

CITY OF DESTIN



# AGENDA ITEM

**COUNCIL MEETING DATE:** August 1, 2022  
**TYPE OF AGENDA ITEM:** Ordinance  
**AGENDA OUTLINE NUMBER:** 5.A.

---

**TO:** City Council

**THRU:** Michael Burgess, Public Services Director  
Jeffrey Cozadd, Grants Manager  
Krystal Strickland, Finance Director  
Kyle Bauman, City Attorney  
Lance Johnson, City Manager

**FROM:** Webb Warren, Deputy City Manager

**DATE:** 7/1/22

**SUBJECT:** Second reading of Ordinance 22-09-CN - Exclusive Solid Waste Franchise Agreement with Waste Management, Inc, of Florida

---

**I. BACKGROUND:** The City of Destin is in the final year of a five-year solid waste services franchise agreement with Waste Management, Inc, of Florida (WM). This franchise agreement will expire on September 30, 2022.

The current standard residential rate (effective Oct 1, 2021) for Destin residents is:

Monthly \$22.78  
Quarterly \$68.35  
Annual \$273.40

The current Destin contract also provides for a discounted senior service at \$18.63 monthly/\$223.50 annually.

The current agreement provides residential services as follows:

- Twice a week solid waste service (96 gallon)
- Once a week recycling service (96 gallon)
- Once a week bulk pickup
- Once a week yard waste pickup

**October 2021-September 2022 Full Rate Sheet**

City of Destin, Florida 2021 CPI 3.45%

ATTACHMENT "A"							
BASE RATES October 2021							
Commercial Establishment Rates							
These Rates do not include additional service requirement such as casters, opening gates, compactors, etc. Commercial Establishments that only require one 96-gallon cart will receive service two times per week at curbside and will be billed at the same rate as a two-yard container serviced one time per week. Commercial establishments shall be billed for the rate of service required and will not receive recycling services.							
Multi-Family: Multi – Family units that are serviced by Front Load Dumpsters will be billed to one entity based on the Commercial Establishment Rates for the service required and will not receive recycling service. Multi – Family units that are serviced by carts will be billed at the Residential Rate and shall receive recycling and horticultural waste pickup.							
Residential							
All Commercial Rates are per Month DER Price Group							
	1	2	3	4	5	6	7
2 yard container	\$92.09	\$176.24	\$260.63	\$344.91	\$429.19	\$513.44	\$600.73
4 yard container	\$114.21	\$218.46	\$322.70	\$426.94	\$531.18	\$635.42	\$743.44
6 yard container	\$138.65	\$262.87	\$387.08	\$511.30	\$635.51	\$759.73	\$888.88
8 yard container	\$160.09	\$304.27	\$448.45	\$592.65	\$736.83	\$881.04	\$1,030.80

Residential	DER Price Group
Residential Service With Recycling and Carts	\$ 273.40 Annual \$ 22.78 Monthly
Senior Citizen Residential Rates	\$ 223.50 Annual \$ 18.53 Monthly
Second Cart Residential Rates	\$ 158.40 Annual \$ 13.20 Monthly

Rates including 1% Franchise Fee and \$6.00 Annual Billing Fee:

	Monthly		
Rate Monthly	\$ 22.56	\$ 18.44	\$ 13.07
Franch. Fee	\$ 0.23	\$ 0.18	\$ 0.13
Total Rate	\$ 22.78	\$ 18.63	\$ 13.20
Quarter	\$ 68.35	\$ 55.88	\$ 39.60
Annual	\$ 273.40	\$ 223.50	\$ 158.40

Regular  
Senior  
2nd Cart

VIP Compactors: 2021 CPI

	1	2	3	4	5	6	7
2	\$ 144.17	\$ 271.73	\$ 399.32	\$ 526.93	\$ 631.48	\$ 849.14	\$ 1,039.58
4	\$ 186.56	\$ 351.56	\$ 516.48	\$ 681.46	\$ 846.46	\$ 1,098.12	\$ 1,344.44
6	\$ 231.95	\$ 434.33	\$ 636.75	\$ 839.08	\$ 1,087.50	\$ 1,350.45	\$ 1,310.65
8	\$ 271.88	\$ 511.66	\$ 751.42	\$ 991.17	\$ 1,284.63	\$ 1,596.76	\$ 1,954.84

8/24/2021 2:23 PM

Destin CPI 10-01-2021 Rate Sheet Oct 2021

Destin and surrounding area current contract comparisons:

LOCATION	CONTRACTOR	SERVICE/GARBAGE	SERVICE/RECYCLING	SERVICE/YARD WASTE	SERVICE/BULK	COST/MONTH/RESIDENT
Destin, FL	Waste Management	2x/wk garbage	1x/wk recycling	1x/wk yard waste	Provided	\$22.78
Okaloosa County	Waste Management	2x/wk garbage	1x/wk recycling	1x/wk yard waste	Provided	*\$29.99
Santa Rosa County	Waste Pro	1x/wk garbage	subscription only	1 item/month	Provided	\$25.75 (\$9.89 Recycling) \$35.64
Escambia County	ECUA	1x/wk garbage	1x/wk recycling	1x/wk yard waste	None	\$24.54
Fort Walton Beach	FWB	1x/wk garbage	1x/wk recycling	1 item/month (\$30 each add. item)	Provided	\$22.63
Panama City Beach	Waste Pro	1x/wk garbage	1x/wk recycling	1 item/month	Provided	\$37.00

\* New rate effective April 1, 2022

Unincorporated areas of Okaloosa County have a similar service contract to Destin's with Waste Management.

The Okaloosa Board of County Commissioners voted on March 15 to renew their contract (effective April 1, 2022) with Waste Management. This was done under the direction of the County Commissioners for staff to negotiate a new contract with Waste Management. The unincorporated Okaloosa County residential rate increased under the new contract from \$25.90 to \$29.23 per month (15% increase), plus a county \$.76 remediation fee, for a total of \$29.99.

Staff have received a low number of complaints since 2017 regarding our solid waste services. Since 1/01/2021, the City has received 11 complaints and 37 compliments on Destin's solid waste services.

At the March 21, 2022 City Council Meeting, the City Council directed the City Manager to negotiate a renewal of the solid waste contract with Waste Management and to bring information back to the City Council in May of 2022.

Staff worked with representatives from Waste Management to structure proposed services very similar to current contract levels. The current contract and service levels have resulted in a low number of complaints.

Staff brought forth an agenda item in May with the results of the negotiations with Waste Management. Below are the proposed rates for a new 5 year franchise agreement for Destin, with a 3% franchise fee, and a contract effective October 1, 2022.

Residential rates are proposed to be \$307.20 annually / \$76.80 quarterly / \$25.60 monthly.

Commercial Establishment Rates							
These Rates do not include additional service requirement such as casters, opening gates, compactors, etc. Commercial Establishments that only require one 96-gallon cart will receive service two times per week at curbside and will be billed at the same rate as a two-yard container serviced one time per week. Commercial establishments shall be billed for the rate of service required and will not receive recycling services.							
Multi-Family Residential	Multi – Family units that are serviced by Front Load Dumpsters will be billed to one entity based on the Commercial Establishment Rates for the service required and will not receive recycling service. Multi – Family units that are serviced by carts will be billed at the Residential Rate and shall receive recycling and horticultural waste pickup.						
All Commercial Rates are per Month DER Price Group							
	1	2	3	4	5	6	7
2 yard container	110.02	210.56	311.37	412.07	512.76	613.41	717.69
4 yard container	136.45	261.00	385.53	510.56	634.60	759.13	888.18
6 yard container	165.65	314.05	462.44	610.85	759.24	907.65	1061.94
8 yard container	191.26	363.51	535.76	708.03	880.29	1052.58	1231.49

Residential	DER Price Group
Residential Service With Recycling and Carts	<b>\$ 307.20 Annual</b> <b>\$ 25.60 Monthly</b>
Senior Citizen Residential Rates	<b>\$ 251.40 Annual</b> <b>\$ 20.95 Monthly</b>
Second Cart Residential Rates	<b>\$ 178.56 Annual</b> <b>\$ 14.88 Monthly</b>

Rates including 3% Franchise Fee and \$6.00 Annual Billing Fee:			
Monthly			
Rate Monthly	\$ 24.83	\$ 20.32	\$ 14.43
Franch. Fee	\$ 0.77	\$ 0.63	\$ 0.45
Total Rate	\$ 25.60	\$ 20.95	\$ 14.88
Quarter	\$ 76.80	\$ 62.85	\$ 44.64
Annual	\$ 307.20	\$ 251.40	\$ 178.56

Regular
Senior
2nd Can

**VIP Compactors: Proposed 2022**

	1	2	3	4	5	6	7
2	\$ 185.25	\$ 358.92	\$ 532.59	\$ 706.27	\$ 879.96	\$ 1,053.63	\$ 1,253.63
4	\$ 229.74	\$ 445.74	\$ 661.74	\$ 877.73	\$ 1,093.73	\$ 1,309.70	\$ 1,509.70
6	\$ 278.92	\$ 539.84	\$ 800.75	\$ 1,061.67	\$ 1,322.53	\$ 1,583.50	\$ 1,783.50
8	\$ 322.04	\$ 624.90	\$ 927.77	\$ 1,230.65	\$ 1,533.51	\$ 1,836.38	\$ 2,036.38

**II. DISCUSSION:** Staff brought updates to council in March and May of 2022 concerning the status of the negotiations and requested feedback on a potential contract.

Staff brought forward a draft ordinance to the June 20th, 2022 City Council meeting for Council review. In that meeting, staff took feedback from Council and then worked with Waste Management to revise portions of the ordinance.

- 1.) Glass was added to the recycling list.
- 2.) The measurement of "overage" in relation to an open lid was changed from 6" to 12".
- 3.) Contamination rate was increased from 10% to 20%.
- 4.) Percentage fees in relation to overage and contamination charges were changed to flat rates (\$5 for overage, \$10 for contamination).

- 5.) The effective date of the franchise agreement was changed to October 1st, 2022
- 6.) The language dedicating franchise fees to parks and stormwater funds was removed.
- 7.) The franchise fee was drafted at 3%.

On July 11, during the first reading of the ordinance, feedback was received concerning overages and contamination charges within the ordinance. Since that time, those definitions and charges have been removed from the ordinance. These removals do not necessitate that the ordinance goes back to first reading.

**A. Link to Strategic Goals / Objectives:** Financially sound city providing service excellence/ a green and sustainable environment

**B. Effect on Budget (EOB):** This item does not affect the FY 2022 Budget.

This will increase general fund revenues beginning with Fiscal Year 2023 from \$43,500/year (at prior agreement of 1%) up to \$130,500/year (at newly adopted 3%).

**C. Level of Service (LOS):** Same

**D. Legislative Sponsor:**

**III. CONCLUSION:** Staff included ordinance language as Council discussed at the June 20th Council Meeting. Staff took feedback from the July 11th meeting and Waste Management proposed to remove verbiage from the ordinance as it relates to residential overage and contamination charges.

**IV. RECOMMENDED MOTION:** I move to adopt Ordinance 22-09-CN on second reading.

Attachments:

1. ATT1 - Ordinance 22-09-CN- Exclusive solid waste franchise agreement with Waste Management Inc of Florida
2. ATT2-  
wm\_email\_July18\_2022
3. ATT3 - Marked Up Version of Ordinance 22-09-CN- Exclusive solid waste franchise agreement with Waste Management Inc of Florida (FOR REFERENCE ONLY)

ORDINANCE --22-09-CN

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA PROVIDING FOR THE EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC. OF FLORIDA, A PRIVATE CORPORATION, FOR THE COLLECTION AND DISPOSAL OF ALL RESIDENTIAL AND COMMERCIAL TRASH, GARBAGE, AND OTHER REFUSE WITHIN THE CITY LIMITS; PROVIDING FOR THE COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS WITHIN THE CITY LIMITS; PROVIDING FOR DEFINITIONS; GRANT OF FRANCHISE; LIMITS OF FRANCHISE; TERM; FRANCHISE CONSIDERATION; ASSIGNMENT; BANKRUPTCY OR INSOLVENCY; DEFAULT; RATE CHANGES; RIGHTS OF FIRST REFUSAL; RESTORATION; COMPLIANCE WITH LAWS; LIABILITY INSURANCE, HOLD HARMLESS, WORKERS COMPENSATION; PERFORMANCE BOND; RIGHT TO REQUIRE PERFORMANCE; DISPUTE RESOLUTION; OPERATIONS DURING DISPUTE; STANDARD OF PERFORMANCE; CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL; RECYCLING PROGRAM; COLLECTION SERVICES AND OPERATIONS; OFFICE AND COLLECTION HOURS; COLLECTION EQUIPMENT; DISPOSAL ROUTES AND SCHEDULES; GRANTEE PERSONNEL; SPILLAGE AND LITTER; STORMS AND OTHER EMERGENCIES; NONDISCRIMINATION PROVISION; RATES AND CHARGES; RATE CHANGES; DELINQUENT ACCOUNTS; ACCOUNTING, RIGHT TO AUDIT; COMPLAINTS; CHARGES FOR FAILURE OF PERFORMANCE; VENUE; SOVEREIGN IMMUNITY; CONFLICTING ORDINANCES AND RESOLUTIONS; SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, the City of Destin finds it in the public interest to ensure that high quality refuse collection and disposal service is maintained through a responsive complaint handling procedure; and

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

WHEREAS, Waste Management Inc. of Florida (“Waste Management”) was first granted an exclusive franchise to service the City of Destin and its citizens’ solid waste disposal needs on October 1, 2011, after a competitive bidding process; and

WHEREAS, Waste Management was again awarded an exclusive franchise to service the City of Destin and its citizens' solid waste disposal needs on October 1, 2017, after a competitive bidding process; and

WHEREAS, on October 13, 2021, Waste Management provided written notice to the City of Destin that it desired to negotiate a new franchise agreement due to the current franchise agreement's impending end of term on October 1, 2022; and

WHEREAS, Waste Management has provided a positive impact on the City of Destin and the health, safety, and welfare of its citizens by enhancing the beauty and quality of the environment, preventing the spread of disease, and the creation of nuisances through reliable and dependent services from a single unified source; and

WHEREAS, the City Council considered issuing a Request for Proposals and otherwise competitively bidding the provision of solid waste services to the general market; and

WHEREAS, likely due to unique circumstances stemming from COVID-19 and its cascading negative impacts on the world and specifically the economy, and based upon review of competitive bidding of solid waste disposal services by similarly situated local governments, it is most cost effective to the City of Destin to negotiate an extension of the solid waste disposal franchise with Waste Management as opposed to issuing a Request for Proposals or otherwise competitively bidding the solid waste disposal franchise; and

WHEREAS, overall, the rates described in this Ordinance are more advantageous for the City of Destin and its citizens when compared with similarly situated local governments; and

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

WHEREAS, this Ordinance has superseded Ordinance 11-25-CN, Ordinance 16-16-CN, ~~and~~ Ordinance 11-04-CN, and Ordinance 17-18-CN pursuant to the authority of Section 166.021 and Chapter 403, Part IV, Florida Statutes.

## SECTION 1. DEFINITIONS.

*"Bulky Waste"* shall mean large items of solid waste such as, mattresses, and other oversize wastes whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.

*"Cart"* shall mean a roll out cart receptacle with two wheels and a properly designed axle and fittings, and a top lid that is to remain closed except when loading refuse, with a body consisting of approximately ninety (90) to ninety-six (96) gallons in capacity, constructed of heavy duty plastic and having the strength to store normal household garbage and refuse and equipped with proper attachments for hydraulic loading into the Contractor's collection vehicle by the hydraulic lifts affixed to such vehicle body.

*"Commercial container"* shall mean any portable, nonabsorbent, enclosed container with a close fitting cover, or doors, approved by the Grantor, which is used to store large volumes of refuse. A commercial container must be capable of being serviced by mechanical equipment.

*"Commercial establishment"* shall mean any public or private place, building or enterprise devoted in whole or in part to business purposes, whether for profit or not-for-profit; except where such place,

building or enterprise constitutes a single-family residence or multiple dwelling of four (4) units or less. A multiple dwelling of five (5) units or more shall be considered a commercial establishment unless there is no homeowners' association for such structure or if there is insufficient room for a commercial container. Duplexes, triplexes and condominiums/ townhouses with four units or less where the individual units are privately owned and used for commercial purpose are not commercial establishments within this definition unless commercial containers are used.

*"Commercial rubbish and trash"* shall mean combustibles such as paper, wood and yard trimmings, and noncombustibles such as metal, plastic, glass, stone and dirt.

*"Commercial solid waste"* shall mean garbage, rubbish and trash, resulting from the normal activities of establishments utilizing containers of one (1) cubic yard capacity or more. *"CPI"* as used herein shall be the revised Consumer Price Index for all Urban Consumers South Urban for all items, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor, 1984-82 = 100. In the event the U.S. Department of Labor Statistics ceases to publish the CPI, the parties hereby agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available.

*"Curb Service"* shall mean a single collection point within five (5) feet of the edge of the road.

*"Customer"* shall mean individual or business (residential or commercial) receiving collection services.

*"Construction Debris"* shall mean waste building materials resulting from construction, remodeling, repair or demolition operations.

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

*"Duplex Residence"* shall mean and include an attached two family structure designed or intended for occupancy by two (2) families.

*"Garbage"* shall mean every accumulation of waste (animal, vegetable and/ or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers); and all putrescible or easily decomposable animal or vegetable waste matter which is likely to attract flies or rodents.

*"Garbage Cart"* shall mean the plastic receptacle furnished by the Grantee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) upon request with the Grantor's approval.

*"Grantee"* shall mean Waste Management Inc. of Florida, who is granted this exclusive franchise and hereby undertakes to perform each and every obligation assigned herein and hereby agreed to.

*"Grantor"* shall mean the City of Destin, Florida.

*"Gross Quarterly Dollar Customer Billings"* shall mean the total quarterly invoice amount billed to Destin residents for collection and disposal of all residential trash, garbage, and other refuse within the city limits, including landfill tipping and/ or transfer station fees.

*"Gross Revenue "* shall mean and include any and all fees received by Grantee which were generated within the service area pursuant to this franchise with the exception of those fees associated with storms and other emergencies as defined in Section 27.

*"Handicapped Service"* shall be household garbage and recycling service at the rear or side of a residence for handicapped persons approved by Grantor for special service.

*"Hazardous Waste"* shall mean waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law. For purposes of this franchise, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans, and any items containing chlorofluorocarbons.

*"Horticultural Trash"* shall mean shrubbery cuttings, or clippings, palm fronds, small tree branches (not to exceed six (6') feet in length and four (4) in diameter), bushes or shrubs, or other organic matter generated as refuse in the care of lawns, gardens, hedges, bushes and trees. Large branches, trees or bulky or non-combustible materials not susceptible to normal loading and collection in "load packer" type sanitation equipment used for regular collections from domestic households, and stumps and tree trunks in excess of four (4) inches in diameter are not included in this definition.

*"Multifamily Residences "* shall mean multiple dwelling units of five (5) units or more.

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

*"Plastic liner"* shall mean a plastic bag no larger than a thirty-five (35) gallon garbage can of sufficient strength to hold contents securely tied at top and not to exceed fifty (50) pounds when full.

*"Recyclable Materials"* shall mean newspaper, glass containers, aluminum and steel cans, plastics and such other materials identified by the Grantor during the term of this franchise.

*"Recycling Containers"* shall mean the receptacles purchased and distributed on behalf of the Grantor by the Grantee for the intended use as a receptacle of Recyclable Materials.

*"Recycling Service Area"* refers to the corporate limits of the City of Destin, Florida as hereafter amended through annexation.

*"Roll-off Container"* shall mean any container (open top or enclosed for compacting) used for the collection and storage of construction, demolition debris, or garbage rubbish that can be picked up and transported on a specially equipped truck to the disposal site.

*"Rubbish"* non-recyclable solid wastes or refuse, excluding garbage consisting of both combustible and noncombustible trash.

*"Senior Program"* – City residents, where there are no more than two persons residing in the dwelling and at least one of those two is age 65 or over by October 1st of the current year who, upon application to the Grantee, are determined Grantee, using guidelines established by the City to be eligible for this Senior Program, will receive discounted rates and reduced level of service.

*"Single Family Residence"* shall mean and include a detached single family structure designed for



occupancy by one person or by one family. Each mobile home, trailer, townhouse or condominium (if located in a building with four (4) or less connected units) shall be deemed a "residence" and each such townhouse/ condominium unit shall be deemed a single family structure unless the townhouse/ condominium building uses commercial containers. Each unit of a residential duplex or triplex shall be deemed a "residence" unless the duplex or triplex uses commercial containers.

*"Solid Waste"* shall mean 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, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in s. 403.703(7), Florida Statutes, are not solid waste.

*"Special material"* shall mean bulky materials or other special wastes that are not stored in standard storage containers and cannot be picked up by a normally used collection vehicle. Wastes such as major appliances, furniture, building materials, tree limbs, noncontainerized trash piles and any unusually large amount of refuse not suitable for containerization will be picked up as a special service of the Grantee and billed separately to the customer on the basis of labor, truck costs and dumping charges. All fees received by the Grantee for the collection of special material on a special service basis are subject to the City's franchise fee.

## SECTION 2. GRANT OF FRANCHISE.

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

## SECTION 3. LIMITS OF FRANCHISE.

This franchise covers the corporate limits of the City of Destin, Florida, as those corporate limits may change from time to time. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

## SECTION 4. TERM.

A. The franchise shall be granted from the date of this franchise for a period of five (5) years beginning on October 1, 2022 unless sooner terminated by reason of breach of the terms hereof by the Grantee which result in the failure of the Grantee to provide effective and efficient service.

B. This franchise may be automatically renewed under the same terms, conditions and limitations as contained herein, unless Grantor or Grantee shall give notice to the other of an intent to cancel or renegotiate, which notice shall be in writing, delivered by United States Mail, return- receipt requested and posted no sooner than twelve (12) months, and no later than nine (9) months before the initial termination date of this franchise. Said notice may also be delivered by hand within the above time frame,

and if so delivered, a receipt thereof signed by an authorized agent of the Grantor or of the Grantee as applicable, shall be evidence of delivery.

#### SECTION 5. FRANCHISE CONSIDERATION.

Grantee shall pay to the Grantor a franchise fee equal to the sum of three (3%) percent of the gross quarterly dollar commercial establishment customer billings. Payment to the Grantor shall be made four (4) times per year, in March, June, September and December, within ten (10) days of each quarter and without demand by Grantor. A late fee of 20% of the total quarterly payment shall be assessed by the Grantor on all late payments. It is further understood and agreed that the franchise fee paid pursuant to this franchise shall not be added on as a separate item on the occupant's or resident's garbage collection bills, but rather shall be considered as an operational expense. Residential customers billed by the Grantor will pay a three percent (3%) franchise fee as part of their billing.

The franchise fee may be changed by the City with approval of the City Council once a contract year (Oct. 1 – Sept. 30), upon adoption of an ordinance and after two readings at duly noticed public hearings. Any changes to the franchise fee will become effective on October 1 following adoption and passage of the ordinance. The Grantor shall provide notice of the change to the Grantee at least ninety (90) days prior to the next billing period.

#### SECTION 6. ASSIGNMENT.

A. The franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the express approval of the Grantor, which shall be reflected by a resolution of Grantor adopted by its governing body. In the event of such an assignment, Grantee shall cause its assigns to execute an Agreement of Acceptance, subject to the approval of the Grantor, evidencing that such assignee accepts the assignment subject to any and all terms, conditions and limitations imposed hereby and which acceptance shall include an affirmative statement evidencing such Assignee's intent to fulfill the obligations imposed by Grantor in contemplation hereof. Notwithstanding the Grantor's approval of such an assignment and assignee's acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

B. A transfer of more than fifty-one percent (51%) of the issued outstanding stock of Grantee shall constitute an assignment for the purpose of this section. Likewise, any transfer of the voting rights attendant to fifty-one percent (51%) or more of the issued or outstanding stock of Grantee shall constitute an assignment for the purposes hereof.

#### SECTION 7. BANKRUPTCY OR INSOLVENCY.

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

## SECTION 8. DEFAULT.

A. Failure on the part of the Grantee to comply in any material respect with any of the provisions of this ordinance shall be grounds for a forfeiture of this franchise, but no such forfeiture shall take effect until Grantor has served upon the Grantee written notice of default setting forth the nature and extent thereof. Following receipt of the notice of default, Grantee shall have 24 hours to collect any garbage or trash that was not collected at the regularly scheduled pick up time and shall have fourteen (14) days to correct, or to notify the City of the means, subject to City approval, by which the Grantee intends to correct, other identified defaults. If Grantee disagrees with the reasonableness or propriety of Grantor's notice of default, Grantee may protest such default by filing with the City Clerk a written protest within 2 hours of receipt of Grantor's notice regarding a missed trash/ garbage pickup and within five (5) days of receipt of Grantor's notice for other identified defaults.

B. If the Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's notice of default, then the issue shall be resolved by a court of appropriate jurisdiction located in Okaloosa County, Florida, which shall be the exclusive venue for such a dispute.

## SECTION 9. RIGHTS OF FIRST REFUSAL.

In the event Grantee shall at any time during the term of this Ordinance desire to sell the disposal service then existing and shall have received a bona fide offer from any other person, firm, corporation or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, the Grantee shall within ten (10) days after receipt of such bona fide offer advise the Grantor in writing of the purchase price and other terms and conditions of such offer, and the Grantor for a term of thirty (30) days after giving of such notice shall have the option to purchase the disposal service from Grantee upon the terms and conditions as set forth in said offer. In the event the Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, Grantee shall have the right to sell the disposal service to the prospective purchaser thereof, subject to the terms of Section 6 of this franchise.

## SECTION 10. RESTORATION.

The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered. The Grantor and Grantee shall meet at least quarterly to review damage to public streets and rights-of-way to assess costs and scheduling of repairs.

## SECTION 11. COMPLIANCE WITH LAWS.

Grantee shall conduct operations under this franchise in compliance with all applicable laws. Grantee specifically agrees to be solely responsible for the enforcement, administration and compliance with all applicable provisions of Chapter 403, Part IV, Florida Statutes, and future amendments thereto. Furthermore, Grantee shall be responsible for the necessary promotion and educational activities required to familiarize the general public with the recycling mandates.

## SECTION 12. LIABILITY INSURANCE; HOLD HARMLESS; WORKERS COMPENSATION.

Grantee shall carry public liability insurance to the extent of Five Million (\$5,000,000) Dollars for the death of or injury to more than one person or property damage insurance to the extent of One Million (\$1,000,000) Dollars, upon each of the trucks or other vehicles used in carrying out the work called for in this franchise, such insurance expressly to cover both the Grantor and the Grantee. A certificate showing

that the Grantee has in force and effect the aforesaid insurance shall be filed with the Grantor within ten (10) days from the execution of the franchise, and yearly thereafter at least thirty (30) days prior to the date of the expiration of said policies or insurance for each year of said franchise. The aforesaid insurance shall be of such form and written by such companies as are approved by the Grantor and also shall contain an advance of the cancellation of the insurance. Said policies of insurance shall name Grantor as additional insured.

The Grantee will defend, indemnify, save harmless, and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from or based on (i) violation of applicable laws, ordinances, rules or regulations by the Grantee, its agents or employees; (ii) injury to persons or damage to property arising out of the Grantee's or its agents' and/ or employees' intentional, willful or negligent acts or omissions in the performance of this Franchise Agreement or for injury or damage caused outside the scope of this Franchise Agreement but for which Grantee, its officers, agents, servants, or employees are responsible.

Grantee shall carry Workers Compensation insurance on all its employees and show proof of insurance and payment of premiums thereon to the Grantor, as requested. All such Workers Compensation policies shall provide for notice by the insurer to the Grantor at least sixty (60) days prior to any termination, revocation or modification thereof.

#### SECTION 13. PERFORMANCE BOND.

Grantee shall furnish to the Grantor a performance bond, in a form approved by the Grantor, for the faithful performance of this franchise and all of the obligations arising hereunder in the amount of One Million(\$1,000,000.00) Dollars. Said bond shall be executed by a surety company approved by Grantor and licensed to do business in Florida.

#### SECTION 14. RIGHT TO REQUIRE PERFORMANCE.

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

#### SECTION 15. DISPUTE RESOLUTION.

If any controversy shall arise between the parties either party may pursue all available legal remedies in the appropriate Okaloosa County, Florida court, which shall be the exclusive venue for any dispute.

## SECTION 16. OPERATIONS DURING DISPUTE.

A. In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to the terms and conditions, performance or compensation required under this franchise, the Grantee shall continue to render service in full compliance with all terms and conditions of this franchise regardless of the nature of the dispute.

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

C. If the term of this franchise is not renewed, Grantee shall continue to provide service for at least ninety (90) days following expiration or until a substitute Grantee is in place, whichever comes first, but shall not continue service past 120 days.

## SECTION 17. STANDARD OF PERFORMANCE.

A. If the Grantee fails to collect the materials herein specified for a period in excess of three (3) consecutive scheduled working days or fails to operate the system in a satisfactory manner for a similar period, the Grantor may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other causes beyond the reasonable control of Grantee):

1. At its option, after written notice to the Grantee, take over and operate any or all of the Grantee's equipment used in the performance of this franchise until such time as the Grantee is again able to carry out its operation satisfactorily, as determined solely by the Grantor. Any and all operating expenses incurred by the Grantor in so doing may be charged to the Grantee.

2. Enter into contract(s) or agreement(s) with another qualified firm(s) to provide solid waste collection and disposal until such time as the Grantee is again able to satisfactorily fulfill its responsibilities under this franchise as determined solely by the Grantor.

B. During such period, the liability of the Grantor to the Grantee for loss or damage to the equipment used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability. The liability of the Grantee to third parties shall continue and all claims or demands arising out of the operation of the collection service shall be directed solely to the Grantee and Grantor shall be treated as an agent of the Grantee for purposes of determining liability.

## SECTION 18. CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL.

A. Grantee shall be required to provide recycling to all residential customers. Grantee shall not be required to provide multifamily residences or commercial customers with recycling.

B. Grantee shall collect all residential recycling materials in the corporate limits of the City, transport and provide for recovery of said residential recyclable materials at a designated recovery facility. The Grantee shall perform such services as are required to provide a complete residential recyclable materials program.

C. Collection of recyclable materials shall be at curbside or other such locations as will

provide ready accessibility to the Grantee's collection crew and vehicle. In the event an appropriate location cannot be agreed upon, the Grantor shall designate the location. Handicapped residents shall be accommodated at no additional fee.

D. The Grantee shall pick up all recyclable materials which have been properly prepared for collection and placed in recycling carts and placed at the curbside from all single family residences. The Grantee shall distribute one (1) 96-gallon cart to hold recyclable materials to be collected to each single family residence within the service area. The cart shall be replaced by the Grantee as required. The Grantee shall maintain an adequate supply of carts at all times. Grantee shall retain ownership of the carts. Residents may retain 18 gallon bins previously distributed, place them by or in the recycling cart for removal. Information and instructions about the recycling program will be provided with the recycling cart.

E. All refuse and recyclable materials hauled by the Grantee shall be so contained, tied or enclosed that leaking, spilling or blowing are prevented.

F. The Grantee shall make collections with as little noise and disturbance to the residents as possible and in conformance with the City's Noise Ordinance. Grantee shall handle recycling carts with reasonable care and return them to the approximate curbside location from which they were collected. Any recyclable materials spilled by the Grantee shall be picked up immediately. Recycling carts shall be thoroughly emptied and left at the point of collection. Grantee shall develop a procedure for handling placement of incorrect material in the recycling carts by residents, preferably a notice reminding the resident of acceptable materials.

G. Grantee shall collect recyclable materials within the service area one (1) time per week. The day of collection shall be the same day as one of the regular collection days for solid waste preferably the first collection of the week. However, pickups normally scheduled on a holiday shall be rescheduled for the next regularly scheduled pickup day.

H. Grantee will provide at no additional cost to Grantor an eight (8) yard recycling container at the Public Services Facility for use by residents and visitors.

I. Grantee will provide at no additional cost an eight (8) yard recycling container at the Norriego Point parking lot for use by residents and visitors.

J. Grantee will provide at no additional cost to Grantor up to three (3) additional eight (8) yard recycling containers for use by residents and visitors at Grantor's requested location.

#### SECTION 19. RECYCLING PROGRAM.

A. The Grantee shall be responsible for maintaining the information and records adequate to determine participation rates and weekly setout rates by volume of solid waste diverted from landfill by percent, weight of items recycled, neighborhoods above or below average participation. . The Grantee shall furnish quarterly diversion report to the City. Reports shall be on forms and in a format required by the Grantor.

B. Grantee agrees to meet on a semiannual basis with the Grantor's Environmental/ Tree Committee or, if such a committee is not standing, then the City's Parks and Recreation Committee to discuss ways to increase recycling throughout the City, at a time mutually agreed to by both parties to this agreement.

## SECTION 20. COLLECTION SERVICES AND OPERATIONS.

### A. Residential

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up from the curbside adjacent to each residence all garbage, rubbish, and residential wastes (household garbage) two (2) times a week from Carts provided by Grantee; collection of horticultural trash and bulky waste shall be one (1) time per week on days agreed upon by the Grantee and Grantor. Instructions regarding regular solid waste collection, Bulky Waste collection and Horticultural Waste collection shall be provided by Grantee on the 96 gallon Cart provided to residents. However, pickups normally scheduled to be made on a holiday shall be rescheduled for the next regularly scheduled pickup day. Grantee agrees to collect additional Rubbish outside of the Cart only on the next service day after Christmas generated by Holiday festivities. Such additional Rubbish shall be bagged, bundled or contained, to avoid scattering and each bag, bundle or container shall weigh less than fifty pounds. Grantee, at his sole expense, shall notify residences served of the holiday observed and regular pickup schedules at least five (5) days in advance by publication or other means approved by Grantor.

(a) Holidays: The following holidays may be observed by Grantee for purposes of this franchise: New Year's Day, Thanksgiving Day and Christmas Day.

(b) Schedule: Regularly scheduled pick up days for household garbage shall be Tuesday and Friday; Tuesday will be the day for recycling and Wednesday and/or Friday will be the day for horticultural trash collection. However, all schedules and routes are subject to being rescheduled as mutually agreed to by the Grantor and Grantee. The Grantor, at the request of the Grantee or on its own, may extend, suspend or modify these schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

2. Quantity: Grantee shall be required to pick up all garbage and rubbish generated at residential premises, provided same is placed in the garbage cart. Grantee shall also be required to furnish an additional cart when requested and paid for by residents at an additional fee of \$\_\_\_\_ See Exhibit A\_\_\_\_ per month billed annually at \$\_\_\_\_ See Exhibit A\_\_\_\_ and adjusted annually to reflect the change in the WST CPI from the prior twelve month period ending in June.

3. Collections. All collections shall normally be made in residential areas no earlier than 6:00 a.m. and no later than 6:00 p.m., with no service on Sunday and select holidays, except in declared emergencies. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Garbage carts shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found at the curbside. All work shall be done in a safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee. Missed pickups and minor issues shall be resolved within 24 hours. All other problems must be resolved or a cure initiated within seven (7) days.

4. Bulky Waste Collection: Grantee shall collect bulky waste placed at the curbside for collection once a week on a day agreed upon by Grantee and Grantor. Bulky Waste shall include up to six (6) cubic yards of material. Grantee shall provide additional Bulky Waste collection to residential customers at a rate agreed to between Grantee and resident. The resident shall be responsible for payment for these additional services.

5. Special services: Services such as back door collection, below ground collection, removal of any refuse other than garbage or rubbish as defined herein or additional pickups shall be provided on a separate fee basis upon terms agreed to by the Grantee and the customer. Grantee shall provide the requested special services within two (2) business days after reaching agreement with customer as to the rate for such services. Requests for pickups of special materials as defined herein shall be considered as requests for special pickup services. Charges for special services shall not be unreasonable or excessive. Household garbage services shall be provided at the rear or side residence for handicapped persons approved by the Grantor at no extra charge. Smaller sixty-four (64) gallon carts will be made available to special needs customers (handicapped or elderly) upon request by Grantor.

6. Exempt customers: Residents or occupants who, upon application to the Grantor pursuant to Section 12-86, Destin City Code, are determined by the City Manager to be unable to pay the collection and disposal fee due to hardship or inability shall be exempt from the payment of collection fees. Any customer desiring to be considered for exempt status needs to apply by April 15<sup>th</sup> of each year.

7. Public Right of Way Collection: Grantee shall collect at no additional charge to Grantor, illegally dumped materials such as Horticultural trash, furniture and Bulky Waste disposed of in the City right of ways; provided such collections do not require the use of a special truck not normally used in Grantee's collection of waste pursuant to this Agreement.

8. Senior Program: City residents, where there are no more than two persons residing in the dwelling and at least one of those two is age 65 or over by October 1st of the current year who, upon application to the Grantee, and using guidelines established by the City to be eligible for a senior program, will receive discounted rates as determined in Section 29 (A). 1. The City of Destin may enforce other restrictions/ criteria to be eligible for this discount. The level of service for the senior program for collection of garbage will be once a week and picked up on the first day of weekly collection service for the route which services their address. All other services (recycling and horticultural waste) will be the same as other residential customers.

9. Waste Receptacles:

- (a) Garbage: Garbage shall be placed for collection separately from rubbish and shall be placed in the garbage carts furnished by the Grantee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) upon request with the Grantor's approval.
- (b) Horticultural trash: Horticultural trash must be canned, bagged and/ or stacked and shall not weigh more than fifty (50) pounds per container or stack, and shall not be in excess of six (6) feet in length or four (4) inches in diameter. Total volume per each horticultural debris service day pickup shall not exceed two (2) cubic yards (approximately the amount which can be placed in the bed of a standard pickup truck). Grantee will not remove stumps or tree trunks in excess of four (4) inches, in diameter.

10. Hazardous materials: Grantee shall not be required to collect hazardous materials.

11. Location of residential waste for collection: Persons in occupancy of each residential establishment shall place their garbage carts at the curb no sooner than 12:00 p.m. the day before



a scheduled pick-up and shall remove the garbage carts by midnight of the day of the pick-up, unless: the occupant or resident has been approved for back door or side door pickup or the occupant or resident has negotiated a special service collection at another location.

10. Customer restrictions: Grantee shall not be required to collect residential waste when such waste is not generated on the residence served. Grantee shall have the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

B. Commercial

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up all garbage, rubbish, and wastes. However, pickups normally scheduled to be made on a holiday shall be rescheduled for the day before or the day after the holiday or with the approval by the commercial establishment any other day within a five-day window of the holiday.

(a) Holidays: The following holidays may be observed by Grantee for purposes of this franchise: New Year's Day, Thanksgiving Day and Christmas Day.

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

2. Quantity: Grantee shall be required to pick up all garbage and rubbish generated by a commercial establishment, provided same is placed in a waste receptacle. The City Manager or his/her designee may require the commercial establishment to increase their level of service to accommodate the waste generated at the commercial establishment. Collections: All collections shall normally be made at commercial establishments no earlier than 6:00 a.m. and no later than 6:00 p.m. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Waste receptacles shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found. All work shall be done in a safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee.

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

4. Waste receptacles:

(a) Garbage and rubbish: Garbage and rubbish shall be placed for collection within a commercial container.

(b) Hazardous and biohazardous materials: Grantee shall not be required to collect hazardous or biohazardous materials.

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

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

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

#### SECTION 21. OFFICE AND COLLECTION HOURS.

A. The Grantee's office shall remain open Monday through Friday from 8:00 a.m. to 5:00 p.m. to handle complaints from residential customers; and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. Commercial customers shall be provided a local or toll free number which shall be available from 7:00 a.m. to 5:00 p.m. Monday through Friday and on Saturdays from 8:00 a.m. to 4:00 p.m. These requirements do not apply on the legal holidays identified in Section 20.

B. Collections shall normally be made at commercial establishments no earlier than 6:00 a.m. and no later than 6:00 p.m. If the Grantee has an equipment breakdown, it shall be relieved from completing collection by 6:00 p.m. but not later than 10:00 p.m. for the route being served by such equipment experiencing operating difficulties, provided that such route shall be fully collected that day by the Grantee with substitute equipment.

C. An exception to the normal pickup times is granted to commercial establishments located south of Harbor Blvd, to include McGuire's Irish Pub, due to high traffic volume and limited parking. The pickup times at these locations are 4:30 a.m. to 7:00 p.m. At the request of the Grantee or the City Manager or his designee, Section 21. C. may be modified due to the proximity of residential units, new commercial establishments and other concerns. The approval of such requests will not be unreasonably delayed or withheld.

#### SECTION 22. COLLECTION EQUIPMENT.

The Grantee shall have on hand at all times sufficient equipment in good working order and of the minimum weight necessary to permit Grantee to perform its duties hereunder fully, adequately and efficiently. Equipment shall be purchased from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment shall be kept clean, sanitary, neat in appearance, and in good repair at all times and shall be equipped with back-up warning lights and alarm. The Grantee shall at all times have available reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond in size and capability to the equipment normally used by the Grantee to perform its duties hereunder.

#### SECTION 23. DISPOSAL.

All garbage and solid waste shall be hauled to sites or facilities selected by Grantee and legally empowered to accept it for treatment or disposal.

#### SECTION 24. ROUTES AND SCHEDULES.

The Grantee shall periodically provide the Grantor with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, Grantee shall notify each customer affected by either direct mail or door hangers which the Grantor shall approve for such purpose. Grantee shall also notify customers by placing an advertisement prominently displayed in a local newspaper on at least two (2) occasions, the latter being at least one (1) week prior to the change. All such changes in routes or schedules will also be immediately communicated to Grantor at the time determined by the Grantee. Grantee shall assist Grantor in conveying these changes through all other reasonable means, including through Grantor's website and social media accounts.

#### SECTION 25. GRANTEE PERSONNEL.

Grantee shall assign a qualified person to be in charge of operations under this franchise and shall give the name and qualifications of said person to the Grantor. Grantor requires that Grantee's collection employees wear clean uniforms bearing Grantee's company name. Each person employed to operate a vehicle shall at all times carry a valid CDL driver's license for the type of vehicle being driven. Grantor may request the dismissal of any employee of Grantee who violates any provisions of this subsection or who is found to have been wanton, negligent or discourteous in the performance of his or her duties. Grantee shall provide operating and safety training for all personnel. Wages of all employees of Grantee shall be equal to or exceed the minimum hourly wages for such employees established by local, state or federal law. Grantee utilizes and will continue utilizing Florida's E-Verify program as required by section 448.095, Florida Statutes, as it may be amended from time to time.

#### SECTION 26. SPILLAGE AND LITTER.

The Grantee shall not litter premises in the process of making collections, but shall not be required to collect any waste material that has not been placed in supplied or approved containers or in a manner herein provided. During hauling, all solid waste or liquids shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the Grantee, the Grantee shall promptly clean up the litter.

#### SECTION 27. STORMS AND OTHER EMERGENCIES.

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

The Grantee shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster (including increased horticultural trash and bulky waste) unless the Grantor enters into a written agreement with Grantee specifying the terms and compensation for such services.

Further, the parties shall track on a quarterly basis the volume of waste Grantee collects under normal, non-disaster event influenced conditions. Should waste volume collected by the Grantee in a quarter be greater by fifteen percent (15%) than such volume collected by Grantee in the same quarter of the previous year, and the increase in volume is attributable to a recent disaster event, Grantee shall be entitled to additional compensation for the collection of waste in excess of normal volumes for the same period. Such compensation shall be calculated at the average rate charged to the City of Destin by its storm debris collection contractors.

## SECTION 28. NONDISCRIMINATION PROVISION.

The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request it will permit reasonable access by Grantor to its records of employment, employment advertisements, application forms, and other pertinent data and records for purposes of investigation to ascertain compliance with the nondiscrimination provisions of this franchise, provided, however, that Grantee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the date of the franchise.

## SECTION 29. RATES AND CHARGES.

### A Rates:

1. The initial rates for recycling and the automated collection of garbage, Horticultural Trash, and Bulky Waste under this franchise, the initial residential rate shall be according to Exhibit "A" which is attached hereto and incorporated herein annually (\$\_\_\_See Exhibit A\_\_\_ per month). Additional carts if requested will be \$ \_\_\_See Exhibit A\_\_\_ annually (\$\_\_\_See Exhibit A\_\_\_ per month). For City residents who elect and are approved to take advantage of the Senior Program as defined in Section 20, the initial rate will be \$\_\_\_See Exhibit A\_\_\_ annually (\$ See Exhibit A per month).] All such rates shall be adjusted in accordance to Section 30.

For garbage, yard waste for the initial term of this franchise, the monthly rate for commercial establishments shall be as stated on Exhibit A.

B. Grantee shall be solely responsible for the billing and collection of receivables from residential cart customers on an annual or quarterly basis. The following steps will be followed with respect to accounts in arrears:

- 30 plus days – customers will receive notice of overdue account and a call from Grantee's collection department. The property owner will receive the same notifications from Grantee.
- 45 days – customer's service will be suspended pending payment in full. Customer and property owner will receive a call from Grantee's collection department. A reactivation fee of \$25 per residential unit will be assessed. All calls will be documented in Grantee's database.
- 92 days – the Cart will be retrieved by Grantee and the account will be cancelled for non-payment. Grantor will be provided with a list of these customers weekly. A reactivation fee of \$25 will be assessed.

C. Grantee shall be solely responsible for the billing and collection of receivables from commercial customers on a monthly basis, respectively. Customers may include either the property owner or tenant/ occupant of each commercial establishment generating solid waste.

D. For items requiring roll-off service or any other special handling not otherwise delineated in this franchise, the charges are to be negotiated between the Grantee and the customer. If agreement cannot be reached, the matter shall be submitted to the Grantor for final determination.

E. Grantee shall keep records of the volume of solid waste collected and charges therefore and the Grantor shall have the right to review any records which in any way pertain to solid waste payments.

F. The Grantee is to provide solid waste removal and recycling services to all of the City's facilities, including all City parks and the City's sports complexes at no charge. The Grantee will provide six (6) commercial containers each of a size to be specified by the City at no cost to the City for City sponsored events, including one community cleanup per year.

Grantee shall provide at no additional cost to the Grantor, one twenty (20) yard roll-off container at the Public Works Facility serviced twelve (12) times annually for disposal of street sweeping debris considered special waste. An additional thirty (30) yard roll-off container will be placed at the Public Works Facility and serviced twenty-four (24) times annually at no cost to the Grantor.

I. Should Grantor annex any property currently serviced by Grantee under Okaloosa County Solid Waste contract, the owners of the annexed property shall have the option to opt into this Agreement at the rate structures specified herein, or the owners of the annexed property may elect to continue with the rate structure provided in Grantee's agreement with Okaloosa County through the end of the term of Grantee's agreement with Okaloosa County.

J. Either party may request a joint house count annually.

#### SECTION 30. RATE CHANGES.

##### A. CPI and Fuel Adjustments

The initial rates contained herein shall be in place for the first twelve (12) months of this agreement. On October 1st of each subsequent anniversary date, the rates will be adjusted according to the changes in the Consumer Price Index (CPI) for the previous twelve (12) months ending on the preceding June. For purposes of this agreement, CPI shall mean the Consumer Price Index for Water, Sewer and Trash CPI, Not Seasonally Adjusted, All Areas (WST CPI) as published by the U.S. Department of Labor.

1. Should any new law, fee, surcharge, duty, tax, or other charges of any nature be imposed by the federal government, any agency thereof, the State of Florida, any agency thereof, or by any local government body or agency which is payable solely by reason of the nature of the operations conducted by Grantee and any other sales or services taxes of general application to the Grantee's operations, then the parties shall convene and negotiate in good faith an increase in Grantee's hauling rates.

2. In addition to the foregoing, Grantee may petition the Grantor for rate increases to cover unforeseen and unusual increases in the costs of operating under this Agreement. Grantee will be responsible for documenting the impact of such costs and any resulting increase in the rates and the Grantor shall reasonably and timely consider the request in good faith. The Grantor shall not unreasonably deny relief.

##### B. Change in Law:

The Grantee may petition the Grantor to adjust Grantee's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefor. The Grantor shall be entitled to audit the Grantee's financial and operational records directly related to the Grantee's request in order to verify the increase in costs and the reasons

therefor.

"Change in Law" means (i) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Agreement, which in the case of either (i) or (ii) establishes requirements affecting the Grantee's operation under this Agreement more burdensome than the requirements that are applicable to Grantee and in effect as of the date of this Agreement. A change in any federal, state, county, or other tax law or workers' compensation law shall not be a Change of Law. However, in the event that a federal, state or local entity imposes a fee, tipping fee adjustment, charge or tax after the date of this Agreement that applies to Grantee's operations per se, such fee, charge or tax shall be treated as a Change in Law.

The Grantee's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The Grantor may request from the Grantee, and the Grantee shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Grantor shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the Grantor. The Grantor shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

#### SECTION 31. DELINQUENT ACCOUNTS.

A. Commercial: When an account is delinquent by thirty (30) days Grantee shall provide the commercial establishment with the following written notices by United States Mail: 30 days, friendly reminder of delinquency; 40 days, notice of potential service interruption; 50 days, notice of service interruption; 60 days, final demand for payment; 65 days audit/final notification before cancellation; and 90 days cancellation and delivery to third party collection agency. At the time that the Grantee actually stops service, notification of that fact will be given to the Grantor.

B. Grantee shall make all reasonable efforts to work with commercial establishment customers regarding payment of their accounts prior to interrupting or canceling service, i.e., negotiate payment plans, resolve billing disputes, etc.

#### SECTION 32. ACCOUNTING; RIGHT TO AUDIT.

A. Grantee shall keep an accurate set of books and records reflecting gross revenues derived within the service area pursuant to this franchise. Said books and records shall reflect, in addition to information normally reflected pursuant to standard accounting procedures, and the requirements of Chapter 403, Florida Statutes, the name and service address of each residential and commercial establishment customer, dates of commencement and termination of service, the service charge and any change thereto, the billings, billing dates and receipt of revenues. Certified copies of the above shall be furnished to the Grantor upon request. These certified copies shall be provided in a reasonable amount of time not to exceed two weeks from the date of request.

B. Two (2) times per year the Grantor may audit the books and records of the Grantee in order to determine whether the franchise fees paid pursuant to Section 5 are those required thereby. Grantor's failure to exercise its right to audit at any time shall not constitute a waiver of such right, and notwithstanding such omission, the Grantor shall have such continuing right to audit until one year after the termination of this franchise. In the event that Grantor elects to exercise its right to audit, Grantor shall provide to Grantee written notice of such election at least forty-eight (48) hours in advance of the time of the audit. Grantor

shall have the right to select the auditors to make the audit and one (1) audit per year shall be at the Grantee's expense. In the event a second audit is performed at Grantor's request in any given year, the expense of that second audit shall be borne by the Grantor, except in cases of fraud, deceit or intentional misrepresentation of monies due to the Grantor, in which case the expenses of the audit shall be borne by the Grantee. Grantee shall make available to the auditor, at no charge, such personnel, financial and other records as the Grantor may in its reasonable discretion request in order to complete such audit.

**SECTION 33. COMPLAINTS.**

All complaints shall be resolved by Grantee within twenty-four (24) hours. Grantee shall, within forty-eight (48) hours of receipt, supply Grantor with copies of all complaints on a form approved by the Grantor and indicate the disposition of each. Each month such record shall be available for inspection by Grantor at all times during the business hours specified herein. The complaint record/ form shall indicate the day and hour on which the complaint was received and the day and hour on which the complaint was resolved. When a complaint is received on the day preceding a holiday or on a Sunday, it shall be serviced on the next working day. The Grantee shall establish procedures acceptable to the Grantor to ensure that all customers are notified of the complaint procedure.

**SECTION 34. CHARGES FOR FAILURE OF PERFORMANCE.**

A. Upon the recommendation of any Council member or City staff member, and reasonable notice to Grantee, administrative charges may be assessed against the Grantee by vote of the City Council if the Council determines that

1. Total residential complaints during any calendar month involve more than one (1%) percent of the total residential customers within the service area;
2. Total residential complaints during the Grantor's fiscal year exceed more than two (2%) percent to the total residential customers with the service area;
3. Total commercial complaints during any calendar month involve more than three (3%) percent of the total commercial customers within the service area;
4. Total commercial complaints during the Grantor's fiscal year exceed more than six (6%) percent to the total commercial customers within the service area; or
5. Where the lack of performance by Grantee is continuous and determined by the Council to constitute a threat to the health, safety or welfare of residents and commercial establishments. "Welfare" as used in this subsection shall include the direct and indirect economic effects of Grantee's failure to perform.

B. Administrative charges shall be assessed only for verified complaints which indicate that the Grantee has failed to meet the minimum standards stated herein and will be in accord with the following schedule:

**SCHEDULE OF ADMINISTRATIVE CHARGES**

- |    |   |                       |
|----|---|-----------------------|
| 1. | Failure to clean up spilled refuse  | \$100.00 per incident |
| 2. | Failure to collect solid waste per location or special collection solid waste from any premises at or within service area | \$100.00 per incident |

- |    |  |                                    |
|----|--|------------------------------------|
| 3. | Failure to complete each route on the regular scheduled pickup             | \$1,500.00 per route not completed |
| 4. | Failure to keep equipment in clean, safe and sanitary manner               | \$150.00 per vehicle per day       |
| 5. | Failure to have vehicle operator properly Licensed                         | \$150.00 per day per incident      |
| 6. | Failure to maintain office hours as set forth in Section 21                | \$150.00 per incident              |
| 7. | Failure to replace or repair any damage caused by Grantee or its personnel | \$100.00 per incident              |

C. Within five (5) business days of the date of Council's action imposing such administrative charge, Grantee shall be notified in writing by certified United States Mail, return receipt, of the assessment of administrative charges and the basis for such assessment. Grantee may contest such assessments by filing a written protest with the City Clerk stating the reasons for disagreement within five (5) business days of the receipt of the notice of assessment. This protest will be acted upon by the City Council at the Council's next regularly scheduled council meeting.

#### SECTION 35. VENUE

The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Florida. The venue for any action arising out of this Agreement shall be exclusively in Okaloosa County, Florida and nowhere else.

#### SECTION 36. SOVEREIGN IMMUNITY

Nothing contained herein is intended to nor shall be construed to waive the City of Destin's rights and immunities under the Florida Constitution, common law or Florida Statutes 768.28, as amended from time to time.

#### SECTION 37. CONFLICTING ORDINANCES AND RESOLUTIONS.

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

#### SECTION 38. FORCE MAJEURE.

A. Except for the failure to make payment when due, neither Party shall be in default for its failure to perform or delay in performance caused by an Uncontrollable Circumstance, and the affected Party shall be excused from performance during the occurrence of such events. For purposes of this Agreement, "Uncontrollable Circumstances" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, epidemics and pandemics, quarantines, labor shortages, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), declarations or acts of domestic or foreign



governments, or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party.

#### SECTION 39. JURY TRIAL WAIVER.

GRANTEE AND CITY AGREE TO WAIVE THEIR RIGHTS TO A TRIAL BY JURY REGARDING ANY LAWSUIT INVOLVING THE INTERPRATION, CONSTRUCTION, ENFORCEMENT, OR GOVERNANCE OF THIS CONTRACT, AND FOR ANY LAWSUIT RELATED IN ANY WAY TO THIS CONTRACT OR FOR THE WORK PERFORMED PURSUANT TO THIS CONTRACT.

#### SECTION 40. PUBLIC RECORDS.

IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE CITY CLERK, (850)837-4242, 4200 INDIAN BAYOU DRIVE, DESTIN, FLORIDA 32541, rbailey@cityofdestin.com.

Specifically, GRANTEE must:

i. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this FS Chapter 119 or as otherwise provided by law.

ii Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if GRANTEE does not transfer the records to the public agency.

iii Upon completion of the contract, transfer, at no cost, to the City all public records in possession of GRANTEE or keep and maintain public records required by the City to perform the service. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

#### SECTION 41. SAVINGS CLAUSE.

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

#### SECTION 42. EFFECTIVE DATE.

This ordinance shall take effect October 1, 2022 by the City Council of the City of Destin, Florida, and the signature of the Mayor, and upon filing of Grantee's written acceptance with the City Clerk

ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022

ATTEST:

By: \_\_\_\_\_  
Gary Jarvis, Mayor

\_\_\_\_\_  
Rey Bailey, City Clerk

The form and legal sufficiency of the foregoing  
has been reviewed and approved by the City Attorney.

\_\_\_\_\_  
Kyle S. Bauman , City Attorney

**APPROVAL AND ACCEPTANCE**

WASTE MANAGEMENT INC. OF FLORIDA does hereby approve and accept the foregoing solid waste collection and disposal franchise and, as franchisee, agrees to perform, assume and comply with all of the terms, conditions, covenants and obligations of said franchise and authorizes the undersigned officer to execute this Approval and Acceptance.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

**WASTE MANAGEMENT INC. OF FLORIDA**

By: \_\_\_\_\_

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

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

**EXHIBIT A – 3% Franchise Fee (2022 Proposed Ordinance)**

Commercial Establishment Rates							
These Rates do not include additional service requirement such as casters, opening gates, compactors, etc. Commercial Establishments that only require one 96-gallon cart will receive service two times per week at curbside and will be billed at the same rate as a two-yard container serviced one time per week. Commercial establishments shall be billed for the rate of service required and will not receive recycling services.							
Multi-Family Residential	Multi – Family units that are serviced by Front Load Dumpsters will be billed to one entity based on the Commercial Establishment Rates for the service required and will not receive recycling service. Multi – Family units that are serviced by carts will be billed at the Residential Rate and shall receive recycling and horticultural waste pickup.						
All Commercial Rates are per Month <b>DES</b> Price Group							
	1	2	3	4	5	6	7
2 yard container	110.02	210.56	311.37	412.07	512.76	613.41	717.69
4 yard container	136.45	261.00	385.53	510.56	634.60	759.13	888.18
6 yard container	165.65	314.05	462.44	610.85	759.24	907.65	1061.94
8 yard container	191.26	363.51	535.76	708.03	880.29	1052.58	1231.49

Residential	DER Price Group
Residential Service With Recycling and Carts	<b>\$ 307.20 Annual</b> <b>\$ 25.60 Monthly</b>
Senior Citizen Residential Rates	<b>\$ 251.40 Annual</b> <b>\$ 20.95 Monthly</b>
Second Cart Residential Rates	<b>\$ 178.56 Annual</b> <b>\$ 14.88 Monthly</b>

Rates including 3% Franchise Fee and \$6.00 Annual Billing Fee:

Monthly			
Rate Monthly	\$ 24.83	\$ 20.32	\$ 14.43
Franch. Fee	\$ 0.77	\$ 0.63	\$ 0.45
Total Rate	\$ 25.60	\$ 20.95	\$ 14.88
Quarter	\$ 76.80	\$ 62.85	\$ 44.64
Annual	\$ 307.20	\$ 251.40	\$ 178.56

Regular  
Senior  
2nd Can

**VIP Compactors: Proposed 2022**

	1	2	3	4	5	6	7
2	\$ 185.25	\$ 358.92	\$ 532.59	\$ 706.27	\$ 879.96	\$ 1,053.63	\$ 1,253.63
4	\$ 229.74	\$ 445.74	\$ 661.74	\$ 877.73	\$ 1,093.73	\$ 1,309.70	\$ 1,509.70
6	\$ 278.92	\$ 539.84	\$ 800.75	\$ 1,061.67	\$ 1,322.53	\$ 1,583.50	\$ 1,783.50
8	\$ 322.04	\$ 624.90	\$ 927.77	\$ 1,230.65	\$ 1,533.51	\$ 1,836.38	\$ 2,036.38

## Webb Warren

---

**From:** Rainer, Doug <drainer@wm.com>  
**Sent:** Monday, July 18, 2022 12:46 PM  
**To:** Webb Warren  
**Cc:** Rey Bailey; Catherine Card  
**Subject:** RE: DRAFT WM Ordinance  
**Attachments:** DR UPDATED 7.18.22 - Marked Up Version of Ordinance 22-09-CN- Exclusive solid waste franchise agreement with Waste Management Inc of Florida (1) (1).docx

[CAUTION: This email originated from outside of the City of Destin email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Webb,

After the city council meeting last Monday night, Jake and I talked with our team about options for reducing contamination and overages in Destin without using the proposed new language in the ordinance as it seems to be causing concerns among some of your council members and residents. Because of our smart truck technology, along with your code compliance abilities and your short-term rental ordinance in place, we believe we can remove the proposed language and still work toward our goal of reducing contamination and overages.

Smart truck provides us a real-time (and reviewable) view of contents being dumped into our trucks. In the event we see that contamination should be addressed at a particular residence, we can communicate directly with the resident whose can is contaminated and educate them on what should/shouldn't be included in their recycling cans. We feel this approach can be effective. We also would like to work with staff on an education campaign regarding contamination in the near future.

Overages are most prevalent in short-term rental areas, specifically where homes are heavily occupied and the number of garbage cans are inadequate. The following language from the city's short-term rental ordinance provides the tools necessary to gain the appropriate level of service where overages are a problem – "The owner shall be required to obtain additional garbage containers and to acquire special valet garbage service from the city's solid waste removal provider in order to ensure all garbage is properly contained and removed." Our smart truck technology can be used to identify these issues and WM staff can work directly with city code compliance staff to resolve these situations as they arise.

Attached is an updated ordinance with the contamination and overage language removed. Please check to make sure I got it all and let me know if you have any questions.

Thank you,  
Doug

**Doug Rainer**  
**Public Sector Solutions**  
Gulf Coast Area  
[drainer@wm.com](mailto:drainer@wm.com)

(850) 499-0277  
108 Hill Avenue  
Fort Walton Beach, FL 32548



---

**From:** Webb Warren <[wwarren@cityofdestin.com](mailto:wwarren@cityofdestin.com)>  
**Sent:** Monday, July 18, 2022 10:23 AM  
**To:** Rainer, Doug <[drainer@wm.com](mailto:drainer@wm.com)>  
**Cc:** Rey Bailey <[rbailey@cityofdestin.com](mailto:rbailey@cityofdestin.com)>; Catherine Card <[ccard@cityofdestin.com](mailto:ccard@cityofdestin.com)>  
**Subject:** [EXTERNAL] FW: DRAFT WM Ordinance

Doug, please see the most recent doc file. Just remove the markup for a clean version

---

**From:** Catherine Card <[ccard@cityofdestin.com](mailto:ccard@cityofdestin.com)>  
**Sent:** Monday, July 18, 2022 10:20 AM  
**To:** Rey Bailey <[rbailey@cityofdestin.com](mailto:rbailey@cityofdestin.com)>; Webb Warren <[wwarren@cityofdestin.com](mailto:wwarren@cityofdestin.com)>  
**Subject:** DRAFT WM Ordinance

Hi all,

Spoke to Doug this morning and he asked if we can pass on the draft ordinance to him so he can make the revisions.

Thank you,  
CC

**Catherine Card**  
**Public Information Manager**  
**City of Destin**  
**850.460.8538**



“Please Note: Florida has a very broad public records law. Most written communications to or from the City of Destin officials are public records available to the public and media upon request. Your e-mail address and communications may therefore be subject to public disclosure.”

ORDINANCE 17-18-22-09-CN

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA PROVIDING FOR THE EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC. OF FLORIDA, A PRIVATE CORPORATION, FOR THE COLLECTION AND DISPOSAL OF ALL RESIDENTIAL AND COMMERCIAL TRASH, GARBAGE, AND OTHER REFUSE WITHIN THE CITY LIMITS; PROVIDING FOR THE COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS WITHIN THE CITY LIMITS; PROVIDING FOR DEFINITIONS; GRANT OF FRANCHISE; LIMITS OF FRANCHISE; TERM; FRANCHISE CONSIDERATION; ASSIGNMENT; BANKRUPTCY OR INSOLVENCY; DEFAULT; RATE CHANGES; RIGHTS OF FIRST REFUSAL; RESTORATION; COMPLIANCE WITH LAWS; LIABILITY INSURANCE, HOLD HARMLESS, WORKERS COMPENSATION; PERFORMANCE BOND; RIGHT TO REQUIRE PERFORMANCE; DISPUTE RESOLUTION; OPERATIONS DURING DISPUTE; STANDARD OF PERFORMANCE; CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL; RECYCLING PROGRAM; COLLECTION SERVICES AND OPERATIONS; OFFICE AND COLLECTION HOURS; COLLECTION EQUIPMENT; DISPOSAL ROUTES AND SCHEDULES; GRANTEE PERSONNEL; SPILLAGE AND LITTER; STORMS AND OTHER EMERGENCIES; NONDISCRIMINATION PROVISION; RATES AND CHARGES; RATE CHANGES; DELINQUENT ACCOUNTS; ACCOUNTING, RIGHT TO AUDIT; COMPLAINTS; CHARGES FOR FAILURE OF PERFORMANCE; VENUE; SOVEREIGN IMMUNITY; CONFLICTING ORDINANCES AND RESOLUTIONS; SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

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

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

WHEREAS, the City of Destin finds it in the public interest to ensure that high quality refuse collection and disposal service is maintained through a responsive complaint handling procedure; and

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

WHEREAS, Waste Management, Inc. of Florida (“Waste Management”) was first granted an exclusive franchise to service the City of Destin and its citizens’ solid waste disposal needs on [INSERT DATE] October 1, 2011, after a competitive bidding process; and

WHEREAS, Waste Management was again awarded an exclusive franchise to service the City of Destin and its citizens' solid waste disposal needs on [INSERT DATE]October 1, 2017, after a competitive bidding process; and

WHEREAS, on [INSERT DATE]October 13, 2021, Waste Management provided written notice to the City of Destin that it desired to negotiate a new franchise agreement due to the current franchise agreement's impending end of term on October 1, 2022; and

WHEREAS, Waste Management has ~~generally~~ provided a positive impact on the City of Destin and the health, safety, and welfare of its citizens by enhancing the beauty and quality of the environment, preventing the spread of disease, and the creation of nuisances through reliable and dependent services from a single unified source; and

WHEREAS, the City Council considered issuing a Request for Proposals and otherwise competitively bidding the provision of solid waste services to the general market; and

WHEREAS, likely due to unique circumstances stemming from COVID-19 and its cascading negative impacts on the world and specifically the economy, and based upon review of competitive bidding of solid waste disposal services by similarly situated local governments, it is most cost effective to the City of Destin to negotiate an extension of the solid waste disposal franchise with Waste Management as opposed to issuing a Request for Proposals or otherwise competitively bidding the solid waste disposal franchise; and

WHEREAS, overall, the rates described in this Ordinance are more advantageous for the City of Destin and its citizens when compared with similarly situated local governments; and

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

WHEREAS, this Ordinance has superseded Ordinance 11-25-CN, Ordinance 16-16-CN, ~~and Ordinance 11-04-CN~~, and Ordinance 17-18-CN pursuant to the authority of Section 166.021 and Chapter 403, Part IV, Florida Statutes.

## SECTION 1. DEFINITIONS.

*"Bulky Waste"* shall mean large items of solid waste such as, mattresses, and other oversize wastes whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.

*"Cart"* shall mean a roll out cart receptacle with two wheels and a properly designed axle and fittings, and a top lid that is to remain closed except when loading refuse, with a body consisting of approximately ninety (90) to ninety-six (96) gallons in capacity, constructed of heavy duty plastic and having the strength to store normal household garbage and refuse and equipped with proper attachments for hydraulic loading into the Contractor's collection vehicle by the hydraulic lifts affixed to such vehicle body.

*"Commercial container"* shall mean any portable, nonabsorbent, enclosed container with a close fitting cover, or doors, approved by the Grantor, which is used to store large volumes of refuse. A commercial container must be capable of being serviced by mechanical equipment.

*"Commercial establishment "* shall mean any public or private place, building or enterprise devoted in whole or in part to business purposes, whether for profit or not-for-profit; except where such place,



building or enterprise constitutes a single-family residence or multiple dwelling of four (4) units or less. A multiple dwelling of five (5) units or more shall be considered a commercial establishment unless there is no homeowners' association for such structure or if there is insufficient room for a commercial container. Duplexes, triplexes and condominiums/ townhouses with four units or less where the individual units are privately owned and used for commercial purpose are not commercial establishments within this definition unless commercial containers are used.

*"Commercial rubbish and trash"* shall mean combustibles such as paper, wood and yard trimmings, and noncombustibles such as metal, plastic, glass, stone and dirt.

*"Commercial solid waste"* shall mean garbage, rubbish and trash, resulting from the normal activities of establishments utilizing containers of one (1) cubic yard capacity or more.

*"CPI"* as used herein shall be the revised Consumer Price Index for all Urban Consumers South Urban for all items, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Labor, 1984-82 = 100. In the event the U.S. Department of Labor Statistics ceases to publish the CPI, the parties hereby agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available.

*"Curb Service"* shall mean a single collection point within five (5) feet of the edge of the road.

*"Customer"* shall mean individual or business (residential or commercial) receiving collection services.

*"Construction Debris"* shall mean waste building materials resulting from construction, remodeling, repair or demolition operations.

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

*"Duplex Residence"* shall mean and include an attached two family structure designed or intended for occupancy by two (2) families.

*"Garbage"* shall mean every accumulation of waste (animal, vegetable and/ or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers); and all putrescible or easily decomposable animal or vegetable waste matter which is likely to attract flies or rodents.

*"Garbage Cart"* shall mean the plastic receptacle furnished by the Grantee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) upon request with the Grantor's approval.

*"Grantee"* shall mean Waste Management Inc. of Florida, who is granted this exclusive franchise and hereby undertakes to perform each and every obligation assigned herein and hereby agreed to.

*"Grantor"* shall mean the City of Destin, Florida.

*"Gross Quarterly Dollar Customer Billings"* shall mean the total quarterly invoice amount billed to Destin residents for collection and disposal of all residential trash, garbage, and other refuse within the city

limits, including landfill tipping and/ or transfer station fees.

*"Gross Revenue"* shall mean and include any and all fees received by Grantee which were generated within the service area pursuant to this franchise with the exception of those fees associated with storms and other emergencies as defined in Section 27.

*"Handicapped Service"* shall be household garbage and recycling service at the rear or side of a residence for handicapped persons approved by Grantor for special service.

*"Hazardous Waste"* shall mean waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law. For purposes of this franchise, the term Hazardous Waste shall also include motor oil, gasoline, paint and paint cans, and any items containing chlorofluorocarbons.

*"Horticultural Trash"* shall mean shrubbery cuttings, or clippings, palm fronds, small tree branches (not to exceed six (6') feet in length and four (4) in diameter), bushes or shrubs, or other organic matter generated as refuse in the care of lawns, gardens, hedges, bushes and trees. Large branches, trees or bulky or non-combustible materials not susceptible to normal loading and collection in "load packer" type sanitation equipment used for regular collections from domestic households, and stumps and tree trunks in excess of four (4) inches in diameter are not included in this definition.

*"Multifamily Residences"* shall mean multiple dwelling units of five (5) units or more.

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

*"Plastic liner"* shall mean a plastic bag no larger than a thirty-five (35) gallon garbage can of sufficient strength to hold contents securely tied at top and not to exceed fifty (50) pounds when full.

*"Recyclable Materials"* shall mean newspaper, glass containers, aluminum and steel cans, plastics and such other materials identified by the Grantor during the term of this franchise.

*"Recycling Containers"* shall mean the receptacles purchased and distributed on behalf of the Grantor by the Grantee for the intended use as a receptacle of Recyclable Materials.

*"Recycling Service Area"* refers to the corporate limits of the City of Destin, Florida as hereafter amended through annexation.

*"Roll-off Container"* shall mean any container (open top or enclosed for compacting) used for the collection and storage of construction, demolition debris, or garbage rubbish that can be picked up and transported on a specially equipped truck to the disposal site.

*"Rubbish"* non-recyclable solid wastes or refuse, excluding garbage consisting of both combustible and noncombustible trash.

*"Senior Program"* – City residents, where there are no more than two persons residing in the dwelling and at least one of those two is age 65 or over by October 1st of the current year who, upon application to the Grantee, are determined Grantee, using guidelines established by the City to be eligible for this Senior Program, will receive discounted rates and reduced level of service.

"Single Family Residence" shall mean and include a detached single family structure designed for occupancy by one person or by one family. Each mobile home, trailer, townhouse or condominium (if located in a building with four (4) or less connected units) shall be deemed a "residence" and each such townhouse/ condominium unit shall be deemed a single family structure unless the townhouse/ condominium building uses commercial containers. Each unit of a residential duplex or triplex shall be deemed a "residence" unless the duplex or triplex uses commercial containers.

"Solid Waste" shall mean 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, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in s. 403.703(7), Florida Statutes, are not solid waste.

"Special material" shall mean bulky materials or other special wastes that are not stored in standard storage containers and cannot be picked up by a normally used collection vehicle. Wastes such as major appliances, furniture, building materials, tree limbs, noncontainerized trash piles and any unusually large amount of refuse not suitable for containerization will be picked up as a special service of the Grantee and billed separately to the customer on the basis of labor, truck costs and dumping charges. All fees received by the Grantee for the collection of special material on a special service basis are subject to the City's franchise fee.

## SECTION 2. GRANT OF FRANCHISE.

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

## SECTION 3. LIMITS OF FRANCHISE.

This franchise covers the corporate limits of the City of Destin, Florida, as those corporate limits may change from time to time. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

## SECTION 4. TERM.

A. The franchise shall be granted from the date of this franchise for a period of five (5) years beginning on October 1, ~~2017-2022~~ unless sooner terminated by reason of breach of the terms hereof by the Grantee which result in the failure of the Grantee to provide effective and efficient service.

B. This franchise may be automatically renewed under the same terms, conditions and limitations as contained herein, unless Grantor or Grantee shall give notice to the other of an intent to cancel or renegotiate, which notice shall be in writing, delivered by United States Mail, return- receipt

requested and posted no sooner than twelve (12) months, and no later than nine (9) months before the initial termination date of this franchise. Said notice may also be delivered by hand within the above time frame, and if so delivered, a receipt thereof signed by an authorized agent of the Grantor or of the Grantee as applicable, shall be evidence of delivery.

#### SECTION 5. FRANCHISE CONSIDERATION.

Grantee shall pay to the Grantor a franchise fee equal to the sum of ~~one-three~~ (31%) percent of the gross quarterly dollar commercial establishment customer billings. Payment to the Grantor shall be made four (4) times per year, in March, June, September and December, within ten (10) days of each quarter and without demand by Grantor. A late fee of 20% of the total quarterly payment shall be assessed by the Grantor on all late payments. It is further understood and agreed that the franchise fee paid pursuant to this franchise shall not be added on as a separate item on the occupant's or resident's garbage collection bills, but rather shall be considered as an operational expense. Residential customers billed by the Grantor will pay a one-three percent (~~1%~~ ~~3%~~) franchise fee as part of their billing.

The franchise fee may be changed by the City with approval of the City Council once a contract year (Oct. 1 – Sept. 30), upon adoption of an ordinance and after two readings at duly noticed public hearings. Any changes to the franchise fee will become effective on October 1 following adoption and passage of the ordinance. The Grantor shall provide notice of the change to the Grantee at least ninety (90) days prior to the next billing period.

#### SECTION 6. ASSIGNMENT.

A. ~~A.~~—The franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the express approval of the Grantor, which shall be reflected by a resolution of Grantor adopted by its governing body. In the event of such an assignment, Grantee shall cause its assigns to execute an Agreement of Acceptance, subject to the approval of the Grantor, evidencing that such assignee accepts the assignment subject to any and all terms, conditions and limitations imposed hereby and which acceptance shall include an affirmative statement evidencing such Assignee's intent to fulfill the obligations imposed by Grantor in contemplation hereof. Notwithstanding the Grantor's approval of such an assignment and assignee's acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

B. A transfer of more than fifty-one percent (51%) of the issued outstanding stock of Grantee shall constitute an assignment for the purpose of this section. Likewise, any transfer of the voting rights attendant to fifty-one percent (51%) or more of the issued or outstanding stock of Grantee shall constitute an assignment for the purposes hereof.

## SECTION 7. BANKRUPTCY OR INSOLVENCY.

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

## SECTION 8. DEFAULT.

~~A. A.~~ Failure on the part of the Grantee to comply in any material respect with any of the provisions of this ordinance shall be grounds for a forfeiture of this franchise, but no such forfeiture shall take effect until Grantor has served upon the Grantee written notice of default setting forth the nature and extent thereof. Following receipt of the notice of default, Grantee shall have 24 hours to collect any garbage or trash that was not collected at the regularly scheduled pick up time and shall have fourteen (14) days to correct, or to notify the City of the means, subject to City approval, by which the Grantee intends to correct, other identified defaults. If Grantee disagrees with the reasonableness or propriety of Grantor's notice of default, Grantee may protest such default by filing ~~wi.th~~with the City Clerk a written protest within 2 hours of receipt of Grantor's notice regarding a missed trash/ garbage pickup and within five (5) days of receipt of Grantor's notice for other identified defaults.

B. If the Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's notice of default, then the issue shall be resolved by a court of appropriate jurisdiction located in Okaloosa County, ~~Florida, which~~Florida, which shall be the exclusive venue for such a dispute.

## SECTION 9. RIGHTS OF FIRST REFUSAL.

In the event Grantee shall at any time during the term of this Ordinance desire to sell the disposal service then existing and shall have received a bona fide offer from any other person, firm, corporation or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, the Grantee shall within ten (10) days after receipt of such bona fide offer advise the Grantor in writing of the purchase price and other terms and conditions of such offer, and the Grantor for a term of thirty (30) days after giving of such notice shall have the option to purchase the disposal service from Grantee upon the terms and conditions as set forth in said offer. In the event the Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, Grantee shall have the right to sell the disposal service to the prospective purchaser thereof, subject to the terms of Section 6 of this franchise.

## SECTION 10. RESTORATION.

The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered. The Grantor and Grantee shall meet at least quarterly to review damage to public streets and rights-of-way to assess costs and scheduling of repairs.

## SECTION 11. COMPLIANCE WITH LAWS.

Grantee shall conduct operations under this franchise in compliance with all applicable laws. Grantee specifically agrees to be solely responsible for the enforcement, administration and compliance with all applicable provisions of Chapter 403, Part IV, Florida Statutes, and future amendments thereto. Furthermore, Grantee shall be responsible for the necessary promotion and educational activities required to familiarize the general public with the recycling mandates.

## SECTION 12. LIABILITY INSURANCE; HOLD HARMLESS; WORKERS COMPENSATION.

Grantee shall carry public liability insurance to the extent of Five Million (\$5,000,000) Dollars for the death of or injury to more than one person or property damage insurance to the extent of ~~Five Hundred Thousand One Million~~ (\$~~5001,000~~,000) Dollars, upon each of the trucks or other vehicles used in carrying out the work called for in this franchise, such insurance expressly to cover both the Grantor and the Grantee. A certificate showing that the Grantee has in force and effect the aforesaid insurance shall be filed with the Grantor within ten (10) days from the execution of the franchise, and yearly thereafter at least thirty (30) days prior to the date of the expiration of said policies or insurance for each year of said franchise. The aforesaid insurance shall be of such form and written by such companies as are approved by the Grantor and also shall contain an advance of the cancellation of the insurance. Said policies of insurance shall name Grantor as additional insured.

The Grantee will defend, indemnify, save harmless, and exempt the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from or based on (i) violation of applicable laws, ordinances, rules or regulations by the Grantee, its agents or employees; (ii) injury to persons or damage to property arising out of the Grantee's or its agents' and/ or employees' intentional, willful or negligent acts or omissions in the performance of this Franchise Agreement or for injury or damage caused outside the scope of this Franchise Agreement but for which Grantee, its officers, agents, servants, or employees are allegedly responsible.

Grantee shall carry Workers Compensation insurance on all its employees and show proof of insurance and payment of premiums thereon to the Grantor, as requested. All such Workers Compensation policies shall provide for notice by the insurer to the Grantor at least sixty (60) days prior to any termination, revocation or modification thereof.

## SECTION 13. PERFORMANCE BOND.

Grantee shall furnish to the Grantor a performance bond, in a form approved by the Grantor, for the faithful performance of this franchise and all of the obligations arising hereunder in the amount of ~~Five Hundred Thousand One Million~~(\$~~1,0500~~,000.00) Dollars. Said bond shall be executed by a surety company approved by Grantor and licensed to do business in Florida.

## SECTION 14. RIGHT TO REQUIRE PERFORMANCE.

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

## SECTION 15. DISPUTE RESOLUTION.

If any controversy shall arise between the parties either party may pursue all available legal remedies in the appropriate Okaloosa County, Florida court, which shall be the exclusive venue for any dispute.

## SECTION 16. OPERATIONS DURING DISPUTE.

A. In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to the terms and conditions, performance or compensation required under this franchise, the Grantee shall continue to render service in full compliance with all terms and conditions of this franchise regardless of the nature of the dispute.

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

C. If the term of this franchise is not renewed, Grantee shall continue to provide service for at least ninety (90) days following expiration or until a substitute Grantee is in place, whichever comes first, but shall not continue service past 120 days.

## SECTION 17. STANDARD OF PERFORMANCE.

A. If the Grantee fails to collect the materials herein specified for a period in excess of three (3) consecutive scheduled working days or fails to operate the system in a satisfactory manner for a similar period, the Grantor may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other causes beyond the reasonable control of Grantee):

1. At its option, after written notice to the Grantee, take over and operate any or all of the Grantee's equipment used in the performance of this franchise until such time as the Grantee is again able to carry out its operation satisfactorily, as determined solely by the Grantor. Any and all operating expenses incurred by the Grantor in so doing may be charged to the Grantee.

2. Enter into contract(s) or agreement(s) with another qualified firm(s) to provide solid waste collection and disposal until such time as the Grantee is again able to satisfactorily fulfill its responsibilities under this franchise as determined solely by the Grantor.

B. During such period, the liability of the Grantor to the Grantee for loss or damage to the equipment used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability. The liability of the Grantee to third parties shall continue and all claims or demands arising out of the operation of the collection service shall be directed solely to the Grantee and Grantor shall be treated as an agent of the Grantee for purposes of determining liability.

## SECTION 18. CURBSIDE RECYCLABLE MATERIALS COLLECTION AND DISPOSAL.

A. Grantee shall be required to provide recycling to all residential customers. Grantee shall not be required to provide multifamily residences or commercial customers with recycling.

B. Grantee shall collect all residential recycling materials in the corporate limits of the City, transport and provide for recovery of said residential recyclable materials at a designated recovery facility. The Grantee shall perform such services as are required to provide a complete residential recyclable materials program.

C. Collection of recyclable materials shall be at curbside or other such locations as will

provide ready accessibility to the Grantee's collection crew and vehicle. In the event an appropriate location cannot be agreed upon, the Grantor shall designate the location. Handicapped residents shall be accommodated at no additional fee.

D. The Grantee shall pick up all recyclable materials which have been properly prepared for collection and placed in recycling carts and placed at the curbside from all single family residences. The Grantee shall distribute one (1) 96-gallon cart to hold recyclable materials to be collected to each single family residence within the service area. The cart shall be replaced by the Grantee as required. The Grantee shall maintain an adequate supply of carts at all times. Grantee shall retain ownership of the carts. Residents may retain 18 gallon bins previously distributed, place them by or in the recycling cart for removal. Information and instructions about the recycling program will be provided with the recycling cart.

E. All refuse and recyclable materials hauled by the Grantee shall be so contained, tied or enclosed that leaking, spilling or blowing are prevented.

F. The Grantee shall make collections with as little noise and disturbance to the residents as possible and in conformance with the City's Noise Ordinance. Grantee shall handle recycling carts with reasonable care and return them to the approximate curbside location from which they were collected. Any recyclable materials spilled by the Grantee shall be picked up immediately. Recycling carts shall be thoroughly emptied and left at the point of collection. Grantee shall develop a procedure for handling placement of incorrect material in the recycling carts by residents, preferably a notice reminding the resident of acceptable materials.

G. Grantee shall collect recyclable materials within the service area one (1) time per week. The day of collection shall be the same day as one of the regular collection days for solid waste preferably the first collection of the week. However, pickups normally scheduled on a holiday shall be rescheduled for the next regularly scheduled pickup day.

H. Grantee will provide at no additional cost to Grantor an eight (8) yard recycling container at the Public Services Facility for use by residents and visitors.

I. Grantee will provide at no additional cost an eight (8) yard recycling container at the Norriego Point parking lot for use by residents and visitors.

J. Grantee will provide at no additional cost to Grantor up to three (3) additional eight (8) yard recycling containers for use by residents and visitors at Grantor's requested location.

~~Glass food and beverage containers — brown, clear, or green~~

## SECTION 19. RECYCLING PROGRAM.

A. The Grantee shall be responsible for maintaining the information and records adequate to determine participation rates and weekly setout rates by volume of solid waste diverted from landfill by percent, weight of items recycled, neighborhoods above or below average participation. . The Grantee shall furnish quarterly diversion report to the City. Reports shall be on forms and in a format required by the Grantor.

B. Grantee agrees to meet on a semiannual basis with the Grantor's Environmental/ Tree Committee **or, if such a committee is not standing, then the City's Parks and Recreation Committee** to discuss ways to increase recycling throughout the City, at a time mutually agreed to by both parties to this



agreement.

## SECTION 20. COLLECTION SERVICES AND OPERATIONS.

### A. Residential

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up from the curbside adjacent to each residence all garbage, rubbish, and residential wastes (household garbage) two (2) times a week from Carts provided by Grantee; collection of horticultural trash and bulky waste shall be one (1) time per week on days agreed upon by the Grantee and Grantor. Instructions regarding regular solid waste collection, Bulky Waste collection and Horticultural Waste collection shall be provided by Grantee on the 96 gallon Cart provided to residents. However, pickups normally scheduled to be made on a holiday shall be rescheduled for the next regularly scheduled pickup day. Grantee agrees to collect additional Rubbish outside of the Cart only on the next service day after Christmas generated by Holiday festivities. Such additional Rubbish shall be bagged, bundled or contained, to avoid scattering and each bag, bundle or container shall weigh less than fifty pounds. Grantee, at his sole expense, shall notify residences served of the holiday observed and regular pickup schedules at least five (5) days in advance by publication or other means approved by Grantor.

- (a) Holidays: The following holidays may be observed by Grantee for purposes of this franchise: New Year's Day, Thanksgiving Day and Christmas Day.
- (b) Schedule: Regularly scheduled pick up days for household garbage shall be Tuesday and Friday; Tuesday will be the day for recycling and Wednesday and/or Friday will be the day for horticultural trash collection. However, all schedules and routes are subject to being rescheduled as mutually agreed to by the Grantor and Grantee. The Grantor, -at the request

of the Grantee or on its own, may extend, suspend or modify these schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

2. Quantity: Grantee shall be required to pick up all garbage and rubbish generated at residential premises, provided same is placed in the garbage cart. Grantee shall also be required to furnish an additional cart when requested and paid for by residents at an additional fee of ~~\$11.58~~14.52 See Exhibit A per month billed annually at ~~\$138.96~~74.24 See Exhibit A and adjusted annually to reflect the change in the WST CPI from the prior twelve month period ending in June.

3. Collections. All collections shall normally be made in residential areas no earlier than 6:00 a.m. and no later than 6:00 p.m., with no service on Sunday and select holidays, except in declared emergencies. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Garbage carts shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found at the curbside. All work shall be done in a safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee. Missed pickups and minor issues shall be resolved within 24 hours. All other problems must be resolved or a cure initiated within seven (7) days.

4. Bulky Waste Collection: Grantee shall collect bulky waste placed at the curbside for collection once a week on a day agreed upon by Grantee and Grantor. Bulky Waste shall include up to six (6) cubic yards of material. Grantee shall provide additional Bulky Waste collection to residential customers at a rate agreed to between Grantee and resident. The resident shall be responsible for payment for these additional services.

5. Special services: Services such as back door collection, below ground collection, removal of any refuse other than garbage or rubbish as defined herein or additional pickups shall be provided on a separate fee basis upon terms agreed to by the Grantee and the customer. Grantee shall provide the requested special services within two (2) business days after reaching agreement with customer as to the rate for such services. Requests for pickups of special materials as defined herein shall be considered as requests for special pickup services. Charges for special services shall not be unreasonable or excessive. Household garbage services shall be provided at the rear or side residence for handicapped persons approved by the Grantor at no extra charge. Smaller sixty-four (64) gallon carts will be made available to special needs customers (handicapped or elderly) upon request by Grantor.

6. Exempt customers: Residents or occupants who, upon application to the Grantor pursuant to Section 12-86, Destin City Code, are determined by the City Manager to be unable to pay the collection and disposal fee due to hardship or inability shall be exempt from the payment of collection fees. Any customer desiring to be considered for exempt status needs to apply by April 15<sup>th</sup> of each year.

7. Public Right of Way Collection: Grantee shall collect at no additional charge to Grantor, illegally dumped materials such as Horticultural trash, furniture and Bulky Waste disposed of in the City right of ways; provided such collections do not require the use of a special truck not normally used in Grantee's collection of waste pursuant to this Agreement.

8. Senior Program: City residents, where there are no more than two persons residing in the dwelling and at least one of those two is age 65 or over by October 1st of the current year who, upon application to the Grantee, and using guidelines established by the City to be eligible for a senior program, will receive discounted rates as determined in Section 29 (A). 1. The City of Destin may enforce other restrictions/ criteria to be eligible for this discount. The level of service for the senior program for collection of garbage will be once a week and picked up on the first day of weekly collection service for the route which services their address. All other services (recycling and horticultural waste) will be the same as other residential customers.

8.

9. Waste Receptacles:

- (a) Garbage: Garbage shall be placed for collection separately from rubbish and shall be placed in the garbage carts furnished by the Grantee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) upon request with the Grantor's approval.
- (b) Horticultural trash: Horticultural trash must be canned, bagged and/ or stacked and shall not weigh more than fifty (50) pounds per container or stack, and shall not be in excess of six (6) feet in length or four (4) inches in diameter. Total volume per each horticultural debris service day pickup shall not exceed two (2) cubic yards (approximately the amount which can be placed in the bed of a standard pickup truck). Grantee will not remove stumps or tree trunks in excess

of four (4) inches, in diameter.

10. Hazardous materials: Grantee shall not be required to collect hazardous materials.

11. Location of residential waste for collection: Persons in occupancy of each residential establishment shall place their garbage carts at the curb no sooner than 12:00 p.m. the day before a scheduled pick-up and shall remove the garbage carts by midnight of the day of the pick-up, unless: the occupant or resident has been approved for back door or side door pickup or the occupant or resident has negotiated a special service collection at another location.

10. Customer restrictions: Grantee shall not be required to collect residential waste when such waste is not generated on the residence served. Grantee shall have the right to terminate service to any customer violating this section only after prior notification to the customer and approval by the Grantor.

## B. Commercial

1. Frequency of collection: Grantee shall, on a regularly scheduled day, pick up all garbage, rubbish, and wastes. However, pickups normally scheduled to be made on a holiday shall be rescheduled for the day before or the day after the holiday or with the approval by the commercial establishment any other day within a five-day window of the holiday.

- (a) Holidays: The following holidays may be observed by Grantee for purposes of this franchise: New Year's Day, Thanksgiving Day and Christmas Day.
- (b) Schedule: Commercial collection shall be on days agreed to by the Grantee and commercial establishment. The Grantor, or its designee, is authorized to extend, suspend or modify these schedules in the event of a natural disaster, health hazard or any other state of emergency requiring such action.

2. Quantity: Grantee shall be required to pick up all garbage and rubbish generated by a commercial establishment, provided same is placed in a waste receptacle. The City Manager or his/her designee may require the commercial establishment to increase their level of service to accommodate the waste generated at the commercial establishment. Collections: All collections shall normally be made at commercial establishments no earlier than 6:00 a.m. and no later than 6:00 p.m. Grantee shall make collections with a minimum of noise and disturbance and in conformance with the City's Noise Ordinance. Waste receptacles shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found. All work shall be done in a safe and sanitary manner. All waste spilled by Grantee shall be picked up and removed by Grantee.

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

4. Waste receptacles:

- (a) Garbage and rubbish: Garbage and rubbish shall be placed for collection within

a commercial container.

- (b) Hazardous and biohazardous materials: Grantee shall not be required to collect hazardous or biohazardous materials.
- (c) Location of commercial waste for collection: All commercial establishments receiving service pursuant to this franchise shall keep waste receptacles, disposal containers and other such items at location(s) approved by the City.

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

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

#### SECTION 21. OFFICE AND COLLECTION HOURS.

A. The Grantee's office shall remain open Monday through Friday from 8:00 a.m. to 5:00 p.m. to handle complaints from residential customers; and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. Commercial customers shall be provided a local or toll free number which shall be available from 7:00 a.m. to 5:00 p.m. Monday through Friday and on Saturdays from 8:00 a.m. to 4:00 p.m. These requirements do not apply on the legal holidays identified in Section 20.

B. Collections shall normally be made at commercial establishments no earlier than 6:00 a.m. and no later than 6:00 p.m. If the Grantee has an equipment breakdown, it shall be relieved from completing collection by 6:00 p.m. but not later than 10:00 p.m. for the route being served by such equipment experiencing operating difficulties, provided that such route shall be fully collected that day by the Grantee with substitute equipment.

C. An exception to the normal pickup times is granted to commercial establishments located south of Harbor Blvd, to include McGuire's Irish Pub, due to high traffic volume and limited parking. The pickup times at these locations are 4:30 a.m. to 7:00 p.m. At the request of the Grantee or the City Manager or his designee, Section 21. C. may be modified due to the proximity of residential units, new commercial establishments and other concerns. The approval of such requests will not be unreasonably delayed or withheld.

#### SECTION 22. COLLECTION EQUIPMENT.

The Grantee shall have on hand at all times sufficient equipment in good working order and of the minimum weight necessary to permit Grantee to perform its duties hereunder fully, adequately and efficiently. Equipment shall be purchased from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment shall be kept clean, sanitary, neat in appearance, and in good repair at all times and shall be equipped with back-up warning lights and alarm. The Grantee shall at all times have available reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond in size and

capability to the equipment normally used by the Grantee to perform its duties hereunder.

#### SECTION 23. DISPOSAL.

All garbage and solid waste shall be hauled to sites or facilities selected by Grantee and legally empowered to accept it for treatment or disposal.

#### SECTION 24. ROUTES AND SCHEDULES.

The Grantee shall periodically provide the Grantor with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, Grantee shall notify each customer affected by either direct mail or door hangers which the Grantor shall approve for such purpose. Grantee shall also notify customers by placing an advertisement prominently displayed in a local newspaper on at least two (2) occasions, the latter being at least one (1) week prior to the change. All such changes in routes or schedules will also be immediately communicated to Grantor at the time determined by the Grantee. Grantee shall assist Grantor in conveying these changes through all other reasonable means, including through Grantor's website and social media accounts.

#### SECTION 25. GRANTEE PERSONNEL.

Grantee shall assign a qualified person to be in charge of operations under this franchise and shall give the name and qualifications of said person to the Grantor. Grantor requires that Grantee's collection employees wear clean uniforms bearing Grantee's company name. Each person employed to operate a vehicle shall at all times carry a valid CDL driver's license for the type of vehicle being driven. Grantor may request the dismissal of any employee of Grantee who violates any provisions of this subsection or who is found to have been wanton, negligent or discourteous in the performance of his or her duties. Grantee shall provide operating and safety training for all personnel. Wages of all employees of Grantee shall be equal to or exceed the minimum hourly wages for such employees established by local, state or federal law. Grantee utilizes and will continue utilizing Florida's E-Verify program as required by section 448.095, Florida Statutes, as it may be amended from time to time.

#### SECTION 26. SPILLAGE AND LITTER.

The Grantee shall not litter premises in the process of making collections, but shall not be required to collect any waste material that has not been placed in supplied or approved containers or in a manner herein provided. During hauling, all solid waste or liquids shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the Grantee, the Grantee shall promptly clean up the litter.

#### SECTION 27. STORMS AND OTHER EMERGENCIES.

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

The Grantee shall not be responsible for nor have an obligation to collect, transport or dispose of debris or other waste material from a hurricane, severe storm or other natural or man-made disaster (including increased horticultural trash and bulky waste) unless the Grantor enters into a written agreement with Grantee specifying the terms and compensation for such services.

Further, the parties shall track on a quarterly basis the volume of waste Grantee collects under normal, non-disaster event influenced conditions. Should waste volume collected by the Grantee in a quarter be greater by fifteen percent (15%) than such volume collected by Grantee in the same quarter of the previous year, and the increase in volume is attributable to a recent disaster event, Grantee shall be entitled to additional compensation for the collection of waste in excess of normal volumes for the same period. Such compensation shall be calculated at the average rate charged to the City of Destin by its storm debris collection contractors.

#### SECTION 28. NONDISCRIMINATION PROVISION.

The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request it will permit reasonable access by Grantor to its records of employment, employment advertisements, application forms, and other pertinent data and records for purposes of investigation to ascertain compliance with the nondiscrimination provisions of this franchise, provided, however, that Grantee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the date of the franchise.

#### SECTION 29. RATES AND CHARGES.

##### A Rates:

1. The initial rates for recycling and the automated collection of garbage, Horticultural Trash, and Bulky Waste under this franchise, the initial residential rate shall be according to Exhibit "A" which is attached hereto and incorporated herein [~~\$239.76~~ annually (~~\$19.9825.06~~ See Exhibit A per month). Additional carts if requested will be \$ See Exhibit A ~~138.96~~ annually (\$ See Exhibit A ~~11.14.5258~~ per month). For City residents who elect and are approved to take advantage of the Senior Program as defined in Section 20, the initial rate will be ~~\$195.96246.72~~ See Exhibit A annually (~~\$16.3320.56~~ See Exhibit A per month).] All such rates shall be adjusted in accordance to Section 30.

~~2.~~ For garbage, yard waste for the initial term of this franchise, the monthly rate for commercial establishments shall be as stated on Exhibit A.

B. Grantee shall be solely responsible for the billing and collection of receivables from residential cart customers on an annual or quarterly basis. The following steps will be followed with respect to accounts in arrears:

- 30 plus days – customers will receive notice of overdue account and a call from Grantee's collection department. The property owner will receive the same notifications from Grantee.
- 45 days – customer's service will be suspended pending payment in full. Customer and property owner will receive a call from Grantee's collection department. A reactivation fee of \$25 per residential unit will be assessed. All calls will be documented in Grantee's database.

- 92 days – the Cart will be retrieved by Grantee and the account will be cancelled for non-payment. Grantor will be provided with a list of these customers weekly. A reactivation fee of \$25 will be assessed.

C. Grantee shall be solely responsible for the billing and collection of receivables from commercial customers on a monthly basis, respectively. Customers may include either the property owner or tenant/ occupant of each commercial establishment generating solid waste.

D. For items requiring roll-off service or any other special handling not otherwise delineated in this franchise, the charges are to be negotiated between the Grantee and the customer. If agreement cannot be reached, the matter shall be submitted to the Grantor for final determination.

E. Grantee shall keep records of the volume of solid waste collected and charges therefore and the Grantor shall have the right to review any records which in any way pertain to solid waste payments.

F. The Grantee is to provide solid waste removal and recycling services to all of the City's facilities, including all City parks and the City's sports complexes at no charge. The Grantee will provide six (6) commercial containers each of a size to be specified by the City at no cost to the City for City sponsored events ~~such as City wide cleanups, including one community cleanup per year.~~

~~G. ——— Grantee shall provide at no additional cost to the Grantor, one twenty (20) yard roll-off container at the Public Works Facility serviced twelve (12) times annually for disposal of street sweeping debris considered special waste. An additional thirty (30) yard roll-off container will be placed at the Public Works Facility and serviced twenty-four (24) times annually at no cost to the Grantor. Grantee shall provide at no additional cost to Grantor, one twenty (20) yard roll-off container at the Public Works Facility for disposal of street sweeping debris considered special waste.~~

I. Should Grantor annex any property currently serviced by Grantee under Okaloosa County Solid Waste contract, the owners of the annexed property shall have the option to opt into this Agreement at the rate structures specified herein, or the owners of the annexed property may elect to continue with the rate structure provided in Grantee's agreement with Okaloosa County through the end of the term of Grantee's agreement with Okaloosa County. ~~Grantee agrees to honor the rate structure provided in the Okaloosa County agreement for those properties through the end of the current term of that agreement.~~

J. Either party may request a joint house count annually.

### SECTION 30. RATE CHANGES.

#### A. CPI and Fuel Adjustments

The initial rates contained herein shall be in place for the first twelve (12) months of this agreement. On October 1st of each subsequent anniversary date, the rates will be adjusted according to the changes in the Consumer Price Index (CPI) for the previous twelve (12) months ending on the preceding June. For purposes of this agreement, CPI shall mean the Consumer Price Index for Water, Sewer and Trash CPI, Not Seasonally Adjusted, All Areas (WST CPI) as published by the U.S. Department of Labor.

1. ~~The hauling rates shall be increased in an amount sufficient to offset any new law (effective after the date hereof) fee, surcharge, duty, tax, or other charges of any nature imposed by the federal government, any agency thereof, the State of Florida, any agency thereof, or by any local~~

~~governmental body or agency which is payable solely by reason of the nature of the operations conducted by Grantee and any other sales or services taxes of general application to the Grantee operations. If Grantee invokes this provision, then it shall notify Grantor at least ninety (90) days prior to any increase in hauling rates. If Grantor disputes Grantee's invocation of this provision, then the parties shall attempt in good faith to resolve the dispute. If the dispute is not resolved, then the parties shall engage in an alternative dispute resolution proceeding or as described in Section 15. Should any new law, fee, surcharge, duty, tax, or other charges of any nature be imposed by the federal government, any agency thereof, the State of Florida, any agency thereof, or by any local government body or agency which is payable solely by reason of the nature of the operations conducted by Grantee and any other sales or services taxes of general application to the Grantee's operations, then the parties shall convene and negotiate in good faith an increase in Grantee's hauling rates.~~

2. In addition to the foregoing, Grantee may petition the Grantor for rate increases to cover unforeseen and unusual increases in the costs of operating under this Agreement. Grantee will be responsible for documenting the impact of such costs and any resulting increase in the rates and the Grantor shall reasonably and timely consider the request in good faith. The Grantor shall not unreasonably deny relief.

2.

B. Change in Law:

The Grantee may petition the Grantor to adjust Grantee's rates based upon unusual and unanticipated increases in the cost of doing business, including but not limited to a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefor. The Grantor shall be entitled to audit the Grantee's financial and operational records directly related to the Grantee's request in order to verify the increase in costs and the reasons therefor.

"Change in Law" means (i) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Agreement, which in the case of either (i) or (ii) establishes requirements affecting the Grantee's operation under this Agreement more burdensome than the requirements that are applicable to Grantee and in effect as of the date of this Agreement. A change in any federal, state, county, or other tax law or workers' compensation law shall not be a Change of Law. However, in the event that a federal, state or local entity imposes a fee, tipping fee adjustment, charge or tax after the date of this Agreement that applies to Grantee's operations per se, such fee, charge or tax shall be treated as a Change in Law.

The Grantee's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The Grantor may request from the Grantee, and the Grantee shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Grantor shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the Grantor. The Grantor shall make a reasonable determination based upon the documentation provided in reaching its decision and shall not unreasonably deny relief hereunder.

#### SECTION 31. DELINQUENT ACCOUNTS.

A. Commercial: When an account is delinquent by thirty (30) days Grantee shall provide the commercial establishment with the following written notices by United States Mail: 30 days, friendly



reminder of delinquency; 40 days, notice of potential service interruption; 50 days, notice of service interruption; 60 days, final demand for payment; 65 days audit/final notification before cancellation; and 90 days cancellation and delivery to third party collection agency. At the time that the Grantee actually stops service, notification of that fact will be given to the Grantor.

B. Grantee shall make all reasonable efforts to work with commercial establishment customers regarding payment of their accounts prior to interrupting or canceling service, i.e., negotiate payment plans, resolve billing disputes, etc.

#### SECTION 32. ACCOUNTING; RIGHT TO AUDIT.

A. Grantee shall keep an accurate set of books and records reflecting gross revenues derived within the service area pursuant to this franchise. Said books and records shall reflect, in addition to information normally reflected pursuant to standard accounting procedures, and the requirements of Chapter 403, Florida Statutes, the name and service address of each residential and commercial establishment customer, dates of commencement and termination of service, the service charge and any change thereto, the billings, billing dates and receipt of revenues. Certified copies of the above shall be furnished to the Grantor upon request. These certified copies shall be provided in a reasonable amount of time not to exceed two weeks from the date of request.

B. Two (2) times per year the Grantor may audit the books and records of the Grantee in order to determine whether the franchise fees paid pursuant to Section 5 are those required thereby. Grantor's failure to exercise its right to audit at any time shall not constitute a waiver of such right, and notwithstanding such omission, the Grantor shall have such continuing right to audit until one year after the termination of this franchise. In the event that Grantor elects to exercise its right to audit, Grantor shall provide to Grantee written notice of such election at least forty-eight (48) hours in advance of the time of the audit. Grantor shall have the right to select the auditors to make the audit and one (1) audit per year shall be at the Grantee's expense. In the event a second audit is performed at Grantor's request in any given year, the expense of that second audit shall be borne by the Grantor, except in cases of fraud, deceit or intentional misrepresentation of monies due to the Grantor, in which case the expenses of the audit shall be borne by the Grantee. Grantee shall make available to the auditor, at no charge, such personnel, financial and other records as the Grantor may in its reasonable discretion request in order to complete such audit.

#### SECTION 33. COMPLAINTS.

All complaints shall be resolved by Grantee within twenty-four (24) hours. Grantee shall, within forty-eight (48) hours of receipt, supply Grantor with copies of all complaints on a form approved by the Grantor and indicate the disposition of each. Each month such record shall be available for inspection by Grantor at all times during the business hours specified herein. The complaint record/ form shall indicate the day and hour on which the complaint was received and the day and hour on which the complaint was resolved. When a complaint is received on the day preceding a holiday or on a Sunday, it shall be serviced on the next working day. The Grantee shall establish procedures acceptable to the Grantor to ensure that all customers are notified of the complaint procedure.

#### SECTION 34. CHARGES FOR FAILURE OF PERFORMANCE.

A. Upon the recommendation of any Council member or City staff member, and reasonable notice to Grantee, administrative charges may be assessed against the Grantee by vote of the City Council if the Council determines that

1. Total residential complaints during any calendar month involve more than one

(1%) percent of the total residential customers within the service area;

2. Total residential complaints during the Grantor's fiscal year exceed more than two (2%) percent to the total residential customers with the service area;

3. Total commercial complaints during any calendar month involve more than three (3%) percent of the total commercial customers within the service area;

4. Total commercial complaints during the Grantor's fiscal year exceed more than six (6%) percent to the total commercial customers within the service area; or

5. Where the lack of performance by Grantee is continuous and determined by the Council to constitute a threat to the health, safety or welfare of residents and commercial establishments. "Welfare" as used in this subsection shall include the direct and indirect economic effects of Grantee's failure to perform.

B. Administrative charges shall be assessed only for verified complaints which indicate that the Grantee has failed to meet the minimum standards stated herein and will be in accord with the following schedule:

SCHEDULE OF ADMINISTRATIVE CHARGES

1.	Failure to clean up spilled refuse	\$ <del>105</del> 0.00 per incident
2.	Failure to collect solid waste per location or special collection solid waste from any premises at or within service area	\$ <del>1005</del> 0.00 per incident
3.	Failure to complete each route on the regular scheduled pickup	\$ <del>14,5</del> 000.00 per route not completed
4.	Failure to keep equipment in clean, safe and sanitary manner	\$ <del>1504</del> 00.00 per vehicle per day
5.	Failure to have vehicle operator properly Licensed	\$ <del>150</del> 00.00 per day per incident
6.	Failure to maintain office hours as set forth in Section 21	\$ <del>150</del> 00.00 per incident
7.	Failure to replace or repair any damage caused by Grantee or its personnel	\$ <del>10025</del> .00 per incident

C. Within five (5) business days of the date of Council's action imposing such administrative charge, Grantee shall be notified in writing by certified United States Mail, return receipt, of the assessment of administrative charges and the basis for such assessment. Grantee may contest such assessments by filing a written protest with the City Clerk stating the reasons for disagreement within five (5) business days of the receipt of the notice of assessment. This protest will be acted upon by the City Council at the Council's next regularly scheduled council meeting.

SECTION 35. VENUE

The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Florida. The venue for any action arising out of this Agreement shall be exclusively in Okaloosa County, Florida and nowhere else.

SECTION 36. SOVEREIGN IMMUNITY

Nothing contained herein is intended to nor shall be construed to waive the City of Destin's rights and immunities under the Florida Constitution, common law or Florida Statutes 768.28, as amended from time to time.

SECTION 37. CONFLICTING ORDINANCES AND RESOLUTIONS.

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

SECTION 38. FORCE MAJEURE.

A. Except for the failure to make payment when due, neither Party shall be in default for its failure to perform or delay in performance caused by an Uncontrollable Circumstance, and the affected Party shall be excused from performance during the occurrence of such events. For purposes of this Agreement, "Uncontrollable Circumstances" means any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, epidemics and pandemics, quarantines, labor shortages, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), declarations or acts of domestic or foreign governments, or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party. If the Grantor or Grantee is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of force of majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the Grantor or Grantee to correct the adverse effect of such event of force majeure.

~~B. — An event of "force majeure" shall mean the following events or circumstances to the extent that they delay the Grantor or Grantee from performing any of its obligations (other than payment obligation) under this Agreement:~~

~~1. — Strikes and work stoppages unless caused by a negligent act or omission of Grantee or its agents or assignments.~~

~~2. — Acts of God, tornado, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Grantee, its agents, and assignments), landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather.~~

~~3. — Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities; and~~

~~4. — Suspension, termination or interruption of utilities necessary to the operation of~~

~~the duties under this Agreement;~~

~~5. Economic hardship of the Grantee shall not be considered an event of force majeure.~~

#### SECTION 39. JURY TRIAL WAIVER.

GRANTEE AND CITY AGREE TO WAIVE THEIR RIGHTS TO A TRIAL BY JURY REGARDING ANY LAWSUIT INVOLVING THE INTERPRATION, CONSTRUCTION, ENFORCEMENT, OR GOVERNANCE OF THIS CONTRACT, AND FOR ANY LAWSUIT RELATED IN ANY WAY TO THIS CONTRACT OR FOR THE WORK PERFORMED PURSUANT TO THIS CONTRACT.

#### SECTION 40. PUBLIC RECORDS.

IF GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE OFFICE OF THE CITY CLERK, (850)837-4242, 4200 INDIAN BAYOU DRIVE, DESTIN, FLORIDA 32541, rbailey@cityofdestin.com.

Specifically, GRANTEE must:

- i. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this FS Chapter 119 or as otherwise provided by law.
- ii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if GRANTEE does not transfer the records to the public agency.
- iii. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of GRANTEE or keep and maintain public records required by the City to perform the service. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

#### SECTION 41. SAVINGS CLAUSE.

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

#### SECTION 42. EFFECTIVE DATE.

This ordinance shall take effect ~~immediately upon its adoption~~ October 1, 2022 by the City Council of the City of Destin, Florida, and the signature of the Mayor, and upon filing of Grantee's written acceptance with the City Clerk

ADOPTED THIS \_\_\_ DAY OF \_\_\_\_\_, 2017~~2022~~

ATTEST:

By: \_\_\_\_\_  
Gary Jarvis, Mayor

\_\_\_\_\_  
Rey Bailey, City Clerk

The form and legal sufficiency of the foregoing  
has been reviewed and approved by the City Attorney.

City Attorney

\_\_\_\_\_  
Kyle S. Bauman \_\_\_\_\_ ,

**APPROVAL AND ACCEPTANCE**

WASTE MANAGEMENT INC. OF FLORIDA does hereby approve and accept the foregoing solid waste collection and disposal franchise and, as franchisee, agrees to perform, assume and comply with all of the terms, conditions, covenants and obligations of said franchise and authorizes the undersigned officer to execute this Approval and Acceptance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, ~~2017~~2022

**WASTE MANAGEMENT INC. OF FLORIDA**

By: \_\_\_\_\_

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

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

**EXHIBIT A – EXHIBIT A**

**3% Franchise Fee (2022 Proposed Ordinance)**

<b>Commercial Establishment Rates</b>							
These Rates do not include additional service requirement such as casters, opening gates, compactors, etc. Commercial Establishments that only require one 96-gallon cart will receive service two times per week at curbside and will be billed at the same rate as a two-yard container serviced one time per week. Commercial establishments shall be billed for the rate of service required and will not receive recycling services.							
Multi-Family Residential	Multi – Family units that are serviced by Front Load Dumpsters will be billed to one entity based on the Commercial Establishment Rates for the service required and will not receive recycling service. Multi – Family units that are serviced by carts will be billed at the Residential Rate and shall receive recycling and horticultural waste pickup.						
All Commercial Rates are per Month <b>DER</b> Price Group							
	1	2	3	4	5	6	7
2 yard container	110.02	210.56	311.37	412.07	512.76	613.41	717.69
4 yard container	136.45	261.00	385.53	510.56	634.60	759.13	888.18
6 yard container	165.65	314.05	462.44	610.85	759.24	907.65	1061.94
8 yard container	191.26	363.51	535.76	708.03	880.29	1052.58	1231.49

<b>Residential</b>	<b>DER Price Group</b>
Residential Service With Recycling and Carts	<b>\$ 307.20 Annual</b> <b>\$ 25.60 Monthly</b>
Senior Citizen Residential Rates	<b>\$ 251.40 Annual</b> <b>\$ 20.95 Monthly</b>
Second Cart Residential Rates	<b>\$ 178.56 Annual</b> <b>\$ 14.88 Monthly</b>

Rates including 3% Franchise Fee and \$6.00 Annual Billing Fee:

	<b>Monthly</b>		
Rate Monthly	\$ 24.83	\$ 20.32	\$ 14.43
Franch. Fee	\$ 0.77	\$ 0.63	\$ 0.45
<b>Total Rate</b>	<b>\$ 25.60</b>	<b>\$ 20.95</b>	<b>\$ 14.88</b>
Quarter	\$ 76.80	\$ 62.85	\$ 44.64
Annual	\$ 307.20	\$ 251.40	\$ 178.56

Regular  
Senior  
2nd Can

**VIP Compactors: Proposed 2022**

	1	2	3	4	5	6	7
2	\$ 185.25	\$ 358.92	\$ 532.59	\$ 706.27	\$ 879.96	\$ 1,053.63	\$ 1,253.63
4	\$ 229.74	\$ 445.74	\$ 661.74	\$ 877.73	\$ 1,093.73	\$ 1,309.70	\$ 1,509.70
6	\$ 278.92	\$ 539.84	\$ 800.75	\$ 1,061.67	\$ 1,322.53	\$ 1,583.50	\$ 1,783.50
8	\$ 322.04	\$ 624.90	\$ 927.77	\$ 1,230.65	\$ 1,533.51	\$ 1,836.38	\$ 2,036.38

**RATE SHEET**

COMMERCIAL							
Commercial rates should not include additional service requirements such as casters, opening gates, compactors, etc. Commercial Establishments that only require one (1) 96-gallon cart shall receive service (2) two times per week at curbside, and shall be billed at the same rate as a two (2) yard container serviced one (1) time per week. Commercial establishments shall be billed for the rate of service required and will not receive recycling services.							
Multi-Family Residential	Multi-Family units serviced by Front Load Dumpsters shall be billed to one entity based on the Commercial Rates for the service required and will not receive recycling service. Multi-Family units that are serviced by carts will be billed at the annual Residential Rate and shall receive recycling and horticultural waste pickup.						
	Rate per Month						
	Frequency/Times per week						
	1	2	3	4	5	6	7
2 yard container	\$80.75	\$154.64	\$228.54	\$302.44	\$376.34	\$450.22	\$526.76
4 yard container	\$100.15	\$191.56	\$282.96	\$374.37	\$465.77	\$557.18	\$651.90
6 yard container	\$121.58	\$230.50	\$339.42	\$448.34	\$557.26	\$666.18	\$779.43
8 yard container	\$140.38	\$266.80	\$393.23	\$519.67	\$646.10	\$772.54	\$903.87

RESIDENTIAL		
Residential Service with Recycling and Carts	\$239.76	Annual
	\$19.98	Monthly
Senior Citizen Residential Service	\$195.96	Annual
	\$16.33	Monthly
Second Cart Residential Service	\$138.96	Annual
	\$11.58	Monthly

RESIDENTIAL including Franchise Fee			
	Regular	Senior	2 <sup>nd</sup> Cart
Rate Monthly	\$19.78	\$16.17	\$11.46
Franchise Fee	\$0.20	\$0.16	\$0.12
Total Rate	\$19.98	\$16.33	\$11.58
Quarter	\$59.94	\$48.99	\$34.74
Annual	\$239.76	\$195.96	\$138.96

VIP COMPACTOR \$							
Rate Per Month							
	1	2	3	4	5	6	7
2 yard container	\$126.42	\$238.27	\$350.15	\$462.05	\$553.72	\$744.58	\$911.57
4 yard container	\$163.59	\$308.27	\$452.88	\$597.55	\$742.23	\$962.90	\$1,178.89
6 yard container	\$203.39	\$380.85	\$558.34	\$735.76	\$953.59	\$1,184.16	\$1,449.26
8 yard container	\$238.40	\$448.66	\$658.89	\$869.12	\$1,126.45	\$1,400.14	\$1,714.13

PROVIDE METHODOLOGY FOR CALCULATING CPI / RATE INCREASE
Beginning 10/1/18, the contractor shall be entitled to receive an annual adjustment to the collection rates based upon the Consumer Price Index for water, sewer, and trash, CPI (CPI-WST) Not Seasonally Adjusted, All Areas, as measured by the preceding twelve month period ended each preceding June. The CPI-WST adjustment shall continue to be applied on October 1 of each contract year.