

FRANCHISE AGREEMENT

This Franchise Agreement for Commercial Solid Waste Collection Services (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between the City of Garland (“City”), a Texas home-rule municipality, and _____ (“GRANTEE”), located at _____. The City and GRANTEE may each be referred to hereinafter as a “Party” and/or collectively referred to as “the Parties.”

WHEREAS, pursuant to the City Code of the City of Garland, Chapter 52 “Environmental Waste Services”, the City recommends a franchise agreement for garbage and refuse collection services for commercial accounts within the City of Garland.

WHEREAS, GRANTEE has requested the opportunity to provide garbage and refuse collection (waste collection) services for commercial accounts within the City of Garland.

WHEREAS, the City has established certain conditions and requirements that must be met by any person that wishes to receive a Franchise Agreement for commercial solid waste collection services in the city and the GRANTEE has agreed to comply with the conditions and requirements the City has established in this Franchise Agreement granting the Franchise.

WHEREAS, the Grantee recognizes the privileges and benefits that the GRANTEE will receive by entering into this Agreement with the City.

WHEREAS, this Agreement between the Parties consist of the terms and conditions set forth herein, and **Exhibit A**, identified as the proposal from the GRANTEE for the collection of solid waste for commercial accounts within the City of Garland. In the event that there is a conflict between this Agreement and **Exhibit A**, this Agreement controls.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, the parties do mutually agree as follows:

1. Recitals and Definitions. The foregoing recitals are true, correct, and incorporated herein by reference. The following are definitions as used throughout this Agreement:

Commercial Solid Waste. Any non-hazardous Solid Waste, as defined below, generated by any businesses, restaurants, warehouses, and manufacturing facilities located with the City.

Commercial Unit. Any commercial or industrial enterprise operating within the corporate limits of City, excluding residential dwellings that are 4-plex apartment units or less, excluding enterprises using temporary roll offs; and excluding enterprises using containers permitted by the City during a time of public emergency declared by the Governor of the State of Texas.

Compactor. A machine or mechanism used to reduce the size of material such as waste material or bio mass through compaction.

Excluded Waste. Means highly flammable substances, Construction and Demolition Waste, Hazardous Waste, Liquid Waste, Special Waste, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of the GRANTEE, to be dangerous or threatening to health, or the environment, or which cannot be legally accepted at the applicable disposal facility.

Hazardous Waste. Waste defined as, or of a character or in sufficient quantity to be defined as, a “Hazardous Waste” by the Resource Conservation and Recovery Act, as amended, or any state or local laws or regulations with respect thereto, or a “toxic substance” as defined in the Toxic Substance Control Act, as amended, or any regulations with respect thereto, or any reportable quantity of a “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended or any regulations with respect thereto. The term “Hazardous Waste” also includes any waste whose storage, treatment, incineration or disposal requires a special license or permit from any federal, state or local government entity, body or agency and any substances that, after the effective date of this Agreement, is determined to be hazardous or toxic by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

Infectious Medical Waste. Waste resulting from medical procedures which may cause or is capable of causing disease, such as:

(i) Biological waste, including blood and blood products, excretions, exudates, secretions, suctioning’s and other bodily fluids that cannot be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonably contaminated with biological fluids.

(ii) Cultures and stocks and etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production of biologicals; and serums and discarded live and attenuated vaccines.

(iii) Sharps that have been removed from their original sterile containers, including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

Solid Waste. Any and all materials defined as solid waste by the laws of the State of Texas or regulations promulgated thereunder by the Texas Commission on Environmental Quality (“TCEQ”) or other agency having jurisdiction over solid waste generated within such state, except that the term Solid Waste:

(i) is intended to mean and include only those substances which are normally permitted to be disposed of in a Type 1 sanitary landfill;

(ii) is intended to mean and include materials defined in Section 52.01 of the City of Garland Code of Ordinances as Bulky Waste, Commercial Solid Waste, and Landscape Waste;

(ii) shall exclude Special Waste, radioactive waste, Hazardous Waste and Infectious Medical Waste.

(iii) The solid waste shall not include any Excluded Waste.

Liquid Waste. Grease, oil, liquid waste and grease trap waste.

Special Waste. Any Solid Waste which is defined as special waste by the laws of the State of Texas or regulations promulgated thereunder by the TCEQ or Section 52.01 of the City of Garland Code of Ordinances.

Unacceptable Waste. Any waste excluded from the definition of Solid Waste, including Hazardous Waste, Infectious Medical Waste, Liquid Waste, Special Waste and any other material defined as unacceptable in the Franchise Agreement.

2. Franchise. A non-exclusive franchise is hereby granted to use the public streets, alleys and thoroughfares within the corporate limits of the City of Garland for the purpose of engaging in the business of collecting Solid Waste. The granting of this Franchise does not create any vested rights. The Franchise and this Agreement may be suspended or revoked (terminated) in accordance with the terms of this Agreement.

3. Term. The term of this Agreement shall be for a period of one (1) year beginning on the date of execution of the Agreement. Unless notice of termination is provided by one party to the other at least thirty (30) days prior to the anniversary date of the Agreement, the Agreement shall automatically renew on the anniversary date if GRANTEE is in compliance with the Agreement and, prior to the Anniversary date, has provided (1) documentation that all lawful franchise fees, permit fees, sales, use and ad valorem taxes, and other such levies and assessments, if any, have been paid to the City, and (2) proof of continuing indemnity insurance coverage as required under Section 16 of the Agreement.

In recognition of the investment that solid waste collection requires, if the City gives notice of termination under this paragraph, GRANTEE will be permitted to continue its operation in the City as necessary to fulfill its obligations to customers located in the City who have contracts with GRANTEE that are in existence at the time of the notice, but not to exceed six (6) months, provided that (1) all lawful franchise fees, permit fees, sales, use and ad valorem taxes, and other such levies and assessments, if any, have been and continue to be paid to the City, (2) proof of continuing insurance coverage as required under Section 16 of the Agreement continues to be provided prior to the anniversary date of the Agreement and (3) GRANTEE remains in compliance with all other terms, conditions and requirements of the Agreement. Otherwise the Agreement shall terminate immediately upon receipt of the notice.

4. Independent Contractors. The parties are independent contractors as to each other. Nothing in this Agreement shall be construed as creating any agency or employment relationship. Neither Party shall make any representations tending to create an apparent or implied agency or employment relationship; neither party has the authority to act for the other or to create obligations or debts binding on the other; and neither party shall be responsible for any obligations or expenses incurred by the other.

5. Scope and Nature of Operation. It is expressly understood and agreed that the GRANTEE may collect and deliver for disposal all Solid Waste, accumulated on premises within the

corporate limits of the City, excluding residential service other than apartment complexes and motels, where the services are contracted for by individuals or companies with the GRANTEE. GRANTEE will, at its own expense, furnish personnel and equipment to collect solid waste and will establish and maintain collection services to meet or exceed current industry standards in an efficient and businesslike manner. GRANTEE will furthermore comply with all pertinent rules, regulations, laws, and ordinances as directed by responsible governmental agencies having jurisdiction thereupon.

6. Regulation of Vehicles. All vehicles used by the GRANTEE for the collection and transportation of solid waste shall be covered at all times while loaded and in transit to prevent the spillage of solid waste onto the public streets or properties adjacent thereto. Any spillage will be promptly recovered by the GRANTEE, and all vehicles owned by the GRANTEE shall be clearly marked with the GRANTEE's name in letters not less than four (4) inches in height. All such vehicles shall be cleaned and maintained by GRANTEE so as to be in good repair and of good appearance and, when idle, free of solid waste residue as may cause odor or provide a breeding place for vectors.

7. Regulation of Leased Containers. It is specifically understood and agreed that the City of Garland shall permit the GRANTEE to rent or lease containers for collection purposes to the owner or occupant of any premises within the corporate limits of the City, excluding residential customers other than apartment complexes and motels, for collection purposes subject to the following requirements:

- (A) **ALL** such containers shall be constructed according to good industry practice in the trade;
- (B) **ALL** such containers shall be equipped with suitable covers to prevent blowing or scattering of solid waste while being transported for disposal of their contents;
- (C) **ALL** such containers shall be cleaned and maintained by GRANTEE so as to be in good repair, of a good appearance and free to such solid waste residues as may cause odor and provide a breeding place for vectors; and
- (D) **ALL** such containers used for the disposal of food waste or other putrescible material shall be serviced no less than two times per week.
- (E) **ALL** such containers shall be clearly marked with the GRANTEE's current name and telephone number in letters not less than four (4) inches in height. GRANTEE shall be responsible for making certain that the information reflected on the containers is current, and shall cause any changes necessary to reflect the current information to be made within thirty (30) days after the event giving rise to the need for the change.
- (F) GRANTEE shall notify the City in writing within thirty (30) days of any change of name, address or telephone number of the GRANTEE.

8. Damage to Public Property. Except for normal wear and tear, GRANTEE shall be solely responsible for the repair and/or replacement of any damage to public property, including pavement damage, during the operation of commercial solid waste collection services that is caused by the negligence or willful misconduct of the GRANTEE, its agents, or employees. Repair and/or replacement of property includes, but is not limited to fences, gas meters, and water meters.

9. Disposal of Solid Waste. It is specifically understood and agreed that GRANTEE will comply with all rules, regulations, laws, and ordinances pertaining to the disposal of Solid Waste as directed by responsible governmental agencies having jurisdiction thereupon. Disposal of all Solid Waste collected by the GRANTEE from premises within the corporate limits of the City of Garland must be made at a lawfully permitted sanitary landfill. GRANTEE's violation of this provision shall be cause for revocation of this Agreement.

10. Solid Waste Collection. The collection of solid waste between the hours of 11:00 p.m. and 6:00 a.m. the following day in any area zoned residential, or within three hundred (300) feet of any area zoned residential is prohibited, unless a permit of variance is first obtained from the City Council.

11. Franchise Fee. For and in consideration of the covenants and Agreements herein contained, GRANTEE hereby agrees to pay to the City of Garland a franchise fee of five (5%) percent of the gross revenues generated from GRANTEE's operations within the City.

- (A) Calculation. The calculation of gross revenues generated from operations within the City shall include all revenue, as determined in accordance with generally accepted accounting principles, which is derived, directly or indirectly, by the GRANTEE from or in connection with its operation within the City. Gross revenues shall include, but are not limited to revenues received from the collection and disposal of all solid waste, whether by a company bearing Grantee's name or a company owned or controlled by Grantee but operating under a different name.
- (B) Fee Payment. The franchise fee shall be paid on a quarterly basis no later than thirty (30) days after the end of each calendar quarter. Franchise fee payment for roll off container services shall be paid within 30 days of completion of the job. The payment shall be made to the City of Garland Finance Department.
- (C) Delinquent Payments. Fee payments received after the due date shall be subject to interest at the rate of twelve percent (12%) per annum until the fees are paid in full. In addition, delinquent fees shall be subject to a late payment penalty of five percent (5%) for each month or portion thereof that the fees are outstanding. In no event, however, shall the penalties exceed twenty-five percent (25%) of the total delinquent fees nor shall interest charged exceed the maximum rate allowed by law.

12. Additional Franchise Fee. It is declared the intent of this provision to encourage free and open competition among all Grantees operating within the City. The City recognizes the detriment that could occur should one Grantee or an affiliated group that includes the Grantee substantially control the market described under this agreement. It is further recognized that in the event substantial control is acquired, the citizens of Garland should be compensated for the detrimental impact on the community.

For purposes of this section, the following definitions apply:

- (A) *Grantee* - includes the corporation that executed this agreement. For purposes of determining market share includes all affiliated corporations of the Grantee doing business within the City of Garland.
- (B) *Market Share* - determined by total gross receipts of the Grantee for any reporting period as defined under this agreement divided by the total gross receipts of all Grantees including the City of Garland.
- (C) *Additional Franchise Fee* - the greater of \$1,000,000 or 10% of the annual gross receipts of all Grantees reported during the past year.
 - (1) In the event a Grantee acquires 80% or more of the market share within any reporting period, a one time Additional Franchise Fee shall be due upon the next quarterly reporting period. This shall be in addition to the franchise fees otherwise due. For purposes of measuring market share, the current market share of the Grantee at the point of execution or renewal of this agreement shall be deemed acquired on the first day of the agreement.
 - (2) Notwithstanding the provisions of (1), acquisitions of other Grantees shall not be considered as a triggering event. For purposes of determining market share, the acquisition shall be deemed to have occurred on the first day this agreement was executed or renewed by the Grantee. For purposes of this paragraph, acquisitions refer to the purchase or exchange of stock of Grantees and not purchase or assignment of customer accounts or contracts where the ownership of the Grantee selling or assigning the accounts did not change. Furthermore, this section shall not apply to those funds received by the Grantee because of superfund site cleanup or monitoring, as designated by the Environmental Protection Agency, or the Texas Water Commission, or any other like extra-ordinary event or catastrophe.

13. Reports. Each quarterly payment shall be accompanied by a financial accounting report satisfactory to the City. The purpose of the report is to show the basis for the computation of the quarterly payment. The report shall include the sources and amounts of revenues upon which the

payment was calculated. At a minimum, the report shall include a list of all active accounts during the quarter, the fee structure for each account and the revenue generated by the account. The report shall also include a list of all accounts no longer serviced and all new business for the reporting quarter. In these reports, the identification of customers by account number is sufficient for compliance with this section. If Grantee collects no revenue in a particular quarter, it shall file a report with the City indicating that no revenue has been collected. These reports are required for front load, compactor, and roll off collection services.

14. Auditing Books and Records.

- (A) The City shall have the authority to require an audit of the books and records of the GRANTEE to determine the accuracy of GRANTEE's franchise fee payments. If the City determines that an audit under this paragraph is necessary, the City agrees to follow the procedure established in Paragraph (B).
- (B) The City shall notify GRANTEE when it wishes to require an audit under this section. The City shall select an independent accounting firm to conduct the audit. The GRANTEE shall make available to the selected auditor, all books and records necessary to determine whether all franchise fees due the City have been paid. Failure to provide requested records to the auditor shall be grounds for forfeiture.
- (C) Upon completion of the audit, any demonstrated variance in the fees paid and the fees owed will be rectified. If GRANTEE has underpaid, GRANTEE will pay the difference to the City with interest and penalties provided for late payments. If GRANTEE has overpaid, the City will refund the difference to GRANTEE. If the variance is five percent (5%) or greater in favor of the City, GRANTEE will pay the cost of the audit, otherwise the City and GRANTEE will each pay fifty percent (50%) of the cost of the audit.
- (D) An initial audit to determine baseline revenues shall be conducted, at the expense of the GRANTEE, within one (1) year from the date of the execution of this Agreement. The GRANTEE shall deliver the results of the audit to the City within thirty (30) days of receipt of the audit report.

15. Forfeiture. The failure or refusal of a GRANTEE to: (i) pay any quarterly installment of the annual fee when due; (ii) submit any quarterly financial accounting report or; (iii) permit the City to conduct an audit described in Section 11, shall be deemed good cause for revocation of the GRANTEE's permit under the provisions of the section 52 of the Code of Ordinances of the City of Garland. No new permit shall be issued, and the GRANTEE is prohibited from conducting any commercial solid waste collection activities within the City until, where applicable, all fees are paid in full, any required financial accounting reports submitted, or an audit of the GRANTEE's books and records is permitted. The failure or refusal of the GRANTEE to comply with any of the provisions of this Agreement within ten (10) days after

receiving written notice to do so from the City, shall be deemed a breach of this Agreement. The City Council, after giving notice and the opportunity for a hearing to the GRANTEE, may declare the franchise forfeited and may exclude the GRANTEE from further use of the streets of the City under the franchise. The GRANTEE shall thereupon immediately surrender all rights in and under the franchise and the franchise shall be null and void.

16. Indemnity and Insurance. GRANTEE assumes all risk of loss or injury to property or persons arising from any of its operations (including those companies owned or controlled by Grantee but operating in the City under a different name) under this Agreement, and **AGREES TO INDEMNIFY, SAVE AND HOLD THE CITY OF GARLAND HARMLESS, INCLUDING ITS OFFICERS, AGENTS, EMPLOYEES, AND SERVANTS, FROM ANY AND ALL CLAIMS, ACTIONS, LAWSUITS, PROCEEDINGS, DAMAGES, JUDGMENTS, OR LIABILITIES FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGES RESULTING FROM THE NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF ANYONE UNDER THE GRANTEE'S SUPERVISION OR CONTROL.** It is expressly understood that the foregoing provisions shall not in any way limit the liability of the GRANTEE. GRANTEE agrees to carry the types of insurance (which insurance policies shall cover and name all companies owned or controlled by Grantee but operating within the City operating under a different name) in minimum limits as follows:

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| 1. Commercial General Liability: | \$ 500,000.00 per occurrence
\$1,000,000.00 aggregate |
| 2. Automobile Liability: | \$ 250,000.00 per occurrence
\$1,000,000.00 aggregate |
| 3. Employers Liability: | \$ 250,000.00 per occurrence
\$ 500,000.00 aggregate |
| 4. Workers' Compensation: | Statutory workers' compensation coverage. |
| 5. Umbrella Liability: | Not less than \$1,000,000.00 per occurrence combined limit for bodily injury and property damage. |

17. Retention of Rights by City. The City of Garland, in granting this franchise, fully retains and reserves all the rights, privileges, and immunities that it now has under the law to fully patrol and police the streets, alleys and public ways within the City, and the granting of this franchise shall in no way interfere with the improvements or maintenance, of any streets, alleys or public ways, and the rights of the GRANTEE herein to use the streets shall at all times be subservient to the right of the governing body of the City of Garland to fully exercise its rights or control over streets, alleys and public ways.

18. Taxes. The GRANTEE shall promptly pay all lawful sales, use and ad valorem taxes and other such levies and assessments, if any, that may lawfully be imposed upon it or its operations. Failure to pay any of these charges shall be deemed a breach of this Agreement.

19. Amendments. The City of Garland expressly reserves the right, after due notice to GRANTEE, to modify, amend, alter, change, or eliminate any of the provisions of this franchise and to impose such additional conditions upon the GRANTEE as may be just and reasonable as determined by the City Council, the conditions to be those deemed necessary for the purpose of insuring adequate service to the public.

20. Assignment of Agreement. This Agreement and any and all rights and obligations hereunder may be assigned by the GRANTEE only with the prior written consent of the City Council. All provisions of this Agreement shall apply to the GRANTEE, its successors or assigns.

21. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions herein, which other portions shall continue in full force and effect.

22. Mailing of Notices. Every notice to be served upon the City or the GRANTEE shall be hand delivered or sent by certified mail, return receipt requested. Every such notice to the GRANTEE shall be delivered or sent to _____ . Every such communication to the City shall be delivered or sent to the Finance Director at the following address: City Hall, 200 North Fifth Street, P.O. Box 469002, Garland, Texas 75046-9002 or emailed to EWSCCommercial@garlandtx.gov. The mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when received. Either party may, upon written notice to the other party, change the address specified in this section.

23. Applicable Law. This Agreement shall be deemed to be executed in the City of Garland, State of Texas, regardless of the domicile of the Company, and shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action or proceeding arising under or relating to this Agreement shall be in Dallas County, Texas.

24. Headings. The headings contained in this Agreement are to facilitate reference only, and do not form a part of this Agreement, and shall not in any way affect the construction or interpretation herein.

EXECUTED this _____ day of, _____ 20 ____.

THE CITY OF GARLAND, TEXAS

By: _____

Print Name: _____

Title: _____

GRANTEE

By: _____

Print Name: _____

Title: _____