

**AGREEMENT FOR PROFESSIONAL LEGAL SERVICES BETWEEN
ALACHUA COUNTY AND GARDNER, BIST, BOWDEN, DEE, LAVIA, WRIGHT,
PERRY & HARPER, P.A.**

THIS AGREEMENT entered into when executed by both parties this _____ day of _____, 2022 by and between **Alachua County**, a charter county and political subdivision of the State of Florida, (hereinafter referred to as the "COUNTY"), and **Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry & Harper, P.A.**, a Florida for profit corporation, (hereinafter referred to as the "ATTORNEY"). Individually, the COUNTY and the ATTORNEY may be referred to herein as a "Party" and collectively may be referred to herein as the "Parties".

WITNESSETH:

WHEREAS, Section 21.42, Alachua County Code, permits the County Attorney to appoint special attorneys to represent the COUNTY in legal actions involving specific matters, subject to the approval of the Board of County Commissioners; and

WHEREAS, the County currently has a single exclusive franchisee for the collection of municipal solid waste (MSW), recyclable materials, and yard trash at curbside from residential customers and, in addition, the County has several non-exclusive franchisees for the collection of commercial MSW; and

WHEREAS, the County desires to amend its solid waste ordinance and thereby provide for a single exclusive franchisee for the collection of both residential and commercial MSW; and

WHEREAS, the County Attorney has determined that the services of a special attorney are necessary to assist in procuring said services, preparing related ordinance amendments, and providing other solid waste related legal services as may be needed and requested by the County; and

WHEREAS, it is in the best interest of the COUNTY to retain particularly qualified attorneys who can provide such services; and

WHEREAS, the procurement of professional legal services by the County is exempt from the County's competitive procurement procedures pursuant to Section 22.3-302(9), Alachua County Code of Ordinances; and

WHEREAS, on September 13, 2022, the Board of County Commissioners approved the appointment and hire of the ATTORNEY to represent the COUNTY regarding the procurement of an exclusive residential and commercial MWS franchisee and the provision of other related legal services as needed and requested by the County; and

WHEREAS, the COUNTY desires to retain the ATTORNEY to provide the services specified herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the COUNTY and the ATTORNEY do mutually agree as follows:

1. **TERM.** This Agreement shall commence on the date this Agreement is fully executed by both Parties and shall end at the conclusion of all Task Authorizations issued to the ATTORNEY under this Agreement, unless terminated earlier pursuant to Paragraph 8.

2. **SCOPE OF SERVICE.** The COUNTY hereby engages the ATTORNEY to provide legal services related to the procurement of a single exclusive franchisee for the collection of municipal solid waste (MSW), recyclable materials, and yard trash at curbside from residential customers and the collection of MSW from commercial establishments, as well as the preparation of related ordinance amendments that are necessary or convenient to implement said exclusive franchise within Alachua County, Florida. Said services shall include, but not necessarily be

limited to: (a) developing and reviewing procurement documents; (b) assisting with the preparation of contract documents; (c) performing legal research, preparing legal memoranda, and providing legal advice to the County; (d) drafting ordinances or preparing amendments to existing County ordinances; (e) making presentations to the Board of County Commissioners; and (f) other related services request by the County Attorney. The ATTORNEY accepts such appointment and agrees to perform, in a professional manner, all legal services necessary and proper for the protection of the COUNTY'S interests and to the extent reasonably required by the COUNTY. The ATTORNEY shall not sublet, assign or transfer any work under this Agreement without prior approval of the County Attorney or the County Attorney's designee.

a. Assignment of As-Needed Services. The assignment of as-needed services to the ATTORNEY shall be made in the form of one or more written Task Authorizations issued by the County Attorney or her designee and counter-signed by the ATTORNEY. Each Task Authorization shall: (i) describe the scope of work to be performed by the ATTORNEY; (ii) establish the total amount of compensation and expenses, in the form of a "not to exceed" amount, that the ATTORNEY is authorized to incur to perform the scope of work; and (iii) incorporate the terms of this Agreement. Regardless of any Task Authorizations issued to the ATTORNEY, the fees and expenses to be paid by the COUNTY to the ATTORNEY shall not exceed the NOT TO EXCEED AMOUNT set forth in Paragraph 4.a.

b. The ATTORNEY shall work under the direction of, and report directly to, the County Attorney.

3. **KEY INDIVIDUAL**. The Parties agree that the following individual is a Key Individual under this Agreement: David S. Dee (Shareholder). The ATTORNEY acknowledges that the COUNTY has entered into this Agreement based on ATTORNEY'S representations that

the Key Individual is currently employed by ATTORNEY and shall personally perform the services to be performed by ATTORNEY under this Agreement. To the extent that the Key Individual requires the assistance of other individuals employed or retained by the ATTORNEY, the ATTORNEY represents and warrants that said individuals are skilled, experienced, appropriately licensed or certified, and competent in their respective trades or professions to provide said assistance, and shall perform said assistance under the direct supervision and control of said Key Individual.

4. **PAYMENT OF FEES AND EXPENSES.** Compensation for services rendered and expenses incurred by ATTORNEY pursuant to this Agreement are as follows:

a. The ATTORNEY'S fees and expenses under this Agreement shall not exceed **\$40,000.00** (the "NOT TO EXCEED AMOUNT"). The ATTORNEY shall notify the COUNTY when the ATTORNEY has incurred fees and expenses that total 75%, 90% and 100% of the NOT TO EXCEED AMOUNT, but shall not continue to provide services or incur expenses that cumulatively exceed the NOT TO EXCEED AMOUNT.

b. ATTORNEY shall be paid a fee for services rendered pursuant this Agreement according to the following Fee Schedule:

- i. Shareholder: \$300.00 per hour;
- ii. Associate Attorney: \$225.00 per hour;
- iii. Paralegals: \$100.00 per hour.

c. In addition to the fees set forth above, the COUNTY shall reimburse the ATTORNEY for all reasonable and necessary expenses which the ATTORNEY may pay or incur on behalf of the COUNTY, provided that any individual cost exceeding \$100.00, and all costs within a calendar month that collectively exceed \$500.00, must be approved in advance by the

County Attorney or the County Attorney's designee, with the following exceptions:

i. The COUNTY shall reimburse the ATTORNEY's travel time, vehicle mileage and toll expenses incurred traveling to and from Alachua County or other destinations required by this engagement. Vehicle mileage and toll expenses shall be charged at the standard IRS reimbursement rate. Travel reimbursement shall be calculated in accordance with Sec. 112.061(7)-(8), Florida Statutes.

ii. The COUNTY shall reimburse the ATTORNEY's incidental office costs for copying, postage and Fed Ex mailings.

iii. The COUNTY shall not be invoiced for attorney or non-attorney time preparing, discussing or collecting invoices.

c. ATTORNEY shall invoice the COUNTY on a monthly basis and each invoice shall be itemized to include: (i) the name of the person providing the service, the date on which the service was provided, a brief description of the services provided on that date, and the person's billing rate; (ii) the total fees invoiced during the invoice period; (iii) an itemization of all expenses invoiced during the invoice period, together with supporting documentation of each expense; (iv) the total expenses invoiced during the invoice period; (v) the total amount invoiced (*i.e.*, fees and expenses combined) for the invoice period; and (vi) the cumulative total invoiced to date; and (vii) the total NOT TO EXCEED AMOUNT remaining after payment of the all outstanding invoices.

d. The ATTORNEY, within 3 months of the completion of a Task Authorization, shall submit a final invoice for that Task Authorization to the County Attorney or the County Attorney's designee.

e. The COUNTY shall process and pay all invoices in accordance with the

provisions of Chapter 218, Part VII, Florida Statutes (“Local Government Prompt Payment Act”).

The County shall remit all payments to:

Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry & Harper, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308

f. The COUNTY’S performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Board of County Commissioners (“Board”). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement. In the event sufficient County funds to fund this Agreement become reduced or unavailable, the COUNTY may terminate this Agreement, without penalty or expense to the COUNTY, upon no less than twenty-four hours’ notice to the ATTORNEY. The COUNTY shall be the final authority as to the availability of County funds and how available funds will be allocated.

5. **EXPERTS.** Unless approved by the County Attorney or the County Attorney’s designee in advance, the COUNTY will engage all experts needed in this matter in consultation with the ATTORNEY.

6. **INSURANCE.** Without limiting its liability under this Agreement, the ATTORNEY shall procure and maintain, during the life of this Agreement, professional liability insurance in a minimum amount of \$1 million per occurrence. The ATTORNEY shall furnish the COUNTY with a certificate of insurance within 10 calendar days of the commencement of this Agreement.

7. ATTORNEY'S ADDITIONAL REPRESENTATIONS, DUTIES AND RESPONSIBILITIES.

a. The ATTORNEY shall adhere to all state and local laws, administrative orders and rules, including Rules regulating the Florida Bar and applicable County ordinances and policies.

b. During the performance of this Agreement, the ATTORNEY herein assures the COUNTY that the ATTORNEY is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Human Rights Act of 1992 in that the ATTORNEY does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against the ATTORNEY'S employees or applicants for employment. The ATTORNEY understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance. Other applicable federal, state and local laws, executive orders and regulations prohibiting the type of discrimination as hereinabove delineated are included by this reference thereto.

c. The ATTORNEY shall be bound by and shall follow the Florida Bar Rules of Professional Responsibility when addressing issues of confidentiality, conflict of interest and the attorney-client relationship with the COUNTY.

d. The ATTORNEY shall not represent or advise a client in any matter adverse to the COUNTY unless the conflict is waived by the COUNTY.

e. On matters related to the services covered by this Agreement, the ATTORNEY agrees to only communicate with the County Attorney, or the County Attorney's

designee, or staff members designated by the County Attorney, unless prior approval is obtained from the County Attorney or the County Attorney's designee.

f. The ATTORNEY is an independent contractor and the ATTORNEY and its personnel and subcontractors shall not be considered employees of the COUNTY for any purpose.

8. **TERMINATION.**

a. **TERMINATION FOR CAUSE.** ATTORNEY shall be in material default of this Agreement, and COUNTY may terminate this Agreement upon ten (10) days' notice to ATTORNEY, in the event the County Attorney determines, after consultation with the ATTORNEY, the occurrence of any of the following: (i) failure to timely perform the services required hereunder; (ii) non-performance or failure to provide adequate service under this Agreement; (iii) bankruptcy, insolvency or a general assignment for the benefit of creditors by ATTORNEY or by any of ATTORNEY'S principals, partners, officers or directors; (iv) failure to obey any law applicable or related to the ATTORNEY's services to the County; (v) the Key Individual ceases to be employed by ATTORNEY or otherwise ceases to provide services pursuant to this Agreement; or (vi) any other material breach by ATTORNEY. In the event that the COUNTY terminates this Agreement, the COUNTY may retain other attorneys or law firms to provide any and all such services, or any services the COUNTY shall deem necessary and the ATTORNEY agrees to cooperate with such other attorneys or law firms as may be necessary to represent the interests of the COUNTY and effectuate the intent of this Agreement.

b. ATTORNEY may terminate this Agreement, after consultation with the County Attorney, upon ten (10) days advance written notice to COUNTY in the event that: (i) ATTORNEY does not receive payment of any monthly bills in accordance with Paragraph 4.e.; or

(ii) COUNTY otherwise materially breaches this Agreement.

c. **TERMINATION FOR CONVENIENCE.** The COUNTY may also terminate the Agreement without cause by providing written notice to the ATTORNEY (hereinafter, "Termination for Convenience"). The County Attorney is authorized to provide written notice of Termination for Convenience on behalf of the COUNTY. Upon such notice, ATTORNEY will immediately discontinue all services affected (unless the notice directs otherwise) and deliver to the COUNTY all data, drawings, specifications, reports, estimate, summaries, and such other records, information and materials as may have been accumulated by the ATTORNEY in performing this Agreement, whether completed or in process. In the event of such Termination for Convenience, ATTORNEY'S recovery against COUNTY shall be limited to that portion of the NOT TO EXCEED AMOUNT earned or incurred through the date of termination, but ATTORNEY shall not be entitled to any other or further recovery against COUNTY, including, but not limited to, damages, consequential or special damages, or any anticipated fees or profit on portions of the services or Task Authorizations not performed.

9. **PROJECT RECORDS.**

a. **General Provisions:**

i. Any document submitted to the COUNTY may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(12), Fla. Stat. Any document is

subject to inspection and copying unless exempt under Chapter 119, Fla. Stat., or as otherwise provided by law.

ii. In accordance with §119.0701, Fla. Stat., the ATTORNEY, when acting on behalf of the COUNTY, as provided under §119.011(2), Fla. Stat., shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the COUNTY'S custodian of public records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Fla. Stat., or as otherwise provided by law. Additionally, the ATTORNEY shall provide the public records at a cost that does not exceed the cost provided in this chapter, or as otherwise provided by law.

b. Confidential Information:

During the term of this Agreement, the ATTORNEY shall not claim that some or all of the ATTORNEY'S information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other information (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by the ATTORNEY in accordance with §812.081, Fla. Stat., or other law, and is exempt from disclosure under the Public Record Act. With regard to the ATTORNEY'S work product for the COUNTY, the COUNTY shall have the exclusive right to determine whether to assert any privileges or exemptions from disclosure concerning such materials.

c. Task Completion:

i. Upon completion of, or in the event this Agreement is terminated, the ATTORNEY, when acting on behalf of the COUNTY as provided under §119.011(2), Fla. Stat., shall transfer, at no cost, to the COUNTY all public records in possession of the ATTORNEY

or keep and maintain public records required by the COUNTY to perform the service. If the ATTORNEY transfers all public records to the COUNTY upon completion or termination of the agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the ATTORNEY keeps and maintains public records upon the completion or termination of this Agreement, all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the COUNTY, upon request from the COUNTY'S custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

d. **Compliance.** If the ATTORNEY fails to provide the public records to the COUNTY within a reasonable time, the ATTORNEY may be subject to penalties under Sec. 119.10, Fla. Stat.

IF THE ATTORNEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATTORNEY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (352) 374-5218, STORRES@ALACHUACOUNTY.US, AND 12 S.E. 1ST STREET, GAINESVILLE, FLORIDA 32601.

10. **NOTICE.** Notice pursuant to this Agreement shall be given in writing by: (a) email, which shall be deemed delivered once sent to the email address listed below; or (b) U.S. Mail, which shall be deemed delivered upon deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

COUNTY: Sylvia E. Torres, Esq.
County Attorney
Alachua County
12 SE 1st Street
Gainesville, Florida 32601
Email: storres@alachuacounty.us

ATTORNEY: David S. Dee, Esq.

Gardner, Bist, Bowden, Dee, LaVia, Wright, Perry &
Harper, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Email: ddee@gbwlegal.com

11. **SOVEREIGN IMMUNITY.** Nothing contained herein shall constitute a waiver by the COUNTY of sovereign immunity or the provisions or limitation of liability of §768.28, Florida Statute.

12. **THIRD PARTY BENEFICIARIES.** This Agreement does not create any relationship with, or any rights in favor of, any third party.

13. **SEVERABILITY.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

14. **NON WAIVER.** The failure of any Party to exercise any right in this Agreement shall not be considered a waiver of such right.

15. **GOVERNING LAW AND VENUE.** This Agreement is governed in accordance with the laws of the State of Florida. Sole and exclusive venue for all actions arising under this Agreement shall be in Alachua County, Florida.

16. **AMENDMENTS.** No amendment or modification of this Agreement shall be valid or effective unless in writing and executed by the COUNTY and the ATTORNEY with the same formality as this Agreement.

17. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed in any number of and by the different Parties hereto on separate counterparts, each of

which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Agreement shall constitute valid and sufficient delivery in order to complete execution and delivery of this Agreement and bind the Parties to the terms hereof. The Parties also agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. Delivery of this Agreement or any other document contemplated hereby bearing a manual written or electronic signature, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

18. **U.S. DEPARTMENT OF HOMELAND SECURITY E-VERIFY SYSTEM**

The ATTORNEY shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the ATTORNEY during the term of this Agreement. The E-Verify system is located at <https://www.uscis.gov/e-verify>.

19. **CONSTRUCTION.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is acknowledged and agreed that both Parties have substantially contributed to the preparation of this Agreement.

20. **ENTIRE CONTRACT.** The text herein shall constitute the entire Agreement between the COUNTY and the ATTORNEY and supersedes all prior discussions, agreements,

commitments or understandings of every kind and nature, whether oral or written, between the COUNTY and the ATTORNEY.

IN WITNESS WHEREOF, the COUNTY and the ATTORNEY have caused this Agreement for Professional Legal Services to be executed.

ALACHUA COUNTY, FLORIDA

Michele Lieberman, County Manager

Date: _____

APPROVED AS TO FORM

Alachua County Attorney

WITNESS TO ATTORNEY:

GARDNER, BIST, BOWDEN, DEE, LAVIA,
WIRGHT, PERRY & HARPER, P.A.

Signature

Print Name

Print Name

Date: _____

IF THE ATTORNEY IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBANCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE CONTRACTS ON BEHALF OF YOUR ORGANIZATION.