

SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT

This SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT (this "Agreement"), dated as of January 31, 2024 (the "Effective Date"), is made between Madison County, Alabama, an Alabama public corporation ("the County"), and City of Madison, Alabama, an Alabama public corporation ("the City"). The County and the City are collectively referred to herein as the "Parties."

RECITALS

- A. The County collects, hauls, and disposes of household solid wastes within its unincorporated areas.
- B. Pursuant to Code of Alabama, § 22-27-5(a), counties are permitted to enter into mutual agreements with municipalities to jointly or individually collect, haul, and dispose of solid wastes.
- C. The City desires to engage the County to provide certain solid waste collection and disposal services for the City, pursuant to the terms and conditions of this Agreement.
- D. The County desires to provide certain solid waste collection and disposal services for the City, pursuant to the terms and conditions of this Agreement.
- E. The Parties (and their governing bodies) agree it is mutually economical and feasible for the County to collect, haul, and/or dispose of solid wastes generated within the municipal limits of the City, pursuant to the terms and conditions of this Agreement.

Accordingly, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION.

1.1 **Definitions.** The Parties acknowledge the capitalized terms in this Agreement shall have the meanings ascribed below and/or elsewhere in this Agreement:

- (a) "**Bulk/Commercial Solid Waste(s)**" means any non-liquid materials or substances that are generally discarded or rejected as being spent, useless, or worthless to the owners at the time of such discard or rejection that does not fit within a County-provided receptacle and/or that is discarded by a multi-family residence or an industrial, commercial or retail enterprise, including garbage, trash, refuse, industrial and commercial waste, rubbish, ashes, contained gaseous materials, incinerator residue, and construction and demolition waste; provided, however, that "Bulk/Commercial Solid Waste(s)" shall not include "**Household Solid Waste(s)**" and/or "**Unacceptable Waste(s)**".
- (b) "**Customer(s)**" means any Person within the City who is approved to and does use the Services.
- (c) "**Loss(es)**" means any loss, claim, judgment, award, liability, damage, injury, cost, fine, penalty, or expense, including, but not limited to reasonable attorney's fees, court costs, litigation fees and expenses, expert witness fees, pre- or post-judgment interest, and all other fees and costs.
- (d) "**Party**" means the County or City, and "**Parties**" means the County and City.

- (e) **"Person(s)"** means natural persons, governments (and agencies or departments thereof), quasi-public entities, corporations, partnerships, ventures, trusts, and all other forms of organization, association, or business entity.
- (f) **"Rate Schedule"** means the County's current rates and rate schedule (as shown in Exhibit A), and any future rates and rate schedules.
- (g) **"Service(s)"** means the collecting, hauling, and/or disposing of Household Solid Wastes by the County for the City under this Agreement.
- (h) **"Household Solid Waste(s)"** means any nonliquid materials or substances that are generally discarded or rejected as being spent, useless, or worthless to the owners at the time of such discard or rejection into a County-provided receptacle, including household garbage, trash, refuse, rubbish, ashes, and contained gaseous materials; provided, however, that **"Household Solid Waste(s)"** shall not include **"Commercial Solid Waste(s)"** and/or **"Unacceptable Waste(s)"**.
- (i) **"Unacceptable Waste(s)"** means all or any portion of a material, substance or Solid Waste that is not acceptable waste and/or is a hazardous waste, including sewage sludge, livestock and poultry wastes, herbicides, pesticides, gaseous products and their containers (except household types), motor vehicles and their parts, boats and their parts, utility trailers, pharmaceutical products (other than those for normal household use), pathological wastes and wastes controlled by other federal; state or local governmental entities.

1.2 **Construction and Interpretation.** The Parties hereby acknowledge this Agreement shall be construed and interpreted as follows:

- (a) This Agreement shall be construed neutrally and shall not be construed against any Party.
- (b) The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- (c) If any provision of this Agreement is held to be unenforceable for any reason, it shall be revised rather than voided, if possible, in order to achieve the intent of the Parties to this Agreement to the extent possible.
- (d) Where the context makes it appropriate, each singular word shall include its plural, and each plural word shall include its singular.
- (e) Unless the context otherwise requires, the conjunction "or" shall be understood in its inclusive sense (and/or).
- (f) The words "include," "includes" and "including" shall be deemed as being an illustration or for emphasis only and shall not to be construed so as to limit the generality of any words preceding them.
- (g) The words **"other"** and **"otherwise"** shall not to be construed as being limited by any words preceding them.

- (h) Unless otherwise specified, "section(s)" and "exhibit(s)" referred to in this Agreement shall be the sections of and exhibits to this Agreement.
- (i) The words "writing" and "written" shall not include electronic mail or any other communication in electronic form.

2. **SERVICES.** Subject to the City's compliance with its obligations under this Agreement (including its payment obligations contained in section), the County hereby agrees to provide the Services within the municipal limits of the City--both in the County and in Limestone County, Alabama. The County will also provide Customers, at its expense, an approved receptacle for the discard of Household Solid Wastes. The County shall not be responsible for collecting, hauling and/or disposing of Bulk/Commercial Solid Wastes and/or Unacceptable Wastes. All Bulk/Commercial Solid Wastes shall be the sole responsibility of the City and/or its duly authorized contractor.

3. **PAYMENT AND RATE SCHEDULE.** An invoice for services shall be provided by the County to the City within 10 days of each monthly service count performed by the County. The invoice will be based on the number of services provided by the County to the City residents for each category of services detailed in attached Exhibit A. The City shall pay for Services consistent with the invoice within thirty (30) days of receipt of the invoice for the prior month's Services. A finance charge of twelve percent (12%) per annum shall accrue on each and every unpaid invoice and shall continue to accrue until such invoice is fully paid. The City hereby acknowledges and agrees that the County may, at any time and within its sole discretion, modify, supplement, change and/or increase its rates for Services, rate structure, Rate Schedule and other costs, fees, or charges associated with the Services as long as all such changes are also being applied in the same amount and manner to all other County garbage customers. The City shall, and hereby agrees to, take any and all actions necessary to make its rates for collecting, hauling, and/or disposing of Household Solid Wastes consistent with the Rate Schedule, including making the Rate Schedule binding upon the Customers, providing any and all requisite notices, and obtaining all required consents for the County to provide the Services.

4. **TITLE TO HOUSEHOLD SOLID WASTES AND UNACCEPTABLE WASTE.** All right, title, and interest in and to Household Solid Wastes obtained by provision of the Services shall pass to the County when placed in or upon the County's collection vehicle; provided, however, that no right, title, or interest in and to Unacceptable Waste shall ever pass to the County. The Customer shall retain all rights, title, and interest in and to Unacceptable Waste. The County may refuse to collect the entire receptacle, container, bag, or bundle of Household Solid Waste if all or any portion contains Unacceptable Waste. If the County inadvertently collects Unacceptable Waste, then it will notify the City, which shall be financially responsible for the proper disposal and remediation costs associated with such Unacceptable Waste. The City hereby releases the County from any and all Losses concerning, relating to, and/or associated with collecting, hauling, disposing of, and/or remediating the effects of Unacceptable Waste.

5. **TERM, SUSPENSION, AND TERMINATION.**

5.1 **Initial Term.** This Agreement shall be in effect from the Effective Date for a period of two (2) years, unless it is terminated in accordance with this section 5.

5.2 **Suspension and Termination for Breach.** The County may immediately suspend Services, and subsequently terminate this Agreement for cause by giving ten (10) days written notice of such termination, to the City in the event that: (i) the City fails to timely pay the County; (ii) the City breaches or defaults under any other provision of this Agreement; or (iii) the City fails to satisfactorily

resolve problems with Unacceptable Waste. Upon giving its notice of termination, the County may take such other action as may be consistent with the termination of the business relationship.

5.3 **Termination without Cause.** Either Party shall have the right at any time, by giving sixty (60) days written notice to the other Party, to terminate this Agreement without cause.

5.4 **Termination by Health Officer.** If this Agreement fails to be in the best interest of the health, safety, and welfare of the Customers, the appropriate state health officer shall have the right, by giving thirty (30) days written notice to the Parties, to terminate this Agreement consistent with Code of Alabama, § 22-27-5(a).

5.5 **Survival of Payment Obligation.** All amounts payable by the City to the County shall survive termination and become immediately due and payable, regardless of the manner of termination.

6. INDEMNIFICATION.

6.1 **Indemnification by the County.** The County shall indemnify and hold the City harmless from and against any Losses finally awarded in connection with any claim, suit, demand, action, cause of action or other proceeding brought by another Person arising from, based on, or relating in any way to (a) the County's breach of or default under any provision of this Agreement; or (b) the County's negligent and/or willful misconduct or unlawful acts in performing its obligations pursuant to this Agreement; provided, however, that the County shall not be obligated to indemnify or hold the City harmless unless the City promptly notifies the County in writing of the claim, suit, demand, action, cause of action or other proceeding, allows the County to control the defense and participate in the settlement of such claim, suit, demand, action, cause of action or other proceeding, and cooperates with the County in the defense of the claim, suit, demand, action, cause of action or other proceeding or in any related settlement negotiations.

6.2 **Indemnification by the City.** The City shall indemnify and hold the County harmless from and against any Losses finally awarded in connection with any claim, suit, demand, action, cause of action or other proceeding brought by another Person arising from, based on, or relating in any way to the City's breach of or default under any provision of this Agreement or the City's negligent and/or willful misconduct or unlawful acts in performing its obligations pursuant to this Agreement. Provided, however, that the City shall not be obligated to indemnify or hold the County harmless unless the County promptly notifies the City in writing of the claim, suit, demand, action, cause of action or other proceeding, allows the City to control the defense and participate in the settlement of such claim, suit, demand, action, cause of action or other proceeding, and cooperates with the City in the defense of the claim, suit, demand, action, cause of action or other proceeding or in any related settlement negotiations.

7. DISCLAIMER AND EXCLUSION OF WARRANTIES.

7.1 General Disclaimer and Exclusion of Warranties.

THE CITY ACKNOWLEDGES THAT THE SERVICES FURNISHED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF PERFORMANCE, TIMELINESS, AVAILABILITY, THIRD-PARTY RIGHTS, SATISFACTORY QUALITY, UNINTERRUPTION, SUFFICIENCY OR AGAINST INTERFERENCE WITH ANY PERSON'S ENJOYMENT OF THE SERVICES; NOR ARE THERE ANY WARRANTIES CREATED BY THE COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.

THE CITY ACKNOWLEDGES THAT NO ORAL OR WRITTEN REPRESENTATION, STATEMENT, OR INFORMATION PROVIDED BY THE COUNTY BEFORE, DURING, OR AFTER THE EFFECTIVE DATE WILL CREATE A WARRANTY.

7.2 The disclaimers and exclusions contained in section 7.1 of this Agreement are an essential part of this Agreement and formed the basis for determining the terms and conditions of this Agreement.

8. GENERAL TERMS.

8.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

8.2 **Dispute Resolution.** The Parties expressly agree that any controversy, claim, suit, demand, action, cause of action, or other proceedings arising from, based on, or relating in any way to this Agreement, including, the existence, validity, interpretation, performance, breach or termination of this Agreement, the Services, or the Parties' business relationship shall be brought and decided solely and exclusive in a court of competent jurisdiction located in or embraced by Madison County, Alabama, and nowhere else. The City hereby expressly waives any rights or defenses within any other jurisdiction to require that a civil action regarding this Agreement, the Services, or the Parties' business relationship take place elsewhere, The City hereby waives any objection on grounds of forum *non conveniens*, venue, or personal jurisdiction to proceeding solely and exclusively in the above-referenced courts.

8.3 **Independent Contractors.** The County's and the City's relationship is solely that of independent seller of services and buyer of services, respectively. Except as otherwise provided in this Agreement, neither Party has the express or implied authority to assume or create any obligation on the other Party's behalf, and shall disclaim any such authority whenever necessary to avoid confusion. In no case shall a Party or any other Person subject to its control, if any, be deemed the other Party's agent or representative, nor shall a Party or any other Person subject to its control, if any, have the right to conclude any contract or commitment in the other Party's name, or to make any representation, guarantee, or warranty on behalf of the other Party to any other Person. Nothing in this Agreement shall be construed to create any association, partnership, or joint venture between the Parties.

8.4 **Assignment.** Neither Party is permitted to assign, delegate, transfer, by operation of law or otherwise, this Agreement, nor any rights or duties created by this Agreement, including payment for services provided by the County pursuant to this Agreement, without the prior written consent of the other Party. Any attempted assignment, delegation, or transfer of this Agreement without such written consent shall be void and of no effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns.

8.5 **Force Majeure and Excusable Delays.** Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of either Party (not including the obligations in section 3) shall not constitute a breach of this Agreement and that Party shall not be liable for any act or omission due to such conditions. The County's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control. The City acknowledges that conditions beyond the County's reasonable control include, but are not limited to unavailability of or inability to secure labor or materials, defaults by the County's consultants, vendors, suppliers or service providers, failure of the City or Customers to provide information or materials, failure of the City or Customers to provide access, delays based on the City's and/or its Customers' negligent or unreasonable acts or omissions, natural disasters (such as fire, flood, earthquake, hurricane, tornado, and wind), accidents, acts of or actions by any government or governmental agency after the Effective Date of

the Agreement, quarantine restrictions, power failure, acts of God or the public enemy, labor disputes or shortages, strikes, transportation embargoes, riots, war, rebellion, insurrection, sabotage, epidemics, judicial actions or orders, and such events of force majeure affecting the County's ability to provide the Services.

8.6 Third Party Rights. Nothing in this Agreement shall be construed as giving any Person (including one or more Customers), other than the Parties, any right, remedy, or claim under or in respect of this Agreement or any provision of this Agreement.

8.7 Notices. Any required or permitted notice to be given under this Agreement shall be given in writing and delivered either in hand with receipt obtained, by certified mail, return receipt requested, postage pre-paid, or by Federal Express or other recognized overnight delivery service, all delivery charges pre-paid, and addressed (with confirmation of delivery):

If to County:
Madison County Commission
100 Northside Square, 7th Floor
Huntsville, Alabama 35801

If to the City:
City of Madison, Alabama
Public Works Department
100 Hughes Road
Madison, Alabama 35758

With a copy to:
Madison County Attorney
100 Northside Square, 7th Floor
Huntsville, Alabama 35801

With a copy to:
City Attorney
City of Madison Legal Department
100 Hughes Road
Madison, Alabama 35758

8.8 Severability. If any provision of this Agreement is declared void, invalid, or illegal, or unenforceable by a court of competent jurisdiction, then the validity or legality of all other provisions of the Agreement shall continue in full force and effect.

8.9 Survival. The Parties hereby acknowledge and represent that they have read this Agreement, understand it, and agree to be bound by its terms. The Parties further hereby acknowledge and represent that this Agreement (and exhibits thereto), future Rate Schedules, and invoices from the County constitute the complete and exclusive agreement between the Parties. The Parties hereby acknowledge and represent that the provisions of sections 3, 5.6 and 6-8, as may be amended or modified from time to time, shall survive termination or expiration of this Agreement.

8.10 Modification and Waiver. Any failure of either Party to enforce, at any time or for any period of time, any provision of this Agreement, shall not constitute a waiver of such provision or in any way affect the validity of this Agreement. Except as otherwise provided in this Agreement, no change, modification, waiver, amendment, or supplementation will be effective unless assented to in writing by the Party to be charged, and any explicit, written waiver of a breach or default shall not constitute a waiver of any other right under this Agreement or any subsequent breach or default.

8.11 Warranty of Authority. The Parties, and the signatory for each Party, hereby acknowledge, represent, and warrant that each of them has the right and authority to execute this Agreement on behalf of that Party and the Party's governing body.

8.12 Counterparts. This Agreement may be executed in as many counterparts as may be required, each of which, when delivered, is an original, but all of which taken together constitute one and the same instrument.

8.13 **Exhibits and Referenced Documents.** All exhibits, invoices, and other documents (or portions of other documents as the case might be) referred to in this Agreement are incorporated by this reference.

8.14 **Complete Agreement.** This Agreement with its exhibits and other documents or portions of documents contains the Parties' entire agreement and supersedes all prior communications, representations, understandings, or agreements, oral or written, regarding its subject matter.

The undersigned hereby declare that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted by the Parties, after consultation with legal counsel of their choosing, on the date first identified on page 1 of this Agreement.

CITY OF MADISON, ALABAMA,
a municipal corporation

By: _____
Paul Finley, Mayor

ATTEST:

City Clerk-Treasurer

MADISON COUNTY, ALABAMA

By: Mac McCutcheon
Mac McCutcheon, Chairman
Madison County Commission

ATTEST:

Kevin Jones
Kevin Jones, County Administrator

EXHIBIT A
Rate Schedule
(as of Effective Date)

<i>Amount</i>	<i>Description</i>
\$8.00	1 residential cart, reduced rate (subject to qualification)
\$13.50	1 residential cart
\$18.50	2 residential carts
\$23.50	3 residential carts
\$45.00	Commercial (up to 3 carts)