPI Rate Adjustment provisions (Section 7.2.4). However at the City's discretion, the Base Rate adopted for Contractor for FY 2019/20 shall be no greater than the highest Base Rate for Service Areas III and II.

For Fiscal Years 2020/21 and 2021/22 the Base Rate shall be set pursuant to the CPI Rate Adjustment provisions of Section 7.2.4.

For Fiscal Year 2022/23, the Base Rate shall be set using the lower of the contractual Rate review process (Section 7.2.2.) or the CPI Rate Adjustment in Section 7.2.4. The Base Rate adopted for Fiscal Year 2022/23 shall be the lower of agreed expenses for FY 2022/23 with a markup between 15% to 20% or the 2021/22 rate as adjusted by the contractual CPI Rate Adjustment provisions (Section 7.2.4). However at the City's discretion, the Base Rate adopted for Contractor for FY 2022/23 shall be no greater than the highest Base Rate for Service Areas III and II.

For Fiscal Years 2023/24 and, if applicable, 2024/25 the Base Rate shall be set pursuant to the CPI Rate Adjustment provisions of Section 7.2.4.

At the City's option, if applicable, the City may choose to forgo the Fiscal Year 2025/26 rate review. If such option is exercised the Base Rate for Fiscal Year 2025/26 shall be set pursuant to the CPI Rate Adjustment provision of 7.2.4.

7.2.3. Change in Disposal Site Adjustment: As disposal sites change, travel times may change and compensation may increase or decrease as a result.

The change in disposal sites times will be determined by verifying the time to and from (i) the Contractor's Centroid to the old disposal site and (ii) the time from the Contractor's Centroid to the new disposal site. The time difference will be determined by a timed run at 10 AM, and a timed run at 2 PM, on a week day. The time difference shall be the average of the two and will be the time change due to the disposal site change. Once the difference in time is determined it will be converted to annual hours. These hours will be multiplied by the hourly rate. This total amount is divided by the current Premise count and a per Premise increase or decrease in the monthly Base Rate Component is the result. Current premise count means the current month's count at the time of the change in disposal site. For purposes of this Agreement, the City and the Contractor agree that the hourly rate per route is \$116.39 effective October 1, 2015. For each of the three Waste Streams, annually the hourly rate per route will be adjusted in accordance with the provisions in Section 7.2.4. or 7.2.2. in this Agreement, as applicable.

The additional cost or reduction will be added or subtracted to the current per Premise monthly Base Rate Component to arrive at the new per Premise monthly Base Rate Component. The new/adjusted rate would be effective the first full month after the change in the disposal site.

Example of Change in Disposal Site Adjustment:

Step 1 Verify time difference:

Time to and from Centroid to old disposal site.	21 Minutes
Time to and from Centroid to new disposal site.	<u>12 Minutes</u>
Time difference per route	9 minute savings

Step 2 Conversion to annual hours:

Time difference per route multiplied by	9 minute savings
Number of routes per day (yard waste)	<u>10 affected routes</u>
No. of Minutes per day gained/(lost) by the Contractor	90 Minutes
Total Annual work days per year multiplied by	<u>260 days</u>
Total minutes to be saved Annually	23,400 minutes
Convert minutes to hours above divided by 60	390 hours saved

Step 3 Determine total cost addition or (reduction):

Total annual reduction in hours multiplied by	390 hours saved
Agreed upon Yard Waste hourly rate per route	<u>\$105.00</u>
Equals cost impact (reduction)	(\$40,950.00)

Step 4 Convert to a per premise addition or reduction: If the disposal site change increases contractor travel time, then the City agrees to increase the Contractor monthly Base Rate

Component, if the contractor's travel time is reduced, then the City shall reduce the Contractors monthly Base Rate Component.

Total Annual cost reduction		(\$40,950.00)
Divided by current month's Premises (from Invoice)		70.568
Annual Base Rate Component reduction		.5803
Annual Base Rate Divided by 12	Divided	12
Equals Monthly Rate reduction per Premise		.04835

Step 5 Determine Change per Premise in the Base Rate Component:

Current per Premise monthly Base Rate Component	\$ 10.00
Monthly reduction per Premise	(.04835)
Equals the adjusted per Premise monthly Base Rate Component	\$ 9.9516

Rounded to the nearest cent. \$ 9.95

The adjusted Base Rate Component would be effective the first full month after the change in the disposal site.

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 adjusted upward or downward by an amount equal to the lesser of (i) a maximum percentage of 4.2 % or (ii) 100% of the change in the Consumer Price Index (CPI) for the most current May to May twelve (12) month period immediately preceding the adjustment. The adjustment shall utilize the index for CPI, All Urban Consumers for the South Urban Area, All Items, not seasonality adjusted, base period (1982 — 84 = 100), as published by the U.S. Department of Labor, Bureau of Statistics. In the event that the U.S. Department of Labor, Bureau of Statistics, ceases to publish the said 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. There shall be no CPI rate adjustment (i) prior to the City's first full fiscal year after the Effective Date of this Agreement 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.

**CPI Base Rate Component
Adjustment Example**

Step 1 Determine the Index Changes:

Current CPI (May of Current Yr.)	115.7
Less previous index (May of Prior Yr.)	111.2
Equals index point change	4.5

Step 2 Determine the Percent Change:

Index point difference	4.5
Divided by the Previous Index	<u>111.2</u>
Equals	0.04047
Results Multiplied by 100	0.04047 x 100
Equals percent change	4.047

Step 3 Adjust Monthly Base Rate Component:

	<u>Base Rate</u>
Current Monthly Per Premise Rate	\$ 10.00
Multiply the Change Plus 1	1.04047
New Rate Effective October 1	10.4047
Rounded up or down to the nearest cent	\$ 10.40

7.2.5. Fuel Rate Compensation Adjustment:

Total compensation per Premise consists of two components, a Base Rate Component and a Fuel Rate Component. The Fuel Rate Component per Premise will be adjusted monthly based on (1) a Base Cost per Gallon of \$2.00 compared to the reported monthly average cost per gallon in the Energy Information Administration Department of Energy Index www.eia.doe.gov (Petroleum/ Weekly Retail Gasoline and Diesel Prices/ Arrange Data by Area/ Lower Atlantic (PADD 1C)/ Diesel — All Types/ Cents per Gallon, including taxes/ monthly) (hereinafter referred to as the "Index"). **(If the Index falls below \$2.00 per gallon, the Contractor will receive a Fuel Rate Compensation Adjustment credit (reduced payment) from the City. If the Index goes above \$2.00 per gallon, the Contractor will receive a Fuel Rate Compensation Adjustment payment from the City.)** (2) The compared Index cost will be divided by the Base Cost per Gallon to determine the percentage of change. (3) The Fuel Rate Component per Premise in contract Section (7.2.1) multiplied by the percentage of change plus one (1) equals the monthly rate per Premise. And, (4) The Fuel Rate Component per Premise added to or subtracted from the monthly Rate per Premise equals the monthly Fuel Rate Compensation Adjustment per premise. The Fuel Rate Compensation Adjustment per Premise multiplied by the adjusted month's Premises will equal the Monthly Fuel Rate Compensation Adjustment payment or credit.

In the example below, the assumed cost per gallon of the Index is \$2.57 for October 2007 and the assumed adjusted Premise count is 67,214 for October 2007. **This is an example only.**

Example: Monthly Fuel Rate Compensation Adjustment

Step 1 Determine the Change in the Index:

From Index October 2007	\$ 2.57
Base Cost per Gallon	<u>\$ 2.00</u>
Equals Index Change	\$ 0.57

Step 2 Determine the Percentage Change:

Index Change	\$ 0.57
Divided by Base Cost per Gallon	\$ 2.00
Percentage of Change	28.5%

Step 3 Adjust Monthly Fuel Rate Component:

Fuel Rate Component per Premise	\$ 0.84
Multiplied by	
The percentage change plus 1	<u>1.2850</u>
Equals October monthly Rate per Premise	\$ 1.079
(round to nearest cent)	\$ 1.08

Step 4 Calculate Monthly Fuel Rate Compensation Adjustment:

October monthly rate per premise	\$ 1.08
Less the contract Fuel Rate Component per Premise	\$ 0.84
Equals monthly fuel compensation adjustment	\$ 0.24
Monthly fuel compensation adjustment	
Multiplied by adjusted monthly Premises	x 67,214
Equals Fuel Rate Comp. Adj. for Oct. 2007	<u>\$ 16,131.36</u>

7.3. Premises:

7.3.1. The City and the Contractor shall jointly verify the number of Residential Premises during the Rate review years as set forth in 7.2.2.1. and, in the event of a dispute, the Director's determination shall be final. The method of verifying Residential Premises shall be by (i) actual visual count conducted jointly and simultaneously by the City and the Contractor representatives or, at the City's option, (ii) the electronic method used by

the City's customer user fee system. There shall be a written record of the count in a manner that would allow verification of the Premises counted. Both the Contractor and City shall have access to the Premise count workpapers. The parties may agree to various procedures to verify the number of Premises in the Service Area. The Premise counts shall be done in conjunction with a Rate review referred to in 7.2.2 and adjustments to the Premises count, if any, shall be made as of the following October 1 (Beginning of a Rate review period).

7.3.2. The City shall adjust the Residential Premises count upward or downward after October 1, 2007 on a monthly basis, based upon the Building and Zoning Division's report of Certificates of Occupancy, and demolition permits, mobile home permits and other changes to status of Residential Premises after October 1, 2007.

7.3.3. The Contractor agrees that the beginning number of Residential Premises for October 2015 shall be the ending number of Residential Premises per the September 30, 2015 invoice as adjusted based on the most recent premise counts that were conducted prior to October 1, 2014.

7.4. Compensation:

7.4.1. The Contractor shall be paid monthly within fifteen (15) days after the end of the month for which service was provided, except for CNG fuel costs which will be paid within fifteen (15) days after receipt of the Contractor's invoice. The Contractor's CNG fuel invoice shall contain diesel fuel equivalency numbers for gallons and price.

7.4.2. The Contractor's monthly payment shall be calculated by multiplying the monthly per Premise Base Rate Component and the monthly per Premise Fuel Rate Component times the total number of Residential Premises, as adjusted pursuant to 7.3.2, above served by the Contractor within the Service Area, as determined by the City for that month. The Fuel Rate Adjustment Compensation shall be calculated monthly, as provided in section 7.2.5 of this Agreement. During the period that the City supplies fuel, prior to the Contractor's conversion to CNG (as set forth in Section 7.6), the Fuel Rate Component and the monthly Fuel Rate Adjustment Compensation shall be zero.

7.4.3. Prior to payment, the City shall deduct from the Contractor's monthly payment, any amounts the Contractor owes the City, pursuant to Section 19, or pursuant to other provisions of this Agreement. Such reduction in monthly payment shall not relieve the Contractor from any of its contractual obligations to perform and, shall not limit the City's remedies under either the Agreement or applicable law.

7.4.4. The City reserves the right to correct any errors in payments. In the event the City pays the Contractor for a Residential Premise in error, for

whatever reason, the Contractor shall notify the Director. Upon determination of any overpayment, the Director will make appropriate adjustment to the Contractor's payment or future payment.

7.5. City Option to Provide Fuel: Adjustment to Compensation

The City exercised its option to supply fuel to the Contractor for the services to be performed under this Agreement and will continue to supply fuel for the Contractor's vehicles. The gallons supplied to the Contractor will be capped each year. The gallons are capped in FY 15/16 at 420,470 gallons. The fuel gallon caps will be adjusted in Rate review years after FY 15/16.

7.5.1 Contractor Fuel Controls over City provided Fuel

The Contractor shall implement fuel controls over City provided fuel to insure that the City provided fuel is used only for the City allocated and approved vehicles. The Contractor shall report improper transactions to the City as required by the Chief of Solid Waste and reimburse the City for those improper transactions. The Contractor and the City shall make fuel control modifications to the process as is necessary to improve and prevent improper fuel transactions.

7.6. Claw Back Clause: If the City exercises the City Garbage Option, the Contractor agrees to purchase a sufficient number of trucks to provide such service and that after the purchase is complete, the actual invoices for the total cost of said vehicles will be submitted to the Solid Waste Division and the Council Auditor's Office for review. The actual cost will then be compared and entered into the agreed expenses of the applicable rate review and the Contractors Base rate will be adjusted for any difference that is less.

7.7. Contractor Implementation of Cart Program and Automated Service: Contractor shall implement Automated Service with respect to Recyclables by March 1, 2016, and with respect to Garbage and Rubbish within nine (9) months after a City election to exercise the City Garbage Option. In the event that the Contractor fails to implement the Cart Program as set forth above or Automated Service, as set forth above, the City may terminate this Agreement upon thirty days' notice to the Contractor and reasonable opportunity to cure, subject to Force Majeure, Acts of God or other matters beyond the reasonable control of the Contractor.

8. CHANGES IN THE WORK:

8.1. Change of Law: The parties understand and agree that the Florida Legislature, from time to time, has made comprehensive changes in solid waste management legislation, and that these and other changes in law in the future, whether federal, state or local, which mandate certain actions or programs for counties or municipalities, may require changes or modifications in some of the terms, conditions or obligations under this Agreement. Pursuant to changes in the law, it

may be necessary to modify the terms of this Agreement and to modify Contractor compensation based on changes in law. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law.

- 8.2. Other Changes:** The City shall have the right to require additional services or obligations or to make changes to services under this Agreement with respect to the collection and transportation of Waste and Recyclable Materials, which are determined to be in the best interests of the City in furthering the public health, safety and welfare. The City shall give the Contractor reasonable (but not less than thirty (30) days) notice of any proposed changes. To the extent that the change results in an increase or a reduction in services, the City shall also give the Contractor reasonable notice of its intent to increase or reduce the Contractor's Rate accordingly.
- 8.3. Change in Rate:** The Contractor must, within thirty (30) days of receipt of notification of the change in work, pursuant to Sections 8.1 or 8.2, provide the City with detailed justification, cost analysis, and other such supporting documentation as required by the Director with respect to proposed increases or decreases in compensation for changes in service. The parties shall attempt in good faith to negotiate a mutually agreeable compensation for the increase or decrease in work. If the parties are unable to negotiate a mutually agreeable rate of compensation for the increase or decrease in services, the dispute shall be submitted to the City Council for resolution and the determination of the City Council shall be a final resolution of the dispute. The Contractor shall be required to continue performing all services in accordance with the terms and conditions of this Agreement, including any additional service requested by the City, but disputed by the Contractor.
- 8.4. Automated Garbage Collection Option:** The City shall have the option until September 30, 2019, to elect to require Contractor to ~~switch to~~ automated ~~implement Automated Service~~ collection of Garbage and Rubbish by so notifying Contractor in writing (the "City Garbage Option"). In the event City elects to exercise the City Garbage Option, Contractor shall implement ~~automated~~ Automated Service collection of Garbage and Rubbish within nine (9) months of receipt of City's notice of exercise, including acquiring a sufficient number of trucks for ~~automated pickup~~ Automated Service. Carts for the switch to automated collection of Garbage and Rubbish shall be provided by the Contractor or the City, as determined by the City. In the event the City Garbage Option is exercised, the term of the Agreement shall be extended to February 28, 2026. No change in Rate, as provided in Section 8.3 above, shall be made in connection with the exercise of the City Garbage Option. In the event City exercises the City Garbage Option prior to October 1, 2018, or after the rate review process has been completed in 2019, the City and Contractor must reach a mutually acceptable agreement on an adjustment to the Base Rate to account for the switch to Automated Service.

9. **OPERATIONS DURING DISPUTE:** In the event that a dispute arises between the City and the Contractor, or any other interested party in any way relating to the performance or compensation hereunder, the Contractor shall continue to render service in full compliance with all terms and conditions of this Agreement regardless of such dispute.
10. **CONTRACTOR NOTIFICATIONS:**
- 10.1. **General Collection Information:** Contractor shall be responsible for notifying new customers of route and schedule and general collection information, such as complaint procedures, rules and regulations for container and Curbside collection. The method of notification and information provided shall be acceptable to the Director.
- 10.2. **Notification of Route and Schedule:** The Contractor shall maintain in a format acceptable to the Director, the current routes and schedules for each type of collection service. The Contractor shall provide the Director with a copy of the most current routes and schedules, including applicable maps, after any change to routes and schedules, and shall provide the Director the same within five (5) business days of a written request. The Contractor shall notify the Director of any uncompleted routes no later than noon the following day. The Contractor shall notify the Director, in writing, of any required permanent change in collection schedules. The Contractor must obtain the Director's written approval of both schedule change and manner of notification at least two (2) weeks prior to change. Upon approval of the Director, the Contractor shall notify the affected customers in writing, in a manner approved by the Director, not less than two (2) weeks prior to the change. Notification of pickup day or time changes shall consist of notification by door hanger, flyer or other method as approved by the Director. The week of the change, the Contractor shall run both the old and the new schedule. If more than 25% of the customers set out waste on the old scheduled pickup day, the Contractor must notify affected customers again prior to the next regularly scheduled collection day.
- 10.3. **Notification of Refusal to Collect:** In the event Contractor leaves material uncollected, for any reason, the Contractor shall provide notice to the customer, explaining why the material was not collected.
11. **PUBLIC AWARENESS AND EDUCATION:** Educating the public concerning both waste and recycling collections and promoting both waste reduction and recycling are critical to the success of the City's solid waste management program. The City accepts primary responsibility for developing a citywide public education and promotion program, and the Contractor shall participate in implementing a public education program.
- 11.1. At the City's request, but no more than once per year, the Contractor shall distribute to Residential Premises informational, promotional and educational materials, in the form of flyers or other forms of media, as agreed upon by the

parties, to provide general information about the City's waste management services and recycling events and to increase awareness of hazardous materials.

- 11.2. The Contractor shall provide information about the service standards for collection of Residential Waste, Bulky Waste, Yard Waste, White Goods, Tires and Recyclable Materials with the delivery of a Recyclable Material container.
- 11.3. The Contractor shall not distribute to Residential Premises any collection information or promotional or educational materials relating to Residential Premises collection services pursuant to this Agreement without the City's prior review and written authorization.
- 11.4. As part of the implementation of automated garbage and recycling collection, the Contractor agrees and shall:
 1. Hold meetings with **Citizen Planning Advisory Committees (CPAC)** and other civic and community organizations, homeowner's associations and other groups to provide educational and other information prior to implementation of the conversion to automation.
 2. As a part of the phased implementation, the Contractor will distribute informational brochures, annual recycling collection schedule, refrigerator magnet with contact and other information to each resident along with delivery of the Carts.
 3. The Contractor shall commit up to \$250,000 for public education and information, to insure a smooth transition to automated collection (\$175,000 for Recyclables and \$50,000 for Garbage and Rubbish).

12. **CONTRACTOR PERSONNEL:**

- 12.1. The Contractor shall assign a qualified person or persons to be in charge of the operations within the Service Area and shall provide the Director with the name(s).
- 12.2. The Contractor's solid waste collection employees shall, at all times during Contractor's hours of operation, wear a uniform or shirt clearly identifying the Contractor's name.
- 12.3. Each driver of a collection vehicle shall, at all times, carry a valid Florida commercial driver's license for the type of vehicle that is being driven.
- 12.4. The Contractor's name and office telephone number shall be properly displayed on all solid waste and recycling collection vehicles. All vehicles utilized for the collection of Recyclable Material shall be clearly identified for that purpose.
- 12.5. The Contractor shall provide operating and safety training for all personnel.

12.6. The Contractor's employees shall treat all Residential Premise customers in a polite and courteous manner and shall not use loud or profane language while performing this Agreement.

12.7. The Contractor shall provide emergency contact numbers for all key personnel.

13. DELIVERY TO DESIGNATED FACILITIES:

13.1. **Residential:** The Contractor shall transport to the facility(ies) designated by the City all Residential Waste, Bulky Waste, Recyclable Materials, White Goods, Tires and Yard Waste collected pursuant to this Agreement.

The current addresses of the facilities are as follows (subject to changes pursuant to Section 7.2.3):

Trail Ridge Landfill - Residential Waste, Bulky Waste - 5110 US Highway 301
Materials Recycling Facility - Recyclable Materials – 7000 Imeson Road
Yard Waste – 5110 US Highway 301
White Goods and Tire Facility - 2675 Commonwealth Avenue

13.2. **Commercial Waste:** The Contractor agrees to deliver to the City's Trail Ridge Landfill all of the Commercial Waste (exclusive of Special Waste and Construction and Demolition Debris) collected by the Contractor in Duval County, provided that it remains economically and competitively feasible for Contractor to do so. The Contractor may reduce or discontinue use of Trail Ridge Landfill for Commercial Waste disposal if the Contractor demonstrates by a sworn affidavit, including appropriate available documentation, that (a)(i) a Commercial Waste collection competitor, utilizing a landfill outside of Duval County having lower tipping fees for Commercial Waste disposal, repeatedly solicits the Contractor's commercial customers offering lower prices, and the Contractor must lower its prices to continue serving the commercial customer or risk losing the commercial establishment as a customer; or (ii) a Commercial Waste competitor, utilizing a landfill outside of Duval County having lower tipping fees for Commercial Waste disposal, repeatedly and successfully solicits the solid waste collection business of new or existing commercial establishments not served by the Contractor, impairing or restricting the Contractor's business growth, or (iii) repeated instances of lost business, reduced prices or failure to obtain new business cause the Contractor an economic or competitive disadvantage, and (b) as a result of any of the above factors, the commercial market share of the Contractor is reasonably anticipated to decrease or decreases measurably from the Contractor's commercial market share on the date hereof; provided, however, the Director may contest the factual basis of such affidavit and supporting documentation by written notice to the Contractor. If the parties cannot reach agreement, the same shall be determined by the City Council within thirty days. Notwithstanding the foregoing, the Contractor agrees that it shall not seek to reduce or discontinue its use of Trail Ridge Landfill during the first six months from the date hereof. The City shall have the option to maintain the

Contractor's use of Trail Ridge Landfill for Commercial Waste disposal by reducing its tipping fees to the Contractor to a level that is competitive with other landfills, taking into consideration any increased transportation cost for the Contractor to deliver Commercial Waste to other landfills. For purposes of this section only, the Contractor is defined to include any parent, subsidiaries and affiliated companies.

14. COLLECTION VEHICLES AND EQUIPMENT:

- 14.1. Standards:** The Contractor shall have on hand at all times and in good working order sufficient vehicles and equipment as shall permit the Contractor to adequately and efficiently perform the contractual duties specified in this Agreement. All vehicles shall be licensed in the State of Florida and shall be operated in compliance with all applicable state, federal and local regulations. Solid Waste collection equipment shall meet industry standards pursuant to the American National Standards Institute (ANSI) and shall be approved by the Director. Prior to Automated Service for Recyclables, Recyclable Materials collection vehicles shall be unless waived by the Director either dual compartment equipment (one compartment for paper products; one compartment for other Recyclable Material), or separate vehicles or other equipment that is compatible for unloading at the City's designated facility and that meets industry standards pursuant to ANSI and is approved by the Director. In the event a compacting vehicle is used for the collection of Recyclable Materials, compaction pressure may not exceed 50 pounds per square inch for the commingled non-paper Recyclable Material to avoid glass breakage.
- 14.2. Condition:** All equipment shall be kept in good repair, appearance and in a sanitary, clean condition at all times.
- 14.3. Vehicle Identification:** All equipment used by the Contractor in the collection of Garbage and Rubbish or Recyclable Materials shall be clearly identified with the phrase "JAX RES" and also with the Contractor's name, telephone number and vehicle number, which shall be plainly visible on both sides of the vehicle and on the back of the vehicle. Equipment utilized for the collection of Recyclable Materials shall be clearly identified for that purpose in the same manner. Vehicles shall have no other identification or advertisements without the City's prior approval.
- 14.4. Reserve Vehicle.** The Contractor shall have available reserve equipment which can be put into service within two (2) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties.
- 14.5. Properly Equipped.** Each vehicle shall carry appropriate tools and supplies to clean up litter and spillage that may occur during collection and delivery. All vehicles shall be sufficiently secure so as to prevent littering of material and spillage of fluids. No vehicle shall be overloaded.

- 14.6. Vehicle Inventory:** The Contractor shall provide to the City an inventory of vehicles and equipment designated to provide the services specified in this Agreement. This inventory shall be provided in a format approved by the Director and shall include, at a minimum, the inventory identification number, the make and model, the date of purchase, and the age of each piece of equipment and vehicle. The City reserves the right during the term of this Agreement, with reasonable notice to the Contractor, to inspect the Contractor's service facility and the equipment and vehicles used by the Contractor to perform under this Agreement.
- 14.7. Cart** shall mean, after the Cart Program is available, a 64 to 67 gallon or 94 to 97 gallon container (or such smaller capacity as the Director may approve) on wheels with attached lids provided by the City with one Cart for garbage and rubbish pickup service, if applicable, and one Cart for residential Recyclables pickup service, one or both of which will be provided by the City and one or both of which will be owned by the City of Jacksonville. It will also mean a 64 to 67 gallon or 94 to 97 gallon container on wheels with attached lids provided by the City or the Contractor, as applicable, for one Cart for small commercial garbage and rubbish pickup service and one Cart for small commercial Recyclables pickup service, which will be owned by the City. All carts will include the Jacksonville logo(s) / name as approved by the City, and a serial number imprinted and a Radio Frequency Identification ("RFID") number inserted into each Cart. Cart type /specifications shall be the state of the art in the art in the industry in durability and wall thickness, practicality, customer safety and ease of use, washability, mobility, stability to wind load, resistant to opening and toppling by animals, resistant to rain leakage when closed, having lid handles, imprinted with serial numbers and with RFID numbers inserted and with City logo(s), with a manufacturer's 10-year warranty for replacement. Selection of Cart manufacturer and type/specifications, including Cart color, is subject to City concurrence and subject to the color requirements of the City Ordinance Code. The Carts shall, by March 1, 2016, as to Recyclables, within nine (9) months of the exercise of the City Garbage Option, if applicable, as to Garbage, be distributed to at least 95% of the occupied Premises in the Service area, and there shall be a listing or inventory by serial number of the address that the Carts were delivered. The Contractor shall maintain the listing/inventory and the City shall receive a copy of the initial Cart inventory. The current or updated listing shall be made available to the City on request.
- 14.8.** The Carts shall be maintained, repaired and/or replaced by the Contractor as is necessary. Contractor shall make minor repairs to Carts, such as wheel and lid replacement, at its cost, and will be considered an operating expense. When a resident desires to purchase an additional Cart ("Additional Cart"), or where the Cart has been damaged by the resident and cannot be repaired by minor repair, the resident shall be required to purchase at its own cost such Carts ("Replacement Cart"), at cost, plus a reasonable delivery fee. A Replacement or repaired Cart

shall be the property of the City of Jacksonville, ~~or the Contractor, as applicable,~~ in the same manner as described above for the original Carts.

- 14.9.** The Contractor shall replace or repair a Cart at its cost within five (5) business days after being notified by the Department or resident that the resident's Cart was damaged other than by the resident. In the event of a dispute, the City shall make the final resolution of the dispute.
- 14.10.** The City shall purchase and arrange to have Carts delivered to Contractor's facility, or a different staging area designated by the Director, and shall arrange for the assembly and delivery of the Carts to the Premises. The Cart Program will be in effect throughout the entire term of the Agreement and includes (i) the management, reporting, maintenance, and (ii) with respect to extra Cart inventory, distribution, storage, staging, assembly, door-to-door distribution and manufacturer's warranty period.

Staging and assembly area is the Contractor's responsibility, or a different staging area designated by the Director, and shall be made available 24 hours a day, six days a week, beginning February 10, 2016, as to Recyclables Carts, and within nine (9) months after exercise of the City Garbage Option as to Garbage Carts. The staging area shall be capable of receiving ten tractor trailer loads of Carts per day. When door-to-door distribution to all designated recipients is complete, all undelivered Carts covered in this Agreement will be stored in a secure area at 9798 Normandy Blvd. 32221 or such other place as is designated by the Director.

The City may request during the Agreement, reports including but not limited to: usage, remaining inventory and delivery. Contractor will be required to provide reports requested in hard copy and electronic format as required.

The City shall be responsible for the oversight of shipment, staging, assembling and delivering Carts, with one Cart for Recyclables and, if applicable, one Cart for garbage to be distributed to each occupied residential account in SERVICE AREA I. The City will provide the Contractor a list of street addresses and the Contractor will provide the number of supervisors necessary for coordinating with the delivery crews to assist in the door-to-door delivery.

Because of safety concerns related to the assembly of Carts on the street on the tailgate of the delivery truck or trailer, under no conditions will the Contractor allow or accept any level of assembly on the street.

Carts may be delivered 6 days per week, Monday through Saturday.

The City will provide an electronic address database of each housing unit that will receive a Cart. The addresses will be alphabetical by street name and in ascending house number. If multi-family units are to receive Carts, the address list must show number of

units per address. The City will provide this listing at least one week prior to the start of deliveries.

Each Cart must include (provided by the Contractor) a plastic hanger bag (or a removable exterior sticker approved by the Director) that includes a pre-printed brochure describing the safe care and use of the Carts for residents.

Each Cart's serial number and RFID tag number must be associated during the manufacturing process. Upon delivery to the household, each Cart will be assigned to an address by reading the UHF RFID Tag and an electronic delivery report will be provided to the City by the Contractor. This will ensure the RFID Tag is valid within the Cart. Bar Coded reading of Cart data is not acceptable.

The Contractor will submit the Cart inventory on a quarterly inventory report stating current balance and details or brief explanation of change in current balance from previous quarter's inventory report and identify additional Carts sold to customers, Carts replaced, Carts damaged by customers and Carts damaged by Contractor. All funds for additional or Customer damaged Carts shall be forwarded to the City and the cost of Contractor damaged carts shall be deducted from payments by City to Contractor under this Agreement.

15. **OFFICE AND EQUIPMENT YARD:** The Contractor shall maintain an office within the City of Jacksonville where complaints shall be received. It shall be equipped with sufficient telephones, with no less than two phone lines, and shall have responsible persons in charge during collection hours and shall be open during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. The Contractor shall not be required to maintain regular office hours on City recognized holidays subject to Director's approval. However, on all holidays except Thanksgiving Day and Christmas Day, the Contractor shall provide for an emergency contact person to accept calls from the City and from the Contractor's Residential Premise customers. The Contractor shall provide a fax machine and computer to receive complaints from the City. The Contractor shall provide an answering machine during non-office hours for customer requests and questions to be responded to during the following business day. The Contractor shall provide a contact person for the City to reach during all non-office hours. The contact person must have the ability to authorize Contractor operation in the case of City direction or situations requiring immediate attention.
16. **INSPECTION OF THE WORK:** The Contractor shall allow, during regular business hours, City access to the Contractor's office and equipment yard in order that the City may inspect the operations and equipment for compliance with this Agreement. The Contractor shall cooperate with the City in order to facilitate such inspections.
17. **TIME OF THE ESSENCE:** Time shall be of the essence as to each provision of this Agreement which specifies a time within which performance is to occur. In the absence of any specific time for performance, such performance shall be completed within a reasonable time.

18. COMPLAINTS:

- 18.1.** The Contractor shall prepare and maintain, in accordance with the format approved by the Director, a complaint log of all complaints received directly by the Contractor. The complaint log shall include the following information: (a) date and time complaint received; (b) date and time occurred; (c) source of complaint (City, customer, etc.); (d) Residential Premise name, address and telephone number or location of incident; (e) route number and truck number assigned to handle complaint; (f) nature of complaint; (g) action taken by Contractor; (h) date and time complaint resolved. By the 10th day of each month, the Contractor shall provide to the Director a copy of the prior month's complaint log indicating those complaints received by the Contractor and their disposition. Legitimacy of challenged complaints shall be determined on the basis of a joint inspection by the Director and Contractor's representative.
- 18.2.** The City shall notify the Contractor of complaints received by the City relating to the Contractor's services.
- 18.3.** Complaints relating to missed collection which are received by the Contractor before 12:00 noon shall be serviced by 6:00 p.m. that day. Those complaints received by the Contractor after 12:00 noon shall be serviced by 12:00 noon the following business day. The Contractor shall address all other complaints by the close of business the next regular working day after the date of receipt, unless otherwise specified within this Agreement. Complaints received on a Saturday or the day preceding Thanksgiving Day or Christmas Day shall be resolved by the Contractor no later than the close of business the next regular working day.
- 18.4.** The Contractor shall provide the Director, or the City designated agency, written notification when each complaint received by the City is resolved, and including a full written explanation of the disposition of any complaint involving a claim of damage to private or public property as a result of actions of the Contractor.
- 18.5.** The City may, at its discretion, resolve complaints not timely resolved by the Contractor. The Contractor shall be liable for the costs associated with resolution of the complaint. The City may set off and deduct the costs and damages from any amounts due or to become due to the Contractor.

- 19. LIQUIDATED DAMAGES:** It is the intent of the parties to ensure that the Contractor provides high quality collection services to the City. To that end, the Contractor shall provide services in accordance with this Agreement and within the time limits set forth in this Agreement. The City and the Contractor agree that Contractor's failure to perform in accordance with this Agreement causes the City to incur damages which will be difficult, if not impossible, to calculate; and for that reason, the City and the Contractor agree that the following amounts are reasonable estimates of such damages and shall constitute liquidated damages, and not penalties. Therefore, if the Contractor fails to perform in accordance with this Agreement except in the case of a Force Majeure event, the City, without waiving other remedies it may have under this Agreement, and without reducing

Contractor's obligations to provide quality service, may deduct from any amount otherwise payable to the Contractor the amounts in accordance with the following

- 19.1.** Failure to address a customer service complaint by close of business the next regular working day ("Unsolved Complaint"). However, at the end of the succeeding month, if the Contractor has less than the number of Unsolved Complaints listed below, then Contractor shall receive a credit in the percentage listed below against the prior months liquidated damages incurred under this Section 19.1
- \$25 per Residential Premise; \$150 maximum per route per day for each Waste Stream

<u>Number</u>	<u>% Credit</u>
40-31	70%
30-21	80%
20-6	90%
5 OR less	100%

- 19.2.** Failure of employees to conduct themselves in appropriate manner and failure to treat customers in a polite and courteous manner.

\$50 per incident.

- 19.3.** Commingling Residential Waste with Yard Waste, Recyclable Materials, Tires, White Goods or other inappropriate materials.

\$500 per incident. In addition, Contractor shall separate the commingled waste into separate Waste Streams.

- 19.4.** Failure to clean spillage (oil, hydraulic fluid, garbage, trash recyclables, etc.) on the day notice of such spillage is received.

\$200 per incident. In addition, Contractor shall pay the cost of cleanup and any resulting damage.

- 19.5.** Failure to report incomplete routes by email to the Division Chief of Solid Waste (as used herein, "incomplete" shall mean more than 2% of the route has not been completed on the scheduled pick-up day) on the day said route was not completed.

\$1,000 per incident after the second incident in any one month.

- 19.6.** Failure to complete an incomplete route within the time period agreed to by the Director and the Contractor.

\$1,000 per incident.

- 19.7.** Failure to deliver to the facility designated by the City any Waste, Yard Waste, Recyclable Materials, Bulky Waste, White Goods and Tires collected by Contractor pursuant to this Agreement.

\$500 for each truckload.

- 19.8.** Commingling and delivering to the disposal facility waste materials collected pursuant to this Agreement commingled with waste materials collected by Contractor outside of this Agreement, regardless of whether collected inside or outside Contractor's Service Area.

\$2,500 for each truckload.

- 19.9.** Failure to comply with any other term or provision of this Agreement after Notice from the City.

\$100 per incident or \$100 per day of continued non-compliance.

- 19.10.** Operating Fleet — Average Age: The City views that the operating (vehicles used for the collection of Garbage, Yard Waste and Recyclables only) fleet age relates to the contractor's performance and customer satisfaction therefore the Contractor shall be required to maintain the average age of the operating fleet at six years of age or less. Annually, and as requested, the Contractor shall submit a schedule of their operating fleet calculating the fleets average age to the City. The City, with reasonable notice, shall have the right to inspect the vehicles and the purchase invoices/records of the Contractor's operating fleet.

If the average age of the front line operating fleet excluding spares is determined to be greater than six (6) years and there have been service complaints caused by inoperable equipment or equipment that has caused or is causing road damage (as verified by billings from the City to the Contractor in excess of \$10,000 within a 3 month period) then the Contractor, after notice by the City, shall have 30 days to reduce the average of the fleet to six (6) years or less, or to replace the malfunctioning equipment as identified by the City. If the Contractor fails to reduce the average age of the fleet to 6 years or less, or to replace the malfunctioning equipment within 30 days then the Contractor shall be subject to liquidated damages of \$3,000 per month for the lesser of either (a) every vehicle that is eight (8) years or older or (b) vehicles identified by the City as malfunctioning. Based on a review of the vehicles identified, the City may, at the City's sole discretion, waive the liquidated damages or may require the Contractor to replace the vehicles that have been identified by the City to be replaced with new vehicles. The Contractor shall be subject to the \$3,000 per month liquidated damage amount for each vehicle subject by the City to be replaced. If the Contractor purchases the vehicles necessary and installs them into the

Contractor's City fleet within three (3) months or less, then the Contractor shall receive one half (1/2) of the liquidated damages back from the City. If at the end of the three month period, the vehicles are not replaced and the average age stays above 6 years, then the damages shall continue each month and there shall not be any rebate of damages back to the Contractor.

- 19.11.** Should it be impossible for the Contractor to resolve the complaint or other problem by the time specified, or should the Contractor dispute the validity of the customer complaint, the Contractor must notify the City in writing within the same time period specified herein for addressing the problem. The Contractor's notification shall provide sufficient information justifying the Contractor's position and plan of action, if any. The City and the Contractor shall jointly investigate and agree upon a method for resolving the dispute.
- 19.12.** Should the Contractor dispute the City's collection of liquidated damages, the Contractor shall, within five (5) days of receiving notice of that collection, deliver to the City written notice outlining clearly its basis for disputing same to the City. The Director and the Contractor shall meet within five (5) days of the City's receipt of such notice and attempt to resolve the dispute. In the event no resolution is reached within that period, the parties shall be entitled to seek any relief to which they are entitled hereunder.
- 19.13.** Willful Neglect of Carts and/or Damage: Carts damaged or destroyed by Contractor shall be replaced by Contractor at cost.

20. FORCE MAJEURE AND MAJOR STORM:

- 20.1.** In the event of a major storm, excluding normal weather conditions for the area, which impacts Contractor's route(s), the Contractor must immediately notify the Director in writing of such conditions and request a variance of regular routes and schedules. The Contractor shall also provide the Director with a plan for resuming regular routes and schedules. The Director, at its discretion may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such event, the Contractor shall resume normal routes and schedules and shall so notify the Director in writing. In the event of a Force Majeure event, the Contractor shall immediately notify the Director in writing of such event and of Contractor's proposed changed route and schedule. Upon verifying the Force Majeure event, the Director shall reach agreement with the Contractor as to a changed route and schedule. To the extent not made impossible by the Force Majeure event or major storm, Contractor, shall make every effort to inform the public, through the local news media, as to the conditions, the changed schedule and when regular services may be resumed.
- 20.2. Storm Yard Waste:** This clause shall be effective if/when the Mayor declares a Storm Emergency event. The City agrees to pay the Contractor \$103.90 from October 1, 2015, per ton, adjusted per Section 7.2.4. or 7.2.2., as applicable, for every ton taken to the disposal site over 105% average of the most recent 24

months as adjusted for growth of the average yard waste tons taken to the disposal site for the recent, previous two years without a declared storm event.

- 20.3. The City shall not be liable to the Contractor, or to any third party, due to a Force Majeure or major storm event, as declared by the Mayor, preventing the Contractor from performing under this Agreement. The Contractor shall not be compensated under this Agreement during any period of time in which a Force Majeure or major storm event prevents the Contractor's performance of its Residential Premise collection and transportation services for ten or more working days.
- 20.4. By January 30th of each year, the Contractor shall provide the Director with Contractor's major storm preparedness plan for review and approval. Contractor's plan shall include provisions for additional manpower and equipment and/or additional hours of operation. The Contractor shall continue modifying and updating its major storm preparedness plan for submittal each year to the Director at the aforementioned time. During a minor storm event, the Contractor shall receive no additional compensation for any increase in its collection and transportation services under this Agreement. During a Force Majeure or major storm event, the Contractor shall receive additional compensation, at a mutually agreeable fee, if the City directs the Contractor to perform increased collection and transportation services which exceed those regularly provided under this Agreement.
21. **PERMITS AND LICENSES:** The Contractor shall obtain, at its own expense, all permits and licenses required by federal, state and local laws, rules and regulations and maintain the same in full force and effect. Any changes of the licenses or permits shall be reported to the Director within ten (10) working days of the change.
22. **TAXES:** The Contractor shall be liable for all federal, state and local taxes associated with the performance of this Agreement, including sales and use tax, social security, worker's compensation, unemployment, and any other taxes which may be chargeable against labor, material, equipment, real estate or other items necessary in the performance of this Agreement.
23. **EMPLOYEE WAGES AND BENEFITS:** The Contractor shall comply with all applicable local, state and federal laws relating to wages, hours, overtime and all other applicable laws relating to the employment or protection of employees, now or hereafter in effect. Conditions of employment shall be published and conspicuously posted so all employees may be informed. The Contractor shall furnish, at its expense, reasonable uniforms, rain gear and safety equipment.
24. **INSURANCE:**
 - 24.1. Without limiting its liability under the Agreement, the Contractor shall procure and maintain, at its sole cost and expense during the term of the Agreement, insurance of the types and in the minimum amounts stated below:

Coverage

Limits

Worker's Compensation

Florida statutory coverage
Employer's Liability (including appropriate federal acts)

Statutory
\$1,000,000 per incident

Comprehensive General Liability

Operations; completed operations;
contractual and environmental liability

\$1,000,000 each occurrence;
\$2,000,000 annual aggregate combined single limit for bodily injury, property damage and environmental liability

Automobile Liability

All vehicles - owned, hired or used

\$1,000,000 each occurrence;
\$2,000,000 combined single limit.

- 24.2. The City shall be named as an additional insured under all comprehensive general and automobile liability policies. Such insurance shall be written by a company licensed to do business in the State of Florida and satisfactory to the City. Prior to commencing any work under the contract, certificates evidencing the maintenance of said insurance shall be furnished to the City and shall be subject to the approval of the Risk Manager, such approval not being unreasonably withheld.
- 24.3. The insurance shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice by the City, such notice to be addressed to City of Jacksonville, Office of Risk Management, Room 470, Yates Building, 231 East Forsyth, Jacksonville, Florida 32202.

25. INDEMNIFICATION:

- 25.1. **Contract Indemnification:** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its officers, directors, employees, agents and consultants from and against all claims, costs, losses and damages (including, but not limited to, all attorneys' fees and all court costs) caused by, arising out of, or resulting from the performance of this Agreement, provided that any such claim, cost, loss or damage: (1) is attributable to bodily injury, sickness, disease or death; environmental liability; liability associated with the violation of any applicable federal, state or local laws, rules or regulations; or to damage to or destruction of tangible property, including the loss of use resulting therefrom; and (2) is caused by acts or omissions of the Contractor, or any of its contractors, subcontractors, suppliers, or any persons or organizations employed by any of them in the performance of the Agreement. Nothing herein contained shall be interpreted as waiving or abrogating the City's right of sovereign immunity

pursuant to Section 768.28, Florida Statutes, or any successor statute. In the event the City or its employee is alleged to be liable on account of acts or omissions of the Contractor, the Contractor shall hold the City or its employees harmless and shall defend them against such allegations, claims and litigation through counsel acceptable to the City, and the Contractor shall bear all costs, fees and expenses incurred by such defense.

25.2. Joint Negligence: In the event of joint negligence on the part of the City and the Contractor, any loss shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as amended. Nothing herein contained shall be interpreted as waiving or abrogating the City's right of sovereign immunity pursuant to Section 768.28, Florida Statutes, or any successor statute.

25.3. No Limitation on Indemnification: The indemnification obligation under Section 25.1 above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or for any subcontractor, supplier or person or organization under workers' compensation acts, disability benefits acts or other employee benefits acts. Nothing herein contained shall be interpreted as waiving or abrogating the City's right of sovereign immunity pursuant to Section 768.28, Florida Statutes, or any successor statute.

26. CONTRACTOR RECORDS - MAINTENANCE AND ACCESS:

26.1. The Contractor shall maintain, within the Consolidated City of Jacksonville, detailed records of the services and scope of work during the term of this Agreement and for a minimum of three (3) years following the end of the term of this Agreement or following the end of the renewal term of this Agreement. If an audit, litigation, or other action involving the Agreement commences before the end of the three-year retention period, Contractor must retain the records until all issues arising out of the action are resolved, or until the end of the three-year period, whichever is later.

26.2. The Contractor shall file and keep current with the City all documents and reports required by this Agreement. By September 1 of each year that this Agreement is in effect, the Contractor shall ensure and certify to the City that all required documents are current and on file with the City. Such documents shall include, but are not limited to, certificates of insurance, the current audited financial statements, applicable licenses and permits, performance bond, route schedule and maps, and a list of collection equipment vehicles. Route maps shall be provided in a format as provided by the City.

26.3. The City, or its designee, shall have the right to access Contractor's records, at any time during reasonable business hours, for the purpose of auditing the financial and contractual performance of Contractor, except those that are privileged under Florida law. Contractor shall make its records available to the City for inspection

and audit within 24 hours of the City's written notice. Contractor shall make copies for the City, upon the City's request, at a cost consistent with Chapter 119, Florida Statutes (Public Records).

- 26.4.** Upon the request of any Residential Premise customer, the Contractor shall make available, at its principal place of business in the City, any pertinent information regarding the services rendered. The Contractor shall have on file at each of its principal places of business available for inspection upon request of the general public, the following information: (a) a copy of this Agreement; (b) a copy of the applicable City ordinances and regulations; (c) a map showing the Contractor's Service Area; and (d) a legible notice placed in a conspicuous place in the office to the effect that a copy of the foregoing are kept there for inspection by the general public.

27. REPORTING REQUIREMENTS:

27.1. Financial:

27.1.1. Contractor shall maintain separate accounting records and books relative to the operations performed under this Agreement and in accordance with a uniform chart of accounts by Waste Stream and as prescribed by the Director and the Office of the Council Auditor for the City, which shall run with the City's fiscal year.

27.1.2. By March 1 of each calendar year after the Effective Date, Contractor shall furnish the City with an audited annual financial statement prepared by an independent certified public accountant, licensed to do business in Florida. The audited financial statements shall be on the City's fiscal year (10/1 - 9/30). The audited financial statements (balance sheet, detailed statement of revenue and expense, with footnotes) shall include the unqualified and/or unmodified opinion of the certified public accountant who, having conducted an audit of the Contractor's books and records in accordance with generally accepted auditing standards, including terms and other procedures, certifies that the financial statements are fairly presented in all material respects and in conformity with generally accepted accounting principles. Such audited annual financial statement shall include a certified costs statement prepared in accordance with generally accepted accounting principles, and as required by the Director and the Office of the Council Auditor, and shall utilize the accrual basis of accounting for income and expenses properly chargeable to the scope of work and services performed under this Agreement. Such income and expense shall be reported by collection function (Garbage, Yard Waste, Recycling, Bulky and Tires, White Goods) and shall be clearly segregated from Contractor's other operations not a part of this Agreement. The cost stated shall describe in detail operating expenses and other general and administrative expenses. The Contractor shall document its basis for all expense allocations, which shall be described in the audit report footnotes.

- 27.2. Collection Activities:** In addition to any other requirements of this Agreement, the Contractor shall provide to the Director semiannually, or more frequently as may be necessary to comply with federal, state or local reporting requirements, written reports containing pertinent statistical and cost information pertaining to solid waste collection and recycling collection services as requested by and in a format approved by the Director.
- 28. REPRESENTATIONS:** By signing this Agreement, the Contractor certifies and warrants that as of the date of execution of this Agreement and at all times during the term hereof.
- 28.1. Public Entity Crimes:** Contractor is in compliance with Section 287.133, Florida Statutes, as amended, and with Section 126.104, Ordinance Code, as amended.
- 28.2. Negotiated Agreement:** Contractor has negotiated this Agreement with the City and, to that end, has apprised itself fully of the terms and conditions therein.
- 29. CONTRACTOR'S REPRESENTATIVE:** All dealings, contacts, notices, and payments between the Contractor and the City shall be directed by the Contractor to the Division Chief of Solid Waste and the Contractor shall provide the City with the name of Contractor's representative.
- 30. NOTICE:** Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, postage prepaid, and shall be considered effective upon receipt, at the following address:
- (a) The City:
- City of Jacksonville
Solid Waste Division
1031 Superior Street
Jacksonville, Florida 32254
Attn: Division Chief
- (b) The Contractor:
- Advanced Disposal Services Jacksonville LLC
9798 Normandy Blvd.
Jacksonville, FL 32221
Attn: District Manager

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made from time to time by written notice. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received after 5:00 p.m. or on weekends or holidays,

will be deemed received on the next business day. If sent by facsimile, the original of the notice must still be mailed in the form as required herein.

31. CONTRACT TERMINATION:

31.1. 31.1. Termination for Lack of Funding: The City's contractual authority is limited to funds appropriated. As such, the City shall have the right to immediate termination, upon written notice to the Contractor, for lack of sufficient appropriated funds.

31.2. Termination for Default: Upon a continual or a substantial failure by the Contractor to adhere to the terms of this Agreement, the City may, upon action by the City Council, terminate the Agreement.

31.2.1. Upon the Director delivering to the Contractor written notice of default, the Contractor shall have thirty (30) days in which to provide the Director with a detailed plan to cure such default to the City's satisfaction. Upon receipt of any such plan, Director shall review the plan and notify the Contractor whether or not such plan has been approved. If the plan is approved, Contractor shall commence to cure the default within the time set forth in the approved plan for the default to be cured. The Director's written notice to the Contractor that (i) the Director has rejected the plan to cure the default or (ii) the Contractor has failed to cure such default in accordance with an approved plan, shall constitute notice of proposed termination for default under this provision.

31.2.2. Upon the Contractor's receiving a notice of proposed termination for default, and upon the Director's recommendation to the City Council that the Contractor be terminated, the City Council shall give at least ten (10) days notice to the Contractor prior to holding a public hearing. Should the City Council find either a continual breach or a single substantial breach of the Agreement that justifies termination, the City Council may recommend to the Mayor that he elect to terminate the Agreement. In lieu of or in addition to the foregoing, the City Council may also direct the Office of General Counsel to institute an appropriate action.

31.2.3. In the event of termination, the Contractor shall not be entitled to receive any further payment under this Agreement until the completion of that contract year and a determination by the City of damages resulting from the Contractor's termination including, but not limited to, the City's costs associated with completing Contractor's services. The City may offset and deduct all costs and damages from any work already performed by Contractor but not yet invoiced, or invoiced to the City but not yet paid. Additionally, the City shall have all rights and remedies available to it under any other provision of this Agreement, as well as under the law and in equity.

- 31.2.4.** Upon termination, the Contractor shall promptly turn over to the City the Contractor's records and documents, including electronic records and documents, related to the current collection and transportation services performed under this Agreement, and including Contractor's collection service list of Residential Premises. All such records and documents shall thereafter become the sole property of the City.
- 32. NONWAIVER:** Failure by either party at any time to require strict performance by the other party of any provisions hereof shall not release the other party from its obligations under the Agreement and shall in no way affect the right of the other party, thereafter, to enforce the same. Furthermore, any monthly payments by the City to the Contractor under this Agreement shall not constitute a waiver of any of the parties' rights under this Agreement.
- 33. TITLE TO WASTE:** The Contractor shall, at no time, hold title or ownership to any Residential Waste, Yard Waste, Recyclable Material, White Goods, Tires and any other said waste generated by Residential Premises and collected by the Contractor pursuant to this Agreement, and the Contractor shall have no right to take, keep, process, alter, remove or otherwise dispose of any such materials in any way not specified under this Agreement without prior specific written authorization from the Director.
- 34. GOVERNING LAW AND VENUE:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue of any legal action brought or filed relating to any matter arising under this Agreement shall be exclusively in the federal and state courts sitting in Duval County, Florida, having jurisdiction over such legal action.
- 35. COMPLIANCE WITH LAWS:**
- 35.1.** The Contractor shall conduct operations under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations. Contractor shall immediately cease any activity which causes or results in a violation of federal, state or local laws, rules or regulations, and Contractor shall immediately report such violation to the Director.
- 35.2.** The Contractor shall adopt and maintain, throughout the term of this Agreement, a policy of non-discrimination as defined by the City of Ordinance Code. These requirements shall be incorporated into and made a part of any of Contractor's subcontracts.
- 36. SEVERABILITY:** The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid

provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

37. NO ASSIGNMENT OR SUBCONTRACT:

37.1. The Contractor shall not assign this Agreement, the duties to be performed under this Agreement, or any right occurring or monies due under this Agreement except in accordance with Section 382.308(b), Ordinance Code, as amended.

37.2. It is the intent of the parties that no person, corporation or company, whether by himself or through a relative, itself or through its parent(s), subsidiary(s) or holding companies, shall at any time, through one or more Agreements with the City provide collection and transportation services to Residential Premises in more than two (2) Service Areas. There can be no assignment of this Agreement in violation of Chapter 382, Ordinance Code, regarding same.

37.3. For purposes of this section, a parent subsidiary or holding company shall mean any person, corporation or company holding, owning or controlling more than 10% stock or financial interest of another person, corporation or company.

37.4. The Contractor shall not subcontract this Agreement, the duties to be performed under this Agreement or any right occurring or monies due under this Agreement without prior express written consent of the City, executed with the same formalities as this Agreement. In the event the City approves a subcontractor, no such consent shall relieve the Contractor of any of its liabilities or obligation under this Agreement with the City. For purposes of such subcontract, a subcontractor shall be considered an employee of the Contractor and shall be subject to the same requirements as other employees of the Contractor.

38. INDEPENDENT CONTRACTOR: The Contractor shall operate as an independent contractor and shall have complete charge of its workers engaged in the performance of this Agreement. The Contractor is not an agent, representative or employee of the City, and nothing herein contained is intended or should be construed as establishing the relationship of copartners between the Contractor and the City.

The Contractor shall be responsible for its own labor relations. The Contractor shall negotiate and resolve any disputes between the Contractor and its employees or anyone representing its employees. The Contractor shall immediately notify the Director of any actual or material labor disputes which may affect the Contractor's performance of this Agreement. The Contractor shall also inform the Director of all actions that the Contractor is taking to resolve the dispute.

39. ENTIRE AGREEMENT: This Contract, with all Exhibits hereto, constitutes the entire agreement between the parties with respect to the scope of services and terms and conditions described herein and extinguishes and supersedes all prior agreements and all amendments and prior understandings between the parties with respect to same.

Furthermore, there shall be no changes, modifications, or amendments to this Agreement except by written agreement signed by both parties and executed with the same formalities as this Agreement.

40. **SECTION HEADINGS:** Section and subsection headings appearing in the Agreement are inserted for convenience of reference only and will not be construed as interpretation of text.
41. **PREPARATION OF AGREEMENT:** Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement; therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement.
42. **INTEREST:** All monies not paid when due hereunder shall bear interest at the statutory rate per annum, which also shall be applicable as pre judgment and post judgment interest that may result from litigation.
43. **DAMAGE FORMULAS:** The Contractor shall not present any claims against the City nor recover any amounts against the City based upon any formulas or hypothetical or statistical methodology used to compute damages.
44. **ELECTRONIC INFORMATION COMPLIANCE:** At all times relevant to the term of this Agreement, the Contractor shall be compliant in maintaining documents and information in an electronic format.

[The remainder of this page was intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

ATTEST:

By: James R. McCain
Its: Corporation Secretary



CITY OF JACKSONVILLE

By: Sam E. Mousa
Mayor

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of:
Executive Order No. 2015-05

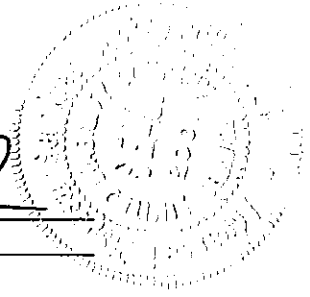
ATTEST:

By: Melissa Zuchowich

Advanced Disposal Services

Jacksonville, LLC

By: [Signature]
Its: COO



In compliance with Section 24.103(e) of the *Ordinance Code* of the City of Jacksonville, I certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement for the fiscal year 2015/2016 and that provision has been made for the payment of the monies provided therein to be paid.

[Signature]

Director of Administration and Finance

Contract Number: 9165

APPROVED AS TO FORM:

[Signature]
Assistant General Counsel

EXHIBIT I

DESCRIPTION OF SERVICE AREA BOUNDARIES
SERVICE AREA I

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SERVICE AREA I

Commence at the southwest corner of Duval County at the intersection of the Duval County, Baker County and Clay County lines, thence northerly along the Baker County-Duval County line to the intersection of the Baker County, Duval County and Nassau County lines; thence northeasterly along the Duval County-Nassau County line to the centerline of New Kings Road; thence southeasterly along centerline of New Kings Road to the southerly right-of-way of Interstate 295; thence northeasterly along the southerly right-of-way of Interstate 295 to the northerly centerline of Trout River; thence meander easterly along centerline of Trout River to the centerline of unnamed creek; thence meander southerly along the centerline of the unnamed creek to the centerline of Trout River Boulevard; thence easterly along centerline of Trout River Boulevard to the centerline of Gibson Avenue; thence southerly along the centerline of Gibson Avenue to the centerline of Soutel Drive; thence southwesterly along centerline of Soutel Drive to the centerline of Archery Avenue; thence westerly along centerline of Archery Avenue to the centerline of Sibbald Road; thence southerly along Sibbald Road to the centerline of Soutel Drive; thence southwesterly along centerline of Soutel Drive to the centerline of Moncrief Road; thence southeasterly along centerline of Moncrief Road to the northwesterly boundary line of Urban Services District One; thence southerly and easterly along the boundary line of Urban Services District One to the centerline of the St. Johns River; thence southerly along the centerline of the St. Johns River to the Duval County-Clay County line; thence westerly along the Clay County-Duval County line to the point of beginning; excepting that part lying within Urban Service District Five.