

RESOLUTION NUMBER 2017-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEW PORT RICHEY, FLORIDA ADOPTING THE FORM OF
WASTE HAULING FRANCHISE AGREEMENT;
ESTABLISHING A FRANCHISE FEE PERCENTAGE RATE;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Ordinance No. 2013-2015 requires that the City Council adopt the form of the waste hauling franchise agreement and set the percentage for franchise fees under the agreement; and

WHEREAS, the City Council desires to adopt the franchise agreement attached as Exhibit A and set the percentages stated herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF NEW PORT RICHEY, PASCO COUNTY, FLORIDA, THAT:**

1. The waste hauling franchise agreement attached hereto as Exhibit A shall be the prescribed form for waste hauling franchise agreements with the City until and unless supplemented by further resolution of the City Council.
2. The franchise fee shall be ten percent (10%) for the years 2016 and all subsequent years, unless thereafter set at a different rate by further resolution of the City Council.
3. This resolution shall be effective immediately upon its passage and adoption.

DONE AND RESOLVED this 15th day of November, 2016.

(SEAL)

(ATTEST)

Judy Myers Prine
City Clerk

Robert Marlowe
Mayor – Councilmember

APPROVED AS TO LEGAL FORM AND CONTENT

By _____
Tim Driscoll, City Attorney

EXHIBIT A

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, ____ (the "Effective Date") by and between the CITY OF NEW PORT RICHEY, FLORIDA, a Florida municipal corporation (the "City") and _____, whose principal address is _____ ("Franchisee")(collectively, the "Parties").

WITNESSETH

WHEREAS, Franchisee desires to engage in the business enterprise of collecting, transporting, or disposing of garbage, trash or refuse ("Waste Hauling Services") within the City and to use the City's street, alleys and rights-of-way for such purpose; and

WHEREAS, Franchisee has been granted a special permit by the City's council; and

WHEREAS, Franchisee recognizes and acknowledges the privileges and benefits it receives by entering into this Agreement.

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

1. **Recitals.** The above recitals are true, correct, and incorporated herein by reference.
2. **Issuance of Franchise.** By executing this Agreement, the City hereby issues a revocable, non-exclusive franchise that authorizes the Franchisee to provide Waste Hauling Services in the City, subject to the requirements of this Agreement and Section 10 of the New Port Richey City Code. The franchise granted herein may be suspended, revoked, or terminated in accordance with the terms of this Agreement and the New Port Richey City Code. The franchise granted herein shall expire or terminate when this Agreement expires or terminates.

3. **Term of Agreement.** The term of this Agreement shall be for one (1) calendar year, commencing on January 1st of the year following the Effective Date and terminating on December 31st of the same year at 11:59pm, unless terminated sooner pursuant to the terms herein or in Section 10 of the New Port Richey City Code.
4. **Renewal of Agreement.** This Agreement may be renewed by the Parties upon written mutual consent. Franchisee shall provide the City with a notice of its intent to renew this Agreement by November 1. The City shall review Franchisee's notice and determine whether Franchisee has demonstrated its ability to comply with the terms of this Agreement and Section 10 of the New Port Richey City Code. Any and all renewals shall be memorialized in writing by executing a franchise agreement for the coming year in the form most recently adopted by the City's council.
5. **City's Responsibilities and Obligations.**
 - a. *Maintenance of Public Improvements.* The City agrees to maintain, to the best of its ability and in its sole discretion, the public streets, rights-of-way and infrastructure used by Franchisee in performing Waste Hauling Services. Notwithstanding the foregoing, nothing contained herein shall be construed to convey a covenant that the City will take any specific action with respect to its public streets, rights-of-way and infrastructure at the direction of Franchisee or to waive the City's decisions in such maintenance.
 - b. *City Rights.* Despite the City's reservation of rights to provide its services, including but not limited to Waste Hauling Services, the City hereby agrees that it will not provide Waste Hauling Services while this Agreement is in effect.
6. **Franchisee's Responsibilities and Obligations.**
 - a. *Compliance with Laws.* Franchisee shall comply at all times with all requirements set forth in this Agreement, Section 10 of the New Port

Richey City Code, as well as any and all laws, rules, regulations, ordinances, and orders of regulatory bodies applicable to Waste Hauling Services.

- b. *Bond.* Franchisee shall file a bond with the City in the amount of Ten Thousand and 00/100 Dollars (\$10,000), to ensure that Franchisee will perform its obligations under this Agreement and comply with all obligations of this Agreement, the New Port Richey City Code, and all other laws, rules, regulations, and ordinances (the "Bond"). The Bond is attached hereto as Exhibit A. Franchisee shall maintain the Bond in full force and effect at all times during the term of this Agreement.

- c. *Franchise Fees.* Franchisee shall pay as compensation to the City, for the rights, privileges, and benefits granted hereunder and for costs associated herewith, a monthly fee (the "Franchise Fee") at the percentage rate provided by resolution of City's council multiplied by Franchisee's collected revenues for all months during the term of this agreement and any renewal thereof. For purposes of this calculation, collected revenues shall consist of all revenues Franchisee has collected from its customers for providing Waste Hauling Services within the City, but does not include collection of franchise fees from its customers.

- d. *Payment of Franchise Fee.* The Franchise Fee shall be due forty-five (45) days after the end of each month in which Franchisee provided Waste Hauling Services under this Agreement. If the 45th day falls on a Saturday, Sunday, or federal or state holiday, payment shall be received the following business day. Each payment shall be accompanied by a statement of Franchisee's collected revenues in a form prescribed by the City's finance department which shall be attached hereto as Exhibit B. The Franchise Fee shall be remitted to the address below:

City of New Port Richey
Billing & Collections Dept.
P.O. Box 2079
New Port Richey, Florida 34656-2079

All amounts paid shall be subject to confirmation by the City. 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.

- e. *Failure to Pay Franchise Fee.* Franchisee's failure to pay the Franchise Fee in compliance with this Agreement shall constitute a material default under this Agreement, which may result in suspension or revocation of this Agreement and the franchise granted hereunder. The City may pursue all remedies now available or hereafter arising for the collection of any delinquent Franchise Fees. Payments not received by the due date may be assessed an administrative fee, late fee, or interest in accordance with the New Port Richey City Code until the total unpaid amount due and owing is paid in full.
 - f. *Books and Records.* Franchisee agrees to make all of its books and records concerning this Agreement available to the City or its designee for inspection, copying, and audit. The City agrees to provide written notice prior to any such inspection. Franchisee shall maintain its records for at least three (3) years after the termination of this Agreement, however terminated.
7. **Liability Insurance.** Franchisee shall obtain and maintain insurance throughout the entire term of this Agreement in accordance with Section 10 of the New Port Richey City Code. Franchisee's certificate evidencing the required insurance shall be attached to this Agreement as Exhibit C.
8. **Regulation of Waste Hauling Services.**
- a. *Hours of Collection.* The authorized hours of collection within the City are between the hours of 6:00am and 7:00pm. For residential areas, collection may only occur on Monday and Thursday, unless falling on a holiday as provided in section 10-25 of the New Port Richey City Code, and any day except Sunday for commercial or multi-family dwellings.

- b. *Routes of Travel.* To the greatest extent practicable, all of Franchisee's collection vehicles shall travel on major thoroughfares, without using side streets, when providing waste hauling services.
- c. *Equipment.* All vehicles, equipment, and containers used to provide Waste Hauling Services shall be maintained at all times in a clean, sanitary, and neat condition, and in good repair. All of 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 Franchisee's collection vehicles, equipment, and containers shall bear Franchisee's name and current phone number.
- d. *Weights of loads hauled.* The total gross weight of any loaded vehicle used by the Franchisee in the City in connection with the Waste Hauling Services shall not exceed the maximum gross weight allowed under any applicable federal, state, or local laws.
- e. *Prohibited materials and wastes.* 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. Franchisee shall not collect prohibited materials in the City. 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 in which Franchisee knew, or reasonably should have known that the Franchisee was collecting, transporting, delivering, or disposing of prohibited materials.
- f. *City's Right to Inspect.* The City shall have the right to inspect Franchisee's equipment, vehicles, and containers at all times. Franchisee shall allow the City's representatives to enter Franchisee's property for the purpose of conducting such inspections. The City's representatives shall provide appropriate identifications, and shall comply with Franchisee's normal procedures for the protection of health and safety when conducting inspections on Franchisee's property. The City shall provide reasonable advance notice before conducting an inspection on Franchisee's property,

and shall conduct such inspection during 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.

9. **Termination.** The City may suspend or revoke (terminate) this Agreement if Franchisee fails to comply with any of the requirements in this Agreement or Chapter 10 of the New Port Richey City Code. Other grounds for the suspension or revocation of the Agreement are set forth in section 10-47 (Revocation or Suspension) of the New Port Richey City Code, as may be amended. The City may suspend the franchise granted herein for a stated period of time, place franchisee on probation, or place other conditions on Franchisee as the City deems necessary in its sole discretion. Franchisee shall be responsible for paying all costs, expenses, attorney's fees and damages the City incurs as a result of Franchisee's failure to comply with the requirements of this Agreement or Chapter 10 of the New Port Richey City Code.

10. **Indemnification.** The Parties recognize that they are independent contractors. Franchisee agrees to assume liability for and indemnify, hold harmless, and defend the City, its council members, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorneys' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Agreement, whether or not due to or caused by the negligence of the City, its board members, officers, employees, agents, and/or attorneys excluding only the sole negligence of the City, its officers, employees, agents, and attorneys. This includes claims made by the employees of Franchisee and Franchisee hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The liability hereunder shall include all attorneys' fees and costs incurred by the City in the enforcement of this indemnification provision. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity from or limitation of liability to which the City may be entitled to pursuant to the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement, however terminated, and

shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

11. Miscellaneous.

- a. *Provisions Cumulative.* All provisions, requirements, and covenants of this Agreement are cumulative and concurrent with Chapter 10 of the New Port Richey City Code, as may be amended from time to time, and are not exclusive of any provisions, requirements, or covenants contained in Chapter 10 of the New Port Richey City Code, as may be amended from time to time.

- b. *Public Records.* Upon request from City's custodian of public records, Franchisee shall provide City a copy of any requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Florida Public Records Act or as otherwise provided by law. Franchisee shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Franchisee does not transfer the records to City. Upon completion of this Agreement, Franchisee shall transfer, at no cost to City, all public records in possession of Franchisee or keep and maintain public records required by City to perform the services provided in this Agreement. If Franchisee transfers all public records to City upon completion of this Agreement, Franchisee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Franchisee keeps and maintains public records upon completion of this Agreement, Franchisee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City's custodian of public records, in a format that is compatible with the information technology systems of City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING

TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (727) 853-1024, MANNSD@CITYOFNEWPORTRICHEY.ORG, AND 5919 MAIN STREET, NEW PORT RICHEY, FLORIDA 34652.

- c. *No Assignment.* Franchisee shall not assign or transfer this agreement, in whole or in part, except upon prior written approval of the City.

- d. *Amendments.* The Parties acknowledge that this Agreement may only be amended by mutual consent of the Parties. All amendments to this Agreement shall be ineffective and unenforceable, unless reduced to writing and approved and executed by the Parties.

- e. *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 nation overnight courier service to the respective addresses below:

For the City:

Attn: _____

For the Franchisee:

Attn: _____

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 shall be effective on the date sent. Either party may change its authorized representative and address, as designated in this section, at any time by giving written notice to the other party.

- f. *Waiver.* 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 non-performance 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.
- g. *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 solely be in the Sixth Judicial Circuit, in and for Pasco County, Florida, for state actions and solely in the United States District Court for the Middle District of Florida for federal actions, to the exclusion of any other venue.
- h. *Entire Agreement.* 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.
- i. *Severability.* If any term or provision of this Agreement, or the application thereof to any person or circumstance is declared invalid or unenforceable by a court of competent jurisdiction, 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 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.

- j. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed and original, but all of which shall constitute a single instrument.
- k. *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, including the general public.
- l. *Authorization.* The Parties represent and warrant that they are authorized to enter into this Agreement without the consent and joinder of any other party. The undersigned individuals represent and warrant that they have full power and authority to execute this Agreement on behalf of their respective parties and to bind their respective parties to the terms hereof.

[Remainder of this page left blank – Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date listed below.

FRANCHISEE

By: _____

Print Name: _____

Title: _____

Date: _____

CITY OF NEW PORT RICHEY, FLORIDA

[Seal]

By: _____

City Manager

Print Name: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

EXHIBIT A

Franchisee's filed bond with the City.

EXHIBIT B

MONTHLY WASTE HAULER FRANCHISE FEE

Company Name: _____

Address: _____

City, State and Zip Code: _____

Waste Hauler Report for Month Ending: _____

Revenues collected during month: \$ _____

Franchise Fee: _____ %

Total Fee Due: \$ _____

I hereby remit the enclosed franchise fee and affirm that the information herein presented is true and correct.

Signature: _____ Date Prepared: _____

Print Name: _____

Title: _____

Please include this form with your payment.



SUBMIT TO: City of New Port Richey
Billing & Collections Dept.
P. O. Box 2079

EXHIBIT C

Franchisee's certificate evidencing the required insurance.