

FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES

This FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES (hereinafter the "Agreement") is made and entered into this 1st day of October, ____ (hereinafter the "Effective Date") by and between the CITY OF TAMPA, a Florida municipal corporation, organized and existing under the laws of the State of Florida, whose address is 4010 West Spruce Street, Tampa, Florida 33607 (hereinafter the "City"), and _____ a commercial solid waste hauler, whose address is _____ (hereinafter the "Franchisee"). The City and the Franchisee are each referred to hereinafter as a "Party" and they are collectively referred to hereinafter as "the Parties."

WITNESSETH:

WHEREAS, Franchisee has applied for a Franchise to collect, transport and dispose of Commercial Solid Waste within the City of Tampa, pursuant to the provisions of the City of Tampa Code ("Code"), Chapter 26, Article VIII, which is entitled "City of Tampa Ordinance for Commercial Solid Waste Collection Services and Franchises" (hereinafter the "Ordinance"); and

WHEREAS, the City has established certain conditions and requirements that must be met by any person that wishes to receive a Franchise for Commercial Solid Waste Collection Services; and

WHEREAS, the Franchisee agrees to comply with the conditions and requirements that the City has established in this Agreement and the Ordinance; and

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

AGREEMENT

NOW THEREFORE, in consideration of the terms, conditions, covenants and mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Recitals.** The foregoing recitals are true, correct, and incorporated herein by reference.
- 2. Definitions.** The words and phrases in this Agreement shall be construed in accordance with the definitions contained in the Ordinance.
- 3. Issuance of Revocable Franchise.** By executing this Agreement, the City hereby issues a revocable Franchise that authorizes the Franchisee to provide Commercial Solid Waste Collection Services in the City, subject to the requirements of this Agreement and the Ordinance. 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 the Ordinance and this Agreement. The Franchise shall expire or terminate when this Agreement expires or terminates.

4. Scope of Franchise. This Franchise only authorizes the collection of Commercial Solid Waste at approved Commercial Establishments. A permit is required pursuant to Chapter 26, Article IV, of the Code if the Franchisee wishes to collect materials that are not Commercial Solid Waste.

5. Duration of Franchise. The term of this Agreement shall commence on the Effective Date. If the Effective Date is prior to October 1, 2013, this Agreement shall expire on September 30, 2013, unless it is revoked sooner in accordance with Section 26.408 of the Ordinance. If the Effective Date is on or after October 1, 2022, this Agreement shall expire on the next September 30th, 2023, following the Effective Date, unless the Agreement is revoked sooner in accordance with Section 26.408 of the Ordinance.

6. Franchise Application and Customer List. The Franchisee's "Application for Franchise for Commercial Solid Waste Collection Service" ("Application") is attached hereto as Exhibit "A." The Franchisee's "Affidavit in support of Franchise Application" ("Affidavit") is attached hereto as Exhibit "B." The Application includes the list of Commercial Establishments that the Franchisee proposed to serve under this Franchise. The Franchisee is hereby authorized to provide Commercial Solid Waste Collection Services, but only to the Commercial Establishments that are approved by the Director of the Department of Solid Waste & Environmental Program Management and identified on Exhibit "C," which is attached hereto, or approved by the Director pursuant to Section 7, below.

7. Amended Application for New Commercial Establishments. The Franchisee shall provide the Department with an amendment to the Franchisee's Application before the Franchisee begins to provide Commercial Solid Waste Collection Service to any Commercial Establishment that is not explicitly identified in Exhibit "C." The amendment shall identify the new Commercial Establishment(s) that the Franchisee wishes to serve, and it shall identify the vehicles, equipment, and containers that will be used to provide service to the new Commercial Establishment(s). The amendment shall update the information in the Application; the amendment does not need to duplicate the information and other materials (e.g., bond; certificate of insurance) that were submitted in the Application, but shall correct any information that is no longer accurate because of events that have occurred after the Application was executed by the Franchisee. The Franchisee shall not begin to provide Commercial Solid Waste Collection Services to any new establishment until the Franchisee receives written approval from the Director to provide the proposed service.

8. Application for Renewal of Franchise. An application for the renewal of this Franchise shall be submitted in the same manner as the Application that was filed for this Franchise. The Franchisee shall submit its application for renewal at least thirty (30) days before the expiration of this Agreement (i.e., on or before September 1st). The application and supporting information shall be submitted on forms provided by the City. The required application fee shall be filed with the application. The application may be denied for the reasons set forth in the Ordinance. Among other things, the application may be denied for a Commercial Establishment if the City is willing and able to provide Commercial Solid Waste Collection Services to that Commercial Establishment.

9. Bond. The Franchisee has filed a bond with the City in the amount of fifty thousand dollars (\$50,000). The bond is attached hereto as Exhibit "D." The bond shall be used to ensure that the Franchisee will perform its obligations hereunder in compliance with this Agreement and the Ordinance. The Franchisee shall maintain the bond in full force and effect at all times during the term of this Agreement.

10. Liability Insurance. The Franchisee shall obtain, and maintain in effect at all times, the types and amounts of insurance coverage required by the Ordinance and this Agreement. The insurance shall be issued by an insurance company that is licensed to do business in Florida and is acceptable to the City. The Franchisee shall comply with the insurance requirements in Exhibit "E," which is attached hereto. The Franchisee has provided the City with a certificate evidencing the required insurance coverages, and the certificate is attached hereto as Exhibit "F."

11. Indemnification. Franchisee agrees that it will indemnify, hold harmless, and defend the City, its officers, employees, agents, consultants, and contractors, from and against any and all claims, actions, causes of action, suits in equity, administrative actions, demands, judgments, liabilities, losses, suits, interests, fines, penalties, damages, losses of use, costs, charges or expenses of any kind, including reasonable expert witness fees and reasonable attorney fees, whether at trial or appeal, and including actions taken against the City by a regulatory agency (e.g., the Florida Department of Environmental Protection, Hillsborough County Environmental Protection Commission, or U.S. Environmental Protection Agency) that arise, result from, or are related to acts or omissions of the Franchisee, its employees, agents, officers or representatives, while collecting, transporting, processing and/or disposing of solid waste within the City.

12. Payment of Franchise Fees. The Franchisee shall pay as compensation to the City, for the rights and benefits granted hereunder, a Franchise fee equal to fifteen (15) percent of the Franchisee's Gross Revenues. For purposes of this Agreement, Gross Revenues shall consist of all revenues the Franchisee is entitled to collect from the Franchisee's customers for providing Commercial Solid Waste Collection Services in the City. Gross Revenues are equal to the Franchisee's billings for Commercial Solid Waste Collection Services, with no deductions, except for bad debts written off in accordance with generally accepted accounting principles issued by the Financial Accounting Standards Board. Notwithstanding anything else contained in this paragraph, Gross Revenues do not include the amount billed by the Franchisee to its customers to pay the Franchise fee.

Franchise fee payments for Commercial Solid Waste Collection Services shall be due forty-five (45) days after the end of each month in which the Franchisee provided such services. Each payment shall be accompanied by a statement of the Franchisee's Gross Revenues for the month, which shall be submitted on a form prescribed by the City's Department of Revenue and Finance. The Franchise fees shall be paid directly to the City's Department of Revenue and Finance. Statements and remittances shall be accepted as timely if postmarked within forty-five (45) days after the end of the month in which the Commercial Solid Waste Collection Services were provided; if the forty-fifth (45th) day falls upon a Saturday, Sunday, or federal or state holiday, the statements and remittances shall be accepted as timely if postmarked on the next succeeding workday.

A Franchisee's failure to pay the necessary Franchise fees in compliance with this Agreement and the Ordinance shall constitute a default under this Agreement, which may result in a suspension or revocation (i.e., termination) of this Agreement and the Franchise.

The City may pursue all remedies at law, now in effect or as amended, for the collection of any delinquent payments of Franchise fees. Payments not received by the due date shall be assessed (a) an administrative fee to reimburse the City for the reasonable administrative costs associated with collecting such monies and (b) interest for each day of delinquency at the rate of eighteen (18) percent per annum or the maximum allowed by law, whichever is less, in accordance with the City of Tampa

Code, Section 1-28 ("Collection charges; interest"), until the total unpaid amount due and owing is paid in full. The administrative fee shall be equal to six (6) percent of the amount owed by the Franchisee to the City or fifteen dollars (\$15.00), whichever is greater. Franchisee shall pay all reasonable attorney fees and other costs incurred by the City in the collection of past due amounts.

All amounts paid by the Franchisee shall be subject to confirmation and re-computation by the City. An acceptance of payment shall not be construed as an accord that the amount paid is the correct amount, nor shall acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

Billing methods that have the effect of reducing or avoiding the payment of Franchise fees are prohibited, and shall be cause for termination of the Franchise and this Agreement. If the Franchisee or the Franchisee's employees, agents or representatives use billing methods that are false, misleading or fraudulent for the purpose of reducing or avoiding payment of Franchise fees, they may be subject to the penalties provided by the City of Tampa Code, Section 1.6 ("General Penalty") and Section 26.417 ("Penalties for Violation").

13. Books and Records. The Franchisee agrees to make all of its books and records concerning the Franchisee's business under this Franchise available to the City or its designee for inspection, copying, and audit. The Department of Solid Waste & Environmental Program Management (hereinafter "Department") shall provide fifteen (15) days advance written notice before conducting any such inspection. The records shall be kept at a location within the City or Hillsborough County, and shall be readily accessible for review by the City. The Franchisee shall maintain its records for at least three (3) years after the termination of the Franchise. Upon request, the City may allow the Franchisee to satisfy one or more of the requirements in this paragraph by providing access to the Franchisee's records via the internet or by providing electronic copies (e.g., computer disks) of the records.

14. Monthly Reports. Upon request, the Franchisee shall furnish to the City a copy of the Franchisee's monthly billing statements for the Commercial Solid Waste Collection Services the Franchisee provided within the City. The Franchisee shall file a monthly report with the Director within forty-five (45) days after the end of each month in which the Franchisee provided Commercial Solid Waste Collection Services in the City. Each monthly report shall contain an accurate and current list of all customers receiving Commercial Solid Waste Collection Services from the Franchisee. At a minimum, the monthly reports shall include the following information for each customer: (a) the customer's name; (b) the street address or location of the customer's commercial establishment; (c) the size (capacity) of each container used by the customer; (d) the type of container(s) used by the customer; (e) the frequency of collection for each container; and (f) the individual and total amount of each fee and charge billed by the Franchisee during the month for the Franchisee's Commercial Solid Waste Collection Services, including but not limited to all container rental fees, container maintenance fees, waste collection and hauling fees, and waste disposal fees. The monthly reports shall be submitted electronically in a format that is acceptable to the Director.

15. Annual Reports. The Franchisee shall file an annual report with the City concerning the Franchisee's total Gross Revenues for the year. This annual report shall be examined by an independent certified public accountant ("auditor"), who shall confirm that the Franchisee's computations concerning Gross Revenues and Franchise fees were performed in accordance with the terms of this Agreement and the Ordinance. The auditor's report shall state that the examination of the Franchisee's records was performed in accordance with professional standards established by the American Institute of Certified

Public Accountants or a successor organization. The auditor's report shall be filed with the Director within one hundred and twenty (120) days after the end of the Franchisee's fiscal year. The auditor's services shall be contracted and paid by the Franchisee.

16. Public Records. In accordance with Chapter 119 Florida Statutes, any written documents that are submitted to the City will become the property of the City and will not be returned. All information contained within such documents shall be available for public inspection, except as otherwise provided under Chapter 119, F.S., or other applicable laws. If the Franchisee claims that any documents provided to the City are exempt from Florida's public records laws, the Franchisee must identify specifically any information that the Franchisee considers confidential, proprietary, or trade secrets, and the Franchisee must specifically cite the applicable law creating such exemption. In the event that the City is served with a subpoena or order of a court or agency seeking disclosure of a document identified by the Franchisee as exempt from disclosure, the City shall notify Franchisee, and provide Franchisee with an opportunity to seek an appropriate protective order or other relief. The City may disclose any document in accordance with a lawful court or agency order, in the event that Franchisee fails to obtain a protective order, or other appropriate relief barring the disclosure of the Franchisee's documents.

17. Method of Making Collections. The Franchisee shall collect and transport Commercial Solid Waste in compliance with the requirements in this Agreement and the Ordinance. The Franchisee shall take care in the loading and transportation of Commercial Solid Waste so that none of the solid waste is left on public or private property in the City. Any solid waste, litter, or liquid spilled, discarded, or otherwise left on public or private property by the Franchisee shall be cleaned up immediately by the Franchisee. If the Franchisee fails to clean up the same within two (2) hours after notification by the City, the City may cause such property to be cleaned and then the City may charge all associated costs to the Franchisee, plus a ten percent (10%) administrative overhead fee.

At a minimum, the Franchisee shall comply with the following conditions when collecting Commercial Solid Waste within the City:

(a) *Hours of collection.* The authorized hours for collecting Commercial Solid Waste within the City shall be established by the Department. In the absence of any contrary regulations adopted by the Department, the Franchisee may collect Commercial Solid Waste between the hours of 3:30 a.m. and 10:00 p.m. The Director may allow Commercial Solid Waste to be collected at other times in cases of extenuating circumstances or emergency situations. The Director may restrict the hours of collection, after providing notice and an opportunity to be heard, if the Director concludes that the Franchisee's operations are causing a nuisance.

(b) *Routes of travel.* To the greatest extent practicable, all of the Franchisee's collection vehicles shall travel on major thoroughfares, without using side streets, when collecting and transporting solid waste. The Franchisee shall comply with the applicable provisions of the City's ordinances concerning the use of designated truck routes by regulated trucks.

(c) *Equipment.* All vehicles, equipment, and containers used to provide Commercial Solid Waste Collection Service shall be maintained at all times in a clean, sanitary, and neat condition, and in good repair. All of the Franchisee's vehicles, equipment, and containers, shall be maintained and operated in a manner to ensure the safety of the citizens of the City. All of the Franchisee's collection vehicles, equipment, and containers shall bear the Franchisee's name and current phone number in letters not less than two (2) inches tall.

(d) *Weights of loads hauled.* The total gross weight of any loaded vehicle used by the Franchisee in the City shall not exceed the maximum gross weight allowed under any applicable federal, state, or City laws.

(e) *Prohibited materials and wastes.* The Franchisee shall use all reasonable measures to prevent prohibited materials from being collected, transported, or disposed of in a manner that poses a threat to human health, public safety, or the environment. The Franchisee shall not collect prohibited materials in the City and shall not deliver prohibited materials to the City's facilities, without the City's prior written approval. The Franchisee shall promptly notify the City if a Person places prohibited materials out for collection by the Franchisee. The requirements and prohibitions in this paragraph apply to cases where the Franchisee knew, or reasonably should have known that the Franchisee was collecting, transporting, delivering or disposing of prohibited materials.

(f) *Produce receipts from approved facilities.* The Franchisee, upon request of the Department, shall produce receipts or other documents demonstrating that all of the Commercial Solid Waste collected by the Franchisee in the City was delivered to the McKay Bay Complex or another solid waste management facility that was approved in advance by the Director.

(g) *Disposal at McKay Bay Complex.* If the Franchisee collects, receives, transports, stores or separates Commercial Solid Waste that was generated within the City, the Franchisee shall deliver such waste to the City's McKay Bay Complex, unless the Franchisee received the Director's advance written authorization to deliver the waste to a different solid waste management facility. The Franchisee shall deliver the Commercial Waste to the McKay Bay Complex, even if it is mixed with materials that are not Commercial Waste.

18. City's Right to Inspect. The City shall have the right to inspect the Franchisee's equipment, vehicles, and containers at all times. The Franchisee shall allow the City's representatives to enter the Franchisee's property for the purpose of conducting such inspections. The City's representatives shall provide appropriate identification, and shall comply with the Franchisee's normal procedures for the protection of health and safety, when conducting inspections on the Franchisee's property. The City shall provide reasonable advance notice before conducting an inspection on the Franchisee's property, and shall conduct such inspection during the Franchisee's normal business hours, unless the City is responding to an emergency or other situation that poses a threat to public health or safety.

19. Grounds for Suspension, Revocation and Termination of Franchise Agreement. The City may suspend or revoke (terminate) this Agreement if the Franchisee fails to comply with any of the requirements in this Agreement or the Ordinance. Other grounds for the suspension or revocation of the Agreement are set forth in the Ordinance, Section 26.408 ("Suspension or revocation of Franchise"). The City may suspend the Franchisee for a stated period of time, place the Franchisee on probation, or place other conditions on the Franchisee as the City finds necessary. The City shall give the Franchisee notice and an opportunity to be heard before the City suspends or revokes this Agreement. Franchisee shall be responsible for paying all costs, expenses, attorneys' fees, and damages the City incurs as a result of the Franchisee's failure to comply with the requirements of this Agreement or the Ordinance.

20. Disclaimer of Joint Venture; No Agent/Employee Relationship. This Agreement shall not be construed or deemed to create a joint venture or common undertaking between the Parties, or between any Party and any third party. The Franchisee and its agents and employees are independent principals

and not contractors, officers, agents, or employees of the City. The Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are employees of the City. Nothing herein shall be deemed to create a principal/agency or employment relationship between the City and the Franchisee.

21. No Assignment. This Agreement shall not be assigned or transferred, in whole or in part.

22. Amendments. The Parties acknowledge that this Agreement may be amended by mutual consent of the duly authorized representatives of the Parties. All amendments to this Agreement shall be ineffective and unenforceable, unless reduced to writing and approved and executed by the duly authorized representatives of the Parties.

23. Notices. All notices, demands, requests for approvals or other communications given by any Party to the other Party shall be in writing and shall be (a) hand delivered, (b) sent by registered or certified mail, postage prepaid, return receipt requested, (c) sent by a recognized national overnight courier service, or (d) sent by facsimile transmission, to the office for the other Party, as indicated below and addressed as follows:

For the City:

Larry Washington , Director
Department of Solid Waste & Environmental Program Management
4010 West Spruce Street
Tampa, Florida 33607
Telephone Number: (813) 348-1153
Fax Number: (813) 348-1156

For the Franchisee:

Until notice of a change of address is received as to a Party, the other Party may rely upon the last address given. Notices given by hand delivery shall be effective when delivered. Notices given in compliance with the requirements herein, and delivered by registered or certified mail, or by overnight courier service, or by facsimile transmission, shall be effective on the date sent. Either Party may change its authorized representative and address, as designated in this Section 23 above, at any time by giving written notice to the other Party.

24. Compliance with Applicable Law and Ethics. Franchisee hereby covenants and agrees that the Franchisee shall comply at all times with all laws, statutes, rules and regulations, including, without limitation, the City of Tampa's Code of Ethics, now in effect or hereafter enacted, which are applicable in any way to the activities conducted under this Agreement by the Franchisee, its officers, employees, and agents.

25. Non-Action on Failure to Observe Provisions of this Agreement. The failure of either Party to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any exhibit hereto, shall not be deemed a waiver of any right or remedy that the Party may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision. To be effective, a waiver shall be in writing and signed by the Party granting the waiver. Any such waiver shall be limited to the particular right so waived, and shall not be deemed to waive any other right under this Agreement.

26. Applicable Law and Venue. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. Venue for any proceeding arising under this Agreement shall be in the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, for state actions, and in the United States District Court for the Middle District of Florida for federal actions, to the exclusion of any other venue.

27. Entire Agreement.

(a) This Agreement and all the terms and provisions contained herein, including without limitation the exhibits hereto, constitute the full and complete agreement between the Parties, and shall supersede and control over any and all prior agreements, understandings, representations, correspondence and statements, whether written or oral. With regard to the issues addressed herein, the Parties shall not be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement. This Agreement may not be amended or modified except by written instrument approved and executed by the duly authorized representatives of the Parties.

(b) The provisions of this Agreement shall be read and applied in para materia with all other provisions hereof.

28. Termination. This Agreement shall terminate if it is revoked by the City in accordance with the provisions in this Agreement or the Ordinance. This Agreement also may be terminated upon the execution of a written agreement by the Parties providing for the cancellation and termination of this Agreement.

29. Approvals.

(a) For the purposes of this Agreement, any required permission, consent, approval or agreement (collectively, an "approval") by the City means the written approval of the Director unless otherwise set forth herein, and such approval shall be in addition to any and all permits and other licenses required by law or this Agreement.

(b) For the purposes of this Agreement, any right of the City to take any action permitted, allowed or required by this Agreement, may be exercised by the Director, unless otherwise set forth herein.

30. Interpretation of Agreement. If there are any inconsistencies between the terms and conditions of this Agreement, and the attached exhibits, this Agreement shall supersede and control over the terms and conditions of the attached exhibits.

31. Partial Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision, and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable by a court of competent jurisdiction, shall be deemed severable and shall not be affected thereby and shall, with the remainder of this Agreement, continue unmodified and in full force and effect.

32. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute a single instrument.

33. Third Party Beneficiaries. The rights and obligations of the Parties set forth in this Agreement are personal to the Parties. No third parties are entitled to rely on or have an interest in any such rights and obligations.

34. Survivability. Any term, condition, covenant or obligation herein which requires performance by a Party subsequent to the expiration or termination of this Agreement, shall remain enforceable against such Party subsequent to the expiration or termination of this Agreement.

35. Sovereign Immunity. Nothing in this Agreement shall be construed to mean that the City waives its sovereign immunity or the limits on liability set forth in Section 768.28, F. S., , or any other law.

36. Exhibits. All of the exhibits attached hereto are essential to this Agreement and incorporated herein by reference. The exhibits are as follows:

Exhibit A – Franchisee’s “Application for Franchise for Commercial Solid Waste Collection Services”

Exhibit B – Franchisee’s “Affidavit in support of Franchise Application”

Exhibit C – List of Commercial Establishments that may receive Commercial Solid Waste Collection Service by the Franchisee

Exhibit D – Franchisee’s Bond

Exhibit E – Insurance Requirements

Exhibit F – Franchisee’s Certificate of Insurance

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates written below.

[The remainder of this page was left blank intentionally]

FRANCHISEE

Corporate Secretary – Signature

By: _____ (SEAL)
(President) (Vice President) (CEO)

Corporate Secretary – Type or Print

Date: _____

Witness – Signature

Witness – Type or Print

Witness – Signature

Witness – Type or Print

Use this form if the Franchisee is a Corporation

If no Corporate Seal, must have two witness signatures.

Witness signature cannot be the same as the President, Vice President, or CEO.

If Corporate Seal, Corporate Secretary signature serving as one witness is sufficient.

CITY OF TAMPA, FLORIDA

ATTEST:

Clerk/Deputy City Clerk

By: _____
Jane Castor, Mayor

Approved as to Legal Sufficiency:

Assistant City Attorney