

**FIRST AMENDMENT TO AGREEMENT FOR COLLECTION OF  
RESIDENTIAL REFUSE AND RECYCLABLES, AND OTHER RELATED  
SERVICES WITHIN THE CITY OF DERBY, KANSAS**

This Amendment is made and entered into this 13 day of JUNE, 2022, by and between:

**THE CITY OF DERBY, KANSAS**, a municipal corporation ("City"); and

**WASTE CONNECTIONS OF KANSAS, INC.**, a Delaware corporation authorized to do business in Kansas, with its principal office at 2745 N. Ohio St. Wichita, KS 67219 ("WCI");

**WHEREAS**, the parties entered into an agreement, dated August 11, 2021 ("Agreement"), pursuant to which WCI is authorized to collect, transport and properly dispose of residential refuse and recyclables generated within the City; and

**WHEREAS**, the Agreement provides for an initial term of five (5) years commencing on January 1, 2022, and terminating on December 31, 2026; and

**WHEREAS**, pursuant to the terms of the Section 25 of the Agreement, WCI was required to provide the City with a 5-year irrevocable and noncancellable performance bond as security for its performance and services under the Agreement; and

**WHEREAS**, shortly before commencement of the Agreement term, WCI notified the City that it would be unable to meet the requirements of Section 25 and proposed an alternative form of security for its performance under the Agreement; and

**WHEREAS**, City notified WCI that acceptance of an alternative form of security would require amendment of the Agreement and approval of the City Council and the City requested an immediate offer of security while these discussions occurred; and

**WHEREAS**, WCI has provided a one year performance bond as interim security of its performance and contractual obligations while alternative forms of security and contractual amendments were explored and negotiated; and

NOW THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

I. Section 25 of the Agreement is hereby amended by deletion of the original text in its entirety and replacement with the following:

**25. Letter of Credit.**

A. WCI will provide for the issuance of an irrevocable standby letter of credit (the "LOC") in the principal amount of One Million Five Hundred Thousand US Dollars and 00/100, issued by a bank approved by the City in its sole discretion (the "Bank") for the benefit of the City. The LOC must authorize the City to draw, in one or more drawings, not less than the full amount. The form of the LOC, including the procedures

for and place of demand for payment and drawing certificate must be in form reasonably acceptable to the City. The LOC must be transferable to any successor or assign of the City.

B. City may draw on the LOC in any of the following events as evidenced to the satisfaction of the City:

- 1) WCI fails to timely cure a material default under the Agreement; or
- 2) WCI is unable or fails to regularly pay its bills as they become due; or
- 3) WCI fails to timely pay any solid waste management facility for services provided in furtherance of this Agreement; or
- 4) WCI fails to pay an insurance deductible or self-insured retention or fails to maintain insurance coverage as required by this Agreement; or
- 5) The City is notified of the non-renewal or extension of the LOC.

C. The LOC shall not expire until one of the following events has occurred:

- 1) This Agreement has expired; or
- 2) This Agreement has been terminated for a period of 180 days or other preference period provided under applicable bankruptcy or insolvency law; or
- 3) The issuing Bank has provided City at least 90 days written notice of non-renewal of the LOC; or
- 4) WCI has substituted an alternative letter of credit or other security reasonably acceptable to the City in the City's reasonable sole discretion; and WCI does not owe City any money.

D. If at any time during the term of this Agreement issuing Bank has provided City with notice of non-renewal of the LOC required by this Section, then and in that event, WCI shall immediately provide City a replacement form of performance assurance for the remainder of the Term of the Agreement. Although it needs to be in place immediately, any such replacement form of performance assurance must be in place not later than 30 days before the expiration of the LOC not being renewed and must be in a form compliant with this Agreement and acceptable to the City, which City will have sole discretion to determine. Nothing in this subsection concerning WCI's offer of a replacement form of performance assurance shall limit or restrict City's ability to draw the full amount of the LOC based on City's receipt of the notice of non-renewal or extension of the LOC.

E. This Section 25 shall survive termination of this Agreement.

2. Subsection B of Section 27 of the Agreement is hereby amended by deletion of the original text in its entirety and replacement with the following:

B. In the event WCI fails to fully and timely pay the franchise administration fee together with any late payment charges, or to make any other payment required hereunder, including but not limited to liquidated damages, City may exercise its rights under any

performance assurance provision hereof or any letter of credit, any financial security instrument, or any bond executed pursuant to this Agreement.

3. Subsection B(6) of Section 35 of the Agreement is hereby amended by deletion of the original text in its entirety and replacement with the following:

(6) Draw on WCI's Letter of Credit, make a claim or draw against any performance bond or other financial security instrument provided by WCI pursuant to this Agreement, or submit claims under insurance.

4. Subsection E(2) of Section 35 of the Agreement is hereby amended by deletion of the original text in its entirety and replacement with the following:

(2) Drawing on the Letter of Credit or making a claim or draw against any performance bond or other financial security instrument provided by WCI pursuant to this Agreement;

5. Section 40 of the Agreement is hereby amended by deletion of the original text in its entirety and replacement with the following:

40. Force Majeure. Neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to Uncontrollable Circumstances to the extent such occurrence is beyond the reasonable control of the non-performing party and the non-performing party makes prompt, diligent and continuous efforts to resume performance; provided, that this section shall not apply to payment of amounts due hereunder to the City or to any default or other occurrence with respect to which the City is authorized to pursue a draw from the Letter of Credit or a draw or claim against any performance bond or other financial security instrument provided by WCI pursuant to this Agreement.

6. Appendix I-Definitions is hereby amended by deletion of the original and replacement in its entirety by the version attached hereto and incorporated herein.

7. Except as specifically amended herein, all other terms and conditions of the Agreement together with its several appendices remain and shall continue in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement as of the date first set forth above.

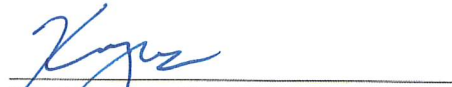
**WASTE CONNECTIONS  
OF KANSAS, INC**

  
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Evan Sharp, Vice President

State of Kansas

  
Herschel West  
Municipality/HOA Market Manager

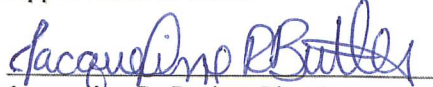
**CITY OF DERBY, KANSAS**

  
Kiel Mangus, City Manager

Attest:

  
Lynn Ciarleglio, City Clerk

Approved as to form:

  
Jacqueline R. Butler, City Attorney