

**CONTRACT NO.** \_\_\_\_\_

**ADDRESS & PHONE OF CITY**

City of Joplin, Missouri  
602 S. Main  
Joplin, MO 64801  
417-624-0820, ext. 500

**NAME, ADDRESS & PHONE OF COMPANY**

Waste Corporation of Missouri, Inc.  
2120 W. Bennett Street  
Springfield, MO 65807  
417-851-1900, ext. 1925

**AGREEMENT**

**THIS AGREEMENT** (hereinafter "Agreement", "Contract" or "contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Joplin, a municipal corporation of the State of Missouri, hereinafter referred to as the "City" with offices at 602 S. Main (64801), Joplin, Missouri and Waste Corporation of Missouri, Inc. with its principal office at 2120 W. Bennett St., Springfield, Missouri, hereinafter referred to as the "Company" or the "Contractor."

**WITNESSETH:**

**WHEREAS**, the City desires to engage the Company to render certain services hereinafter described in Request For Proposal **Solid Waste Collection Services RFP: #101-2016** which Request For Proposal is attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, the Company submitted a proposal dated December 15, 2015, which proposal is attached hereto and incorporated herein as Exhibit B; and

**WHEREAS**, the Company has become the lowest and best Proponent for performing the Scope of Work listed in the Exhibit A;

**NOW, THEREFORE**, the parties to the contract agree to the following:

1. The City agrees to engage the Company as the exclusive provider of residential solid waste collection services within the corporate limits of the City and the Company agrees to perform, in strict accordance with contract documents.
2. The services of the Company shall commence only as authorized in writing by City purchase order or other written notice and shall be undertaken and completed as promised by the Company in Exhibit B. The term of the Agreement shall be for the period of five (5) years, with an option of two additional one-year extensions as specified in the contract documents.
3. The City agrees to pay the Company in accordance with the prices and terms set forth in the contract documents and for work authorized by City purchase order or other written Notice by the City upon presentation of proper invoice and inspection by the City of work completed by the Company.
  - A. Without limiting or modifying the pricing information contained in the contract documents, as identified in Section 11 of this Agreement, the schedule of prices for City facility collection services are set forth on Exhibit C attached hereto.
  - B. The prices for residential and city facility solid waste collection services to be paid to the

Company, as set forth in the Company's proposal, shall remain unchanged for the first two (2) years of the term of this Agreement. Thereafter, such prices shall be automatically adjusted once each year on the anniversary date (April 1<sup>st</sup>) of this Agreement, and continuing through any and all renewal terms, by 100% of the increase reflected in the most recently published Consumer Price Index-All Urban Consumers, Series CUSR0000SEHG, Water and Sewer and Trash Collection, published by the United States Department of Labor, Bureau of Labor Statistics, for the time period from the last date on which such prices were fixed under this Agreement; provided, however, that any such annual increase in prices may not exceed two percent (2%) per annum. In the event the U.S. Department of Labor, Bureau of Labor Statistics ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may then be available so as to carry out the intent of this provision.

- C. The prices paid to the Company for year one of this agreement shall be:
    - 1. Residential Solid Waste Collection Services: \$11.24
    - 2. Residential Solid Waste PLUS Curbside Recycling Services: \$15.24
  - D. The Road Maintenance Fee shall be deducted by the City from the payment to the Company for solid waste collection services provided pursuant to this Agreement, up to but not exceeding the annual cap on such Road Maintenance Fee.
4. All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the Company without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of services.
5. The Company shall fully coordinate its activities in the performance of the contract with the activities of the City in accordance with the following understandings:
- A. The Company agrees to commence the delivery of trash collection carts to residents starting the week of March 21, 2016.
  - B. The Company agrees to make recycling services available to residents who elect to receive such services as early as June 1<sup>st</sup>, 2016 but no later than six (6) months of the date on which the Company is awarded this contract.
  - C. The Company and the City agree that it is in the best interests of the City and its residents to maximize the utilization of recycling services and agree to work together to promote the availability and introduction of recycling services through such sources as mutually agreed upon by the City and the Company, including local media outlets, the City's website, informational brochures and community events.
  - D. The Company shall provide weekly notification to the City of each resident who requested during the prior week to commence or discontinue the provision of recycling services to such resident, which changes in service shall be reflected on each monthly bill to the affected resident.
6. The Company represents that Company will secure at Company's own expense, all personnel required to perform the services called for under this contract by Company. All such personnel of the Company shall not be employees of or have any contractual relationship with the City except as employees of the Company. All of the services required hereunder will be performed by the Company or under Company's direct supervision and all personnel engaged in the work shall be fully

qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the written approval of the City. The Company represents and agrees to secure and provide, at its own expense, all waste collection trucks and other equipment necessary to perform the waste collection services under this contract. The Company further represents and agrees that not less than four (4) waste collection trucks will be dedicated to performing the waste collection services for the City pursuant to this contract and, if necessary to perform the services under this contract, the Company agrees to dedicate additional waste collection trucks to providing such services to the City, its residents and commercial establishments.

7. **Termination:** If, through any cause, the Company shall fail to fulfill in timely and proper manner Company's obligations under this contract, or if the Company shall violate any of the covenants, agreements, or stipulations of this contract, and the Company has not corrected or remedied the failure or violation within ten (10) days of written notice thereof from the City, the City shall thereupon have the right to terminate this contract by giving written notice to the Company of such termination and specifying the effective date thereof, at least five (5) days before the effective day of such termination. The City acknowledges that the Company will make a significant capital investment in the equipment and other resources required to perform its services under this contract and, therefore, the City's right to terminate this contract shall be limited to the Company's failure to correct and remedy any failure or violation for which it is furnished notice in accordance with this Section 7. In the event of such termination, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Company shall, at the option of the City become its property. The Company shall be entitled to receive just and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Company shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Company.
8. **Assignment:** The Company shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto, which consent shall not be unreasonably withheld. Provided, however, that claims for money due or to become due to the Company from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.
9. **Reports and Data:** Any reports, data, or similar information given to or prepared or assembled by the Company under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Company without prior written approval of the City.
10. **Modification of Contract:** The Scope of Work to be done under the Contract shall be subject to modification and supplementation upon the written Agreement of the duly authorized representatives of the Contracting parties. No provision in the Contract shall be changed or modified without the execution of a formal amendment to the Contract, mutually agreed to by the City and the Company and processed through the City. Upon request by the City, the Company shall

provide an estimate of cost of any additional work or services to be incorporated by a modification to the Scope of Work and the Contract.

11. **Contract Documents:** The agreement between the City and the Company shall consist of (1) The Contract form which embodies the requirements contained herein, (2) the Request for Proposal, and any amendments thereto, (3) the proposal, as accepted, submitted in response to the Request for Proposal, (4) Exhibit C, City facility collection services, attached hereto and (5) all other Exhibits attached hereto. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Contract shall govern over all other documents, and the Request for Proposal and amendments thereto shall govern over the Company's Proposal and amendments thereto. However, the City reserves the right to clarify any Contractual relationship in writing with the concurrence of the Company, and such written clarification shall govern in case of conflict with the applicable requirements stated in the Request for Proposal or the Company's proposal. In all other matters not affected by the written clarification, if any, the Request for Proposal shall govern. The Company is cautioned that the proposal shall be subject to acceptance without further clarification.
12. **Appropriation of Funds:** In the event that funds are not appropriated by the Council of the City of Joplin for any term of the contract or extension thereto or portion of any term of the contract which falls in a fiscal period other than a fiscal period for which funds have been appropriated, the contract shall suspend without notice at the end of the fiscal period for which funds are appropriated. In such event, the term of the contract shall be abated and resumed as of the next fiscal period for which funds have been appropriated for the provision of solid waste collection services to residential units and City facilities within the City.
13. **Substitutions:** The Company agrees and understands that the City obligations under the Contract may be predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the Company's proposal. Therefore, the Company agrees that no substitution of such specific individuals and/or personnel qualifications shall be made without the prior written approval of the City. The Company further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the City's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The City agrees that an approval of a substitution will not be unreasonably withheld.
14. **General Independent Contractor Clause:** This agreement does not create an employee/employer relationship between the parties. It is the parties intention that the Contractor will be an Independent Contractor and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation and unemployment insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that is has a full opportunity to find other business, that is has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the

Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

15. The Company shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workers Compensation Program of the City.
16. **Certification of Non-Resident/Foreign Companies:** If the Company is a foreign corporation or non-resident Company, it is agreed that the Company shall procure and maintain during the life of this contract:
  - A. A certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.
  - B. A certificate from the Missouri Director of Revenue evidencing compliance with transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.
17. **Nondiscrimination:** The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a)ii and 41 C.F.R. § 60-741.5(a), if applicable.
  - A. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
  - B. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.
18. **Covenants:** Company covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Company further covenants that in the performance of this contract no person having such interest shall be employed.
19. **Company's Responsibility for Subcontractors:** It is further agreed that Company shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Company shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Company by all the terms herein set forth, insofar as applicable to the work of subcontractors and to give Company the same power regarding termination of any subcontract as the City may exercise over Company under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

20. **Insurance:** Without limiting any of the other obligations or liabilities of the Company, the Company shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City, which approval shall not be unreasonably withheld. The Company has provided the City with the insurance coverage information required by this Section 20, including carrier information, policy amounts and deductibles and the City approves and accepts such insurance coverage, subject to the Company's compliance with the terms and provisions set forth in this Section 20. Regardless of such approval, it shall be the responsibility of the Company to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Company to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City at the time that this contract is signed by the Company. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to cancellation or non-renewal of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Joplin - Public Works, 602 S. Main, Joplin, MO 64801; and

All policies except for the professional liability policy shall name the City as an additional insured with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo. (See, <http://insurance.mo.gov/industry/sovimmunity.php> ).

As of January 1, 2016, the minimum coverage for the insurance referred to herein shall be as set out below:

- A. Workers' Compensation....Statutory coverage per RSMo 287.010 et seq.  
    Employer's Liability..... \$1,000,000.00
- B. Commercial General Liability Insurance, including coverage for Contractual Liability and Independent Contractors Liability. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two Million Seven Hundred Thirty-Four Thousand Five Hundred Sixty-Seven and no/100 Dollars (\$2,734,577.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Ten Thousand One Hundred Eighty-Five and no/100 Dollars (\$410,185.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Company agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorney's fees of Company, its employees, officers or agents. Company

agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

- C. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Seven Hundred Thirty-Four Thousand Five Hundred Sixty-Seven and no/100 Dollars (\$2,734,567.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Ten Thousand One Hundred Eighty-Five and no/100 Dollars (\$410,185.00) with respect to injuries and/or death of any one person in a single accident or occurrence.
- D. Subcontracts. In case any or all of this work is sublet, the Company shall require the subcontractor to procure and maintain all insurance required in subparagraphs (A), (B) and (C) hereof and in like amounts. Company shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.
- E. Notice. The Company and/or subcontractor shall furnish the City prior to beginning the work satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City.
- F. Legislative or Judicial Changes. In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Company, upon 10 days written notice, to execute a contract addendum whereby the Company agrees to provide, at a price not exceeding Company's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

**21. Liability and Indemnity:**

- A. In no event shall the City be liable to the Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.
- B. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract there under (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor. In full satisfaction of

any liability or obligation to indemnify the City for any actual or alleged damages caused by the Contractor to any public streets, roadways or other surface areas, except for those caused by the Contractor's negligence or for accidents for which the Contractor is determined to be at fault, the Contractor agrees to pay to the City a road maintenance fee of \$0.75 per residential service location per month (the "Road Maintenance Fee"), which Road Maintenance Fee shall not exceed, in the aggregate, \$150,000.00 per annum during the term of this Agreement. In consideration of the Road Maintenance Fee, the City releases and waives any claims it may have or make for any damage to public streets, roadways or other surface areas resulting from the Contractor's performance of the services under this contract. However, this release and waiver shall not apply to damages that are caused by Contractor's negligent acts or omissions, for accidents for which the Contractor is determined to be at fault and any other liability other than what is specifically excepted herein. The Road Maintenance Fee shall not be owed or due to the City from any residential service location that has not paid the Contractor for its monthly services. Any damage to public streets, roadways or other surface areas caused the Contractor's negligent acts or omissions, for accidents for which the Contractor is determined to be at fault and any other liability other than what is specifically excepted herein, shall be covered by Contractor and Contractor's insurance in accordance with this contract and the indemnification provisions of this Section 21B.

- C. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
  - D. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.
  - E. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.
  - F. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.
22. **Performance Bond:** Contractor shall furnish a corporate Surety Bond as Security for the performance of the Contract. Said Surety Bond shall be in the amount as defined below and made payable to the City of Joplin. The bond shall remain in effect and shall be renewed annually throughout the term of the Contract, each year being calculated accordingly to the following formula. The amount of the Performance Bond for the first year will be set at One Million Five Hundred Thousand Dollars (\$1,500,000.00) and shall increase each succeeding year by 5% for the term of the contract. The date of submittal of each renewed Performance Bond for each

subsequent year shall be the execution date of this agreement. The Performance Bond shall be in the form as attached hereto.

The surety company on the bond shall be a duly authorized corporate surety company authorized to do business in the State of Missouri and any other state in which the successful Proponent will dispose or process of any solid waste collected as a part of any contract resulting from this RFP.

23. **Conflict of Interest:** No salaried officer or employee of the City and no member of the City council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.
24. **Entire Agreement:** This agreement, including the contract documents contained or referenced herein, constitutes the entire agreement between the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.
25. **Waiver:** No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.
26. **Jurisdiction:** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Jasper County, Missouri.
27. **Notices:** All notices required or permitted hereunder and required to be in writing may be given by first class mail addressed to City of Joplin, 602 S. Main, Joplin, Missouri, 64801, attn.: Director of Public Works, and the Company at the address indicated on Affidavit of Compliance form. The date of delivery of any notice shall be the date falling on the second full day after the day of its mailing.

**IN WITNESS WHEREOF** the parties have hereunto set their hands and, as applicable, seals the date first above written.

**CITY OF JOPLIN, MISSOURI**

By: \_\_\_\_\_  
Nicholas A. Heatherly  
Director of Public Works

**COMPANY**

**WASTE CORPORATION OF MISSOURI, INC.**

By: \_\_\_\_\_  
Signature  
Name: \_\_\_\_\_  
Print or type  
Title: \_\_\_\_\_

**DEPARTMENT CERTIFICATION:**

This contract requires an encumbrance transaction (ET) or Purchase Order (PO) form.  
Check One  yes  no

**CERTIFICATE OF DIRECTOR OF FINANCE:**

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

\_\_\_\_\_  
Leslie Haase, Director of Finance

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter Edwards, City Attorney