

ORDINANCE NO. _____

An ordinance granting a franchise to _____, pursuant to Chapter XIV, City Charter and Chapter 18, Article IV, Dallas City Code, to own, operate and maintain a solid waste collection service within the City of Dallas; providing for its terms and conditions; providing for civil penalties for failure to adhere to the terms and conditions in the franchise ordinance; providing for payment of a franchise fee; providing for the payment of the publication fee; providing for the filing of an acceptance by Franchisee; and providing an effective date.

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WHEREAS, the City of Dallas is authorized to grant one or more non-exclusive franchises for the provision of solid waste collection service to premises within the City of Dallas; and

WHEREAS, the City Council of the City of Dallas is of the opinion that the granting of the franchise on the terms and conditions set forth in this Ordinance is in the public interest and in the interest of the City of Dallas and its residents. Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. Preamble

That the declarations contained in the preambles to this Ordinance are material and are hereby repeated and incorporated herein as a part of this Ordinance as though they were fully set forth in this Section 1.

SECTION 2. Definitions

That for the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given in this Ordinance. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word "shall" is mandatory and not merely directory. The word "may" is not mandatory and is merely permissive. Words defined elsewhere in this Ordinance shall be accorded that meaning

throughout this Ordinance. Words not defined shall be given their common and ordinary meaning.

a. **Affiliate and Affiliated** means any entity controlling, controlled by or under common control with the Franchisee.

b. **Authorized Area** means the entire area from time to time within the corporate limits of the City of Dallas.

c. **City** means the City of Dallas, a municipal corporation, a political subdivision of the State of Texas.

d. **City Charter** means the City's organic law, equivalent to a constitution, which defines the City's existence and prescribes the powers, duties, and organization of the City's governmental structure.

e. **City Code** shall mean the ordinances of the City codified into the Dallas City Code, The Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas (1960 Edition, 1997 Printing), as amended from time to time.

f. **City Manager** shall mean the City Manager or the City Manager's designated assistant or representative.

g. **Control** (and its variants) shall mean actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of the Franchisee; (ii) an agreement of the holders of voting stock or rights of the Franchisee which effectively vests or assigns policy decision-making in any person or entity other than the Franchisee; (iii) a sale, assignment or transfer of any shares or interest in the Franchisee which results in a change in the Control of the Franchisee.

h. **Council** shall mean the governing body of the City of Dallas. This section does not authorize delegation of any decision or function that is required by the City Charter or State law to be made by the Council. In any case in which a hearing is held pursuant to this

Ordinance, the Council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

Unless otherwise stated in this Ordinance or prohibited by the City Charter or State law, the Council may delegate to the City Manager or the Director the exercise of any and all of the powers conferred upon the City by its Charter or by general law relating to the administration and enforcement of this Ordinance and to the Franchisee's exercise of the rights and privileges conferred in this Ordinance.

i. **Director** means the Director of the Sanitation Services Department of the City, or the Director's designated representative.

j. **Franchise** means the grant of the non-exclusive permission and privilege to use Public Ways under this Ordinance, and all of the incidental rights and obligations as described by this Ordinance.

k. **Franchisee** shall mean _____, a _____, the grantee of rights under this Ordinance; or the successor, transferee, or assignee of this Ordinance.

l. **Ordinance** shall mean this document.

m. **Public Ways** shall mean all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated for the benefit of all utilities. "Public Ways" shall not include property of the City which is not a dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated for the benefit of all utilities.

n. **Solid Waste Collection Service** shall mean the term as defined in Section 18-29(5) of the City Code.

SECTION 3. Granting of Franchise

That subject to all the terms and conditions contained in this Ordinance, the Texas Constitution, the City Charter, the City Code, other City ordinances as from time to time may be in effect, and applicable federal law, the City hereby grants the Franchisee non-exclusive

permission and privilege solely for the purpose of operating and maintaining a Solid Waste Collection Service in, over, along and across the Public Ways in the Authorized Area. This grant is subject to the following additional conditions:

a. Franchisee purpose.

The Franchisee accepts the grant set forth above and agrees to operate and maintain the Solid Waste Collection Service in the Authorized Area in accordance with the terms and provisions of this Ordinance.

b. Other Services.

By granting this Ordinance, the City is not authorizing any non-Solid Waste Collection Service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by Franchisee which are not Solid Waste Collection Services. The Franchisee shall immediately notify the City if it provides any non-Solid Waste Collection Services within the Authorized Area.

c. No Priority.

This Ordinance does not establish any priority for the use of the Public Ways by the Franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the Public Ways. In the event of any dispute as to the priority of use of the Public Ways, the first priority shall be to the public generally, the second priority to City, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the City Manager in the exercise of the City's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

d. City's Use of Public Ways.

The Franchisee acknowledges that by this Ordinance it obtains no rights to use or further use of the Public Ways other than those expressly granted in this Ordinance. The Franchisee

acknowledges and accepts at its own risk, provided that the City has the legal authority for the use or uses in question, that the City may make use in the future of the Public Ways in which the Solid Waste Collection Service is located in a manner inconsistent with the Franchisee's use of such Public Ways for the Solid Waste Collection Service, and in that event the Franchisee shall not be entitled to compensation from the City unless compensation is available to all users of the Public Ways which are affected in a similar manner.

e. Emergencies.

The City may temporarily suspend the operation of the Solid Waste Collection Service of Franchisee in the event of a public emergency or calamity as determined by the City. In such event neither the City nor any agent, contractor, or employee of the City shall be liable to the Franchisee or its customers or third parties for any damages caused them or the Solid Waste Collection System. Where possible, prior notice shall be given to the Franchisee. In any event notice of such action shall be given to the Franchisee after such action is taken.

g. Compliance with Law and Standards of Operation.

The Franchisee shall be subject to and comply with all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

h. Other Approvals and Authorizations.

This Ordinance does not relieve and the Franchisee shall comply with any obligation to obtain permits, licenses and other approvals from the City or other units of government, which are required for the operation and maintenance of the Solid Waste Collection Service.

i. City's Right of Eminent Domain Reserved.

Nothing in this Ordinance shall limit any right the City may have to acquire by eminent domain any property of the Franchisee.

j. Taxes, Fees and Other Assessments.

Nothing in this Ordinance shall be construed to limit the authority of the City to impose a tax, fee, or other assessment of any kind on any person. The Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its Solid Waste Collection Service.

k. Disputes Among Public Ways Users.

The Franchisee shall respect the rights and property of the City and other authorized users of the Public Ways. Disputes between the Franchisee and other similar Franchisees over use of Public Ways shall be submitted to the Director for resolution; provided, however, that the Franchisee reserves its rights to submit such disputes directly to a court of competent jurisdiction.

SECTION 4. Service Requirements

a. It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all solid waste accumulated on premises within the Authorized Area where the individuals or companies contract with the Franchisee for those services, excluding residential service (other than apartment complexes and motels). The Franchisee shall, at its own expense, furnish personnel and equipment to collect solid waste and shall establish and maintain the contracted Solid Waste Collection Service in an efficient and businesslike manner.

b. All vehicles used by the Franchisee for the collection and transportation of solid waste shall display a decal issued by the Director in or upon a conspicuous place on the vehicle, in accordance with the applicable requirements of the City Code. All vehicles shall be covered at all times while loaded and in transit to prevent the spillage of solid waste onto the Public Ways or properties adjacent to the Public Ways. Any spillage will be promptly recovered by the Franchisee. All vehicles owned by the Franchisee shall be clearly marked with the Franchisee's name in letters not less than four (4) inches in height. All vehicles shall be cleaned and

maintained by the Franchisee so as to be in good repair, of good appearance and, when idle, free of solid waste residue as may cause odor, provide a breeding place for vectors, or otherwise create a nuisance. In addition, the Franchisee shall comply with the requirements for solid waste collection vehicles contained in Section 18-45 of the City Code.

c. The Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the Public Ways and other facilities that are damaged as a result of the negligence of the Franchisee, its officers, agents, or employees, during the Franchisee's operations pursuant to this Ordinance.

d. The Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by responsible governmental agencies having jurisdiction. Disposal of all solid waste collected by the Franchisee from premises within the Authorized Area must be made at an authorized solid waste disposal, collection, or processing facility.

SECTION 5. Indemnity and Insurance

a. **INDEMNIFICATION OF CITY.**

THE FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY AND ITS RESPECTIVE OFFICERS, BOARDS, COMMISSIONS, EMPLOYEES, AGENTS, ATTORNEYS, AND CONTRACTORS (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST:

1. ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF

OR BE OCCASIONED BY FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OF FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; THE FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH THAT ARE CONTRIBUTED TO BY THE NEGLIGENCE OF ONE OR MORE INDEMNITEES, PROVIDED, HOWEVER, THAT INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT THROUGH WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF EITHER THE FRANCHISEE OR THE CITY UNDER TEXAS LAW; THE ABOVE INDEMNIFICATION SHALL NOT, HOWEVER, APPLY TO ANY JUDGMENT OF LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY; AND

2. ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, PENALTIES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES, WHICH MAY BE IMPOSED UPON OR ASSERTED AGAINST THE INDEMNITEES BECAUSE OF ANY VIOLATION OF ANY STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE OR

RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY THE FRANCHISEE, ITS OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION; AND THE FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST THE CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF THE CITY, THE FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING THE CITY'S PROPERTY AS DESCRIBED IN THIS SUBPARAGRAPH TO BE DISCHARGED OR BONDED.

3. THIS SUBSECTION SHALL NOT BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF THE CITY AND THE FRANCHISEE AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

b. Franchisee's Assumption of Risk.

The Franchisee undertakes and assumes for its officers, employees, agents, contractors, and subcontractors (collectively "Franchisee" for the purpose of this subsection), all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including the Public Ways, **AND THE FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND FROM ANY CLAIM**

ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY PERSON (OTHER THAN FROM AN INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT) ARISING OUT OF THE FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR THE FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

c. Defense of City.

In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the Indemnitees, at the Franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), resist and defend the same with legal counsel selected by the Franchisee and consented to by the City, such consent not to be unreasonably withheld; provided, however, that the Franchisee shall not admit liability in any such matter on behalf of the Indemnitees without the City's written consent and provided further that the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of the Franchisee and execution of any settlement agreement on behalf of the City by the City Attorney.

d. Expenses.

The Indemnitees shall give the Franchisee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5. Nothing herein shall be deemed to prevent the Indemnitees from participating in the defense of any litigation by their own counsel at their own expense. The Franchisee shall pay all expenses incurred by the Indemnitees in participating in the defense, provided that the participation has been requested or required by the Franchisee in conducting the defense. These expenses may include out-of-pocket expenses reasonably and necessarily incurred, such as

attorney fees and the reasonable value of any services rendered by the City's counsel and the actual expenses of the Indemnites' agents, employees or expert witnesses, and disbursements and liabilities assumed by the Indemnites in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided the Indemnites by the Franchisee.

e. Insurance Required.

Not later than the Effective Date of this Ordinance, the Franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Exhibit A, attached to and made a part of this Ordinance. The insurance shall be written by companies approved by the State of Texas and acceptable to the City. The insurance shall be evidenced by delivery to the City of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the City shall be entitled to review copies of the policies and all endorsements at a site determined mutually by the City and the Franchisee. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within thirty (30) days after the date the Council approves this Ordinance, then this Ordinance shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise until satisfactory evidence of insurance coverage required under this subsection is presented to the Director. Evidence of insurance coverage shall be updated by the Franchisee and delivered in writing to the Director on an annual basis, no later than the anniversary date of this Ordinance.

f. Adjustments to Insurance Requirements.

The City reserves the right to review the insurance requirements stated in Exhibit A during the effective period of this Ordinance and to recommend to the Council reasonable

adjustments in the insurance requirements contained in the City Code prior to the anniversary renewal of the insurance when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department. Any adjustments shall be mutually agreeable to the City and the Franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Franchisee. When any insurance coverage limit changes are agreed, the Franchisee shall pay any resulting increase in cost due to the changes.

g. Liability of Franchisee.

Approval, disapproval, or failure to act by the City regarding any insurance supplied or not supplied by the Franchisee shall not relieve the Franchisee of full responsibility or liability for damages and accidents as set forth in the Ordinance. The bankruptcy, insolvency, or denial of liability by any insurer of Franchisee shall not exonerate the Franchisee from the liability obligations of the Franchisee provided for under this Ordinance.

SECTION 6. Fees, Payments and Compensation.

a. Compensation Required.

Because the special use of the Public Ways by the Franchisee and the special business purpose for which the Public Ways are being used requires rental compensation for the rights and privileges granted under this Ordinance, the Franchisee shall pay the City throughout the term of this Ordinance a fee in an amount equal to four percent (4%) of the Franchisee's gross receipts (hereinafter called the "Franchise Fee").

1. Except as provided in subsection a.4. below, Gross Receipts shall mean all revenues directly or indirectly received or generated by the Franchisee from or in connection with the operation of the Solid Waste Collection Service within the Authorized Area, which revenues shall be recorded on a cash accounting basis in accordance with generally accepted accounting principles and generally accepted government auditing standards. Gross Receipts shall also include revenues received by any entity other than the Franchisee, or for any apparent purpose other than the Solid Waste Collection Service, where necessary to prevent the evasion or avoidance of the obligation under this Ordinance to pay the Franchise Fee.

2. Gross receipts from customers utilizing the Solid Waste Collection Service shall be allocated to the City based upon whether or not the premises being provided Solid Waste Collection Service are located in the Authorized Area or not, and not by any other allocation method.

3. Gross receipts that are advertising revenues or other revenues whose source cannot be specifically identified with a particular Solid Waste Collection Service customer or directly from within the Authorized Area shall be allocated proportionately.

4. The following are excluded from gross receipts under this Section:

(i) disposal fees paid to the City by the franchisee for disposal of solid waste at the City's landfill;

(ii) revenues collected for Solid Waste Collection Service provided on behalf of the City through a written contract; and

(iii) the amount of annual documented bad debt write-offs due to uncollectible accounts for Solid Waste Collection Service, not to exceed 3% of gross receipts;

(iv) revenues directly received or generated from the processing of recyclable materials.

b. Payment Procedures.

The Franchisee shall pay the Franchise Fee to the City each month during the term of this Ordinance. The monthly payment required by this Ordinance shall be due and payable by certified check, electronic funds transfer, or other means that provide immediately available funds on the day the payment is due not later than 3:00 p.m. of the thirtieth calendar (30th) day following the end of each calendar month. If the thirtieth (30th) calendar day following the end of a calendar month falls on a Saturday, Sunday, or official City holiday, then the payment is due on the business day prior to the due date. Subject to applicable law, the compensation set forth in this Section 6 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any monthly payment or partial payment is made after 3:00 p.m. on the due date, the Franchisee shall pay

simple interest at the annual percentage rate of ten percent (10%) on the total amount past due. Payment shall be accompanied by a monthly report certified by an officer of the Franchisee showing the total Gross Receipts of the preceding calendar month. The monthly report shall also include a detailed breakdown of Gross Receipts and the computation of the payment amount.

c. Annual Report.

The Franchisee shall file with the City by the end of each calendar year an annual report, prepared and audited by an independent certified public accounting firm acceptable to the City, whose work papers will be made available to the City on request, showing the total Gross Receipts of the preceding calendar year along with the information required under Section 18-41 of the Dallas City Code. Such annual report shall include a detailed breakdown of Gross Receipts and the computation of the payment amount. Bad debt write-offs taken for the year in question shall also be included and summarized in the annual report, along with supporting documentation in a form satisfactory to the Director.

d. City Audit.

The City may audit the Franchisee (or any Affiliate of the Franchisee who has information directly pertaining to Gross Receipts) as often as is reasonably necessary to verify the accuracy of the Franchise Fees paid to the City. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by the Franchisee at a location in the City, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to conduct the audit. Any net undisputed amount due to the City, plus interest at the rate of ten percent (10%) per annum, compounded monthly, calculated from the date each portion of the underpayment was originally due until the date the Franchisee remits the underpayment to the City, shall be paid by the Franchisee within forty-five (45) days after the City's submitting an invoice for the underpayment to the Franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent (5%) of the total Franchise Fee owed for the audit period, the Franchisee shall pay the City's audit costs

as well. The City's right to audit and the Franchisee's obligation to retain records related to the Franchise Fee shall be limited to the previous two (2) calendar years.

SECTION 7. Term; Performance Evaluation

a. Term and Extensions.

The term of this Ordinance shall be twenty (20) years from the Effective Date of this Ordinance plus any extensions mutually agreed to by the City and the Franchisee; provided that the term, including extensions, shall not be longer than forty (40) years.

b. Franchisee Rights Upon Termination.

Subject to applicable law, this Ordinance and all rights, permissions, and privileges of the Franchisee under this Ordinance shall automatically terminate on the expiration of the term of this Ordinance, unless extended by mutual agreement, court order, or applicable law.

c. Performance Evaluation

In order to: (i) assure that the Franchisee is complying with the terms of this Ordinance, as it may be from time to time amended, and (ii) promote a sharing of information between the City and the Franchisee, the City may schedule a performance evaluation no more often than every five (5) years during the term of the Ordinance, subject to subsection d. of this Section, in accordance with the following process:

1. At least ninety (90) days prior to each performance evaluation, the City shall notify the Franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by the Franchisee pursuant to subsection c.2.(iv) below. Unless specifically waived by the Council, attendance of the Franchisee's duly authorized representative at these meetings shall be mandatory.

2. Within sixty (60) days from receipt of such notification, the Franchisee shall file a report with the City that is certified by a representative of the Franchisee knowledgeable of the operations of the Franchisee within the Authorized Area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (i) compliance of the Franchisee's vehicles with solid waste and air quality requirements;
- (ii) customer service, including but not limited to a listing of customer complaints and their resolution;
- (iii) history in regard to prompt and accurate payment of franchise fees;
- (iv) any other topic deemed material or relevant by the City for its enforcement of this Ordinance.

3. All reports to be prepared under this subsection and submitted by the Franchisee shall be based upon information for at least the most recent five (5) year period, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than six (6) months before the time of the performance evaluation.

4. Following receipt of the report, but not less than thirty (30) days prior to the performance evaluation, the City may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. The Franchisee shall make reasonable effort to provide such additional information to the City prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, the Franchisee shall notify the City in writing explaining the reasons for any delay.

5. The Council shall hear any interested persons during such performance evaluation. The Franchisee shall be entitled to all the rights of due process consistent with the City proceedings, including but not limited to, the right to present evidence and the right to be represented by counsel.

6. Upon request of the City, the Franchisee shall assist the City in notifying customers of the evaluation session. Nominal costs associated with the notification, in an amount not to exceed one thousand and no/100 dollars (\$1,000.00), shall be borne by the Franchisee.

d. Additional Performance Evaluations.

Notwithstanding subsection c., the Council may initiate and conduct such additional performance evaluations regarding the Franchisee's performance under this Ordinance as the Council, in its sole discretion, may deem justified or necessary under the circumstances. The Franchisee shall be given reasonable notice of the date, time, and location of any such additional performance evaluations.

SECTION 8. Transfers of Ownership and Control

a. Franchisee Ownership, Management and Operation.

1. Only the Franchisee and its Affiliates, if any, shall operate, manage, and maintain the Solid Waste Collection Service. The Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, the operation, management, or maintenance of the Solid Waste Collection Service without the prior written consent of the Council as provided in subsections 8.b and 8.c below.

2. This Section shall not apply to the Franchisee's employment contracts and other personnel decisions, nor shall it prohibit the Franchisee from contracting for or subcontracting, in whole or in part, any operational, management or maintenance functions in connection with the Solid Waste Collection Service, so long as the Franchisee does not relinquish its decision making authority over or its responsibilities under this Ordinance for any particular function; nor shall it prohibit the Franchisee from complying with this Ordinance or other requirements of federal, state, or local laws and regulations.

3. The Franchisee shall provide the Director written notice, within five (5) calendar days after its occurrence, of any change in the corporate or business structure, change in the chief executive or the top executive structure, change in the board of directors, or other change in the corporate or business method of governance of the Franchisee, regardless of whether or not it results in a transfer or assignment of the Franchise or a transfer of control or ownership of the Franchisee.

b. Transfer and Assignment Procedures.

This Ordinance or the Solid Waste Collection Service shall not be transferred or assigned, by operation of law or otherwise, nor shall title to the Franchisee's rights and obligations under this Ordinance or to the Solid Waste Collection Service pass to or vest in any person, other than for mortgaging or financing of solid waste collection operations or to an Affiliate of the Franchisee under the conditions described below, without the prior written consent of the Council. This Ordinance shall not be leased or subleased without the prior written consent of the Council. The procedures related to transfer or assignment are as follows:

1. The Council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The Director shall be advised in writing of a transfer solely for security purposes at least sixty (60) days before such transfer occurs.

2. The Franchisee may, without additional approval by the Council, transfer or assign this Ordinance to an Affiliate provided that the Affiliate: (i) assumes all of Franchisee's obligations and liabilities under this Ordinance occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this Ordinance; and (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of the Franchisee. The Director shall be advised in writing of such transfer and of the Affiliate's qualifications at least sixty (60) days before such transfer occurs. The City shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer up to a maximum of ten thousand and no/100 dollars (\$10,000.00).

c. Transfer of Control.

There shall be no transfer of or acquisition of control of the Franchisee without the prior written consent of the Council.

d. Schedule of Ownership.

The Franchisee represents and warrants that its current ownership is as set forth on Exhibit C, attached to and made a part of this Ordinance, and that it has full legal and equitable title to the Solid Waste Collection Service as of the Effective Date of this Ordinance.

e. Applications for Consent/Procedure/Restrictions.

If the Franchisee seeks to obtain the consent of the Council to any transactions or matters described in this Section, the Franchisee shall submit an application for such consent to the City and shall submit or cause to be submitted to the City such additional documents and information as the Director may request that are reasonably related to the transaction, including the purchase price of the Solid Waste Collection Service, and the legal, financial, and technical qualifications of the proposed transferee or new controlling entity.

1. The Council shall have one hundred twenty (120) days from the date of submission of a complete and accurate application to act upon the application for consent. If the Council fails to act upon such application for consent within one hundred twenty (120) days, such application shall be deemed as consented to unless the City and the Franchisee otherwise agree to an extension of time.

2. The Council shall not unreasonably withhold its consent to any proposed transaction. The Council may: (i) grant its consent outright, (ii) grant such consent with conditions, which conditions it finds are necessary to ensure performance of the Franchisee or its successor under the Ordinance, or (iii) deny consent.

3. Nothing in any approval by the City under this Section shall be construed to waive or release any rights of the City in and to the Public Ways, public places of the City or property owned by the City.

4. Nothing in any approval by the City under this Section shall be construed as a waiver or release of any of the City's police powers, or as an exercise of eminent domain.

5. The City's granting of consent in any one instance shall not require it to grant consent in other instances.

6. The Franchisee shall reimburse the City for the incidental costs incurred by the City in considering any request of the Franchisee under this Section. Such reimbursement shall not exceed ten thousand and no/100 dollars (\$10,000.00), shall be supported by invoices, and shall not include any costs or expenses incurred by the City in defending any denial of the request; provided, however, that the City does not waive its right to request that its attorney's fees and expenses be reimbursed in any claim or defense related to denial of a request under this Section.

f. City Approval Requirements.

Before any transfer, assignment, sale, foreclosure, or other change of control described under this Section becomes effective and before the Council shall consider giving its consent, the proposed transferee, assignee, purchaser, buyer, foreclosing party, or other person or entity seeking to obtain the rights and obligations under this Ordinance through a change of control shall provide the Director: (i) an agreement and acceptance in writing to comply with all terms of this Ordinance, as amended, (ii) all evidence of insurance required under this Ordinance, as amended, (iii) the legal name and address of the transferee, as well as the name of the person to be contacted for notices, (iv) payment of outstanding Franchise Fees due, and (iv) the legal, technical, and financial ability of the transferee to properly perform and discharge all obligations and liabilities of this Ordinance.

g. Transfer of Control Requirements.

In the event of a transfer of control, before such transfer becomes effective and before the Council shall consider giving its consent, the proposed transferee shall agree in writing to not take any action that will keep the Franchisee from complying with this Ordinance.

SECTION 9. Defaults

a. Events of Default.

The occurrence of any one or more of the following events at any time during the term of this Ordinance shall constitute an Event of Default by the Franchisee under this Ordinance:

1. The failure or refusal by the Franchisee to pay the Franchise Fee when due as prescribed by this Ordinance.

2. The Franchisee's material violation of or failure to comply with any provision or condition of Chapter 18, Article IV of the City Code relating to solid waste collection service franchisees or any other applicable provision or condition of the City Code.

3. The Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this Ordinance, or the Franchisee's failure or refusal to perform any obligation contained in this Ordinance.

4. The Franchisee's failure or refusal to pay or cause to be paid any of the City's governmentally-imposed taxes of any kind whatsoever, including but not limited to real estate taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, Franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

5. The entry of any judgment against the Franchisee in which another party becomes entitled to possession of any of the Franchisee's assets of the Solid Waste Collection Service, for which change in possession the consent of the Council has not been obtained, and such judgment is not stayed pending rehearing or appeal for forty-five (45) or more days following entry of the judgment.

6. The dissolution or termination, as a matter of law, of the Franchisee without the prior consent or approval of the City, which approval, if formally requested, shall not unreasonably be withheld.

7. The Franchisee's filing of a voluntary petition in bankruptcy; being adjudicated insolvent; obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master,

custodian or liquidator of the Franchisee, or any of Franchisee's property or this Ordinance or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay Franchisee's debts as they become due such that the Franchisee is unable to meet its obligations under this Ordinance.

8. The Franchisee attempts to dispose of any of the facilities or property of its Solid Waste Collection Service with the intent of preventing the City from purchasing it as provided for in this Ordinance.

9. The Franchisee engages in any fraudulent or deceitful conduct with the City or its customers.

10. The Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this Ordinance.

11. Any director, officer, employee, or agent of the Franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this Ordinance.

12. The Franchisee's failure or refusal to comply with or a violation of any applicable local, state, or federal law or regulation.

b. Default Procedures.

Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City or a third party, the Franchisee shall have thirty (30) days from written notice of the occurrence of the Event of Default from the Director to cure the Default before the City may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an Event of Default by the Franchisee which cannot be cured by the immediate payment of money to the City or a third party, the Franchisee shall have sixty (60) days from the date of written notice from the City to the Franchisee of the occurrence of the Event of Default to cure the Event of Default before the City may exercise any of its rights or remedies provided for in Section 10, unless the Director, the City Manager, or the Council authorizes a longer cure

period upon a showing of good cause to extend the cure period. If an Event of Default is not cured within the time period allowed for curing the Event of Default, as provided above, the Event of Default becomes, without additional notice, an Uncured Event of Default, which shall entitle the City to exercise the remedies provided for in Section 10.

SECTION 10. Remedies

a. Default Remedies.

Upon the occurrence of any Uncured Event of Default as described in Section 9, the Director shall report the occurrence of same to the City Manager and the Council. The Council shall be entitled in its sole discretion and upon recommendation of the Director and the City Manager to exercise any or all of the following cumulative remedies:

1. Exercise its rights to impose civil penalties as described in subsection d.
2. Authorize the City Attorney to commence an action against the Franchisee at law for monetary damages.
3. Authorize the City Attorney to commence an action in equity seeking injunctive relief or the specific performance of any of the provisions of this Ordinance which, as a matter of equity, are specifically enforceable.
4. Revoke the Franchise granted under this Ordinance.

b. Revocation Procedure.

Upon the occurrence of an Uncured Event of Default, the Council shall have the right to revoke the Ordinance. Upon revocation, the rights, permissions, and privileges comprising the Franchise granted under this Ordinance shall be automatically deemed null and void and shall have no further force or effect and the provisions that are contractual in nature which are also included as a part of this Ordinance are hereby automatically terminated. Upon revocation, the City shall retain any portion of the Franchise Fee and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, prior to any Council hearing to formally consider revocation of the Franchise granted under this Ordinance,

the Director shall notify the Franchisee in writing at least ten (10) days in advance of the Council hearing at which the issue of revocation shall be considered and decided. The Franchisee shall have the right to appear before the Council in person or by legal counsel and raise any objections or defenses the Franchisee may have that are relevant to the proposed revocation. In addition, the following procedures shall apply in regard to the revocation hearing:

1. The Council shall hear and consider the issue of revocation, shall hear any person interested in the issue, and shall determine, in its sole discretion, whether or not any violation by the Franchisee has occurred justifying a revocation of the Franchise.

2. At such hearing, the Franchisee shall be provided due process, including the opportunity to be heard.

3. Upon completion of the hearing described above, the Council shall render a decision and shall transmit a copy of the decision to the Franchisee. The Franchisee shall be bound by the Council's decision, unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days after the date of the decision. The Franchisee reserves the right to challenge both the decision itself and the fairness of the process followed by the City in the proceeding.

4. The Council reserves the right, in its sole discretion, to impose a civil penalty or to pursue other remedies as provided in this Article 10 in lieu of a revocation.

c. Letter of Credit.

As security for the faithful performance by the Franchisee of the provisions of this Ordinance and compliance with all orders, permits, and directions of the City and the payment of all claims, liens, fees, civil penalties, and taxes to the City, the Franchisee shall deposit with the City, no later than the Effective Date of this Ordinance, an unconditional and irrevocable letter of credit issued by a bank in an amount equal to one month's franchise fee payment. The initial value of the letter of credit shall be established on the basis of the monthly franchise fee that would have been paid on the previous calendar year's monthly average gross receipts. The letter of credit shall be updated annually in January of each calendar year during the term of this

Ordinance. The value of the annually updated letter of credit will be fixed on the basis of the average monthly franchise fee payment submitted by the Franchisee as required in this Ordinance. The letter of credit must be issued by a federally-chartered or state-chartered financial institution with a principal office or branch located in Dallas County and otherwise acceptable to the Council, on terms acceptable to the Council and approved by the City Attorney. The letter of credit must be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County by presentation of a letter of demand from the City delivered in person or by courier delivery. Failure to deposit the letter of credit in a timely fashion, or the failure to maintain the letter of credit in the full amount required under this subsection and in effect during the entire term of this Ordinance, or any renewal or extension of this Ordinance, shall constitute a material breach of the terms this Ordinance.

1. If the Franchisee fails to make timely payment to the City or its designee of any amount due as a result of this Ordinance or fails to make timely payment to the City of any taxes due; or fails to repay City for damages and costs; or fails to comply with any provision of this Ordinance which the City reasonably determines can be remedied by an expenditure of monies, the City may draw upon the letter of credit an amount sufficient to repay the City with interest as set forth in this Ordinance, if not otherwise specified by law. If the interest rate is not set forth in this Ordinance or set by federal, state or local law, then the interest rate shall be the prime rate as established in the Wall Street Journal on the day before the City sends notice to the Franchisee of its intent to draw on the letter of credit.

2. Within three (3) days after a drawing upon the letter of credit, the City shall send written notification of the amount, date, and purpose of the drawing to the Franchisee by certified mail, return receipt requested.

3. If, at the time of a drawing by the City, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the drawing is directed, the balance of such payment shall constitute an obligation of the Franchisee to the City until paid, including interest. If the interest rate is not set forth in this Ordinance or set by laws,

then interest shall be the prime rate as established in the Wall Street Journal on the day before the City sends notice to the Franchisee of its intent to draw the letter of credit.

4. No later than thirty (30) days after mailing of notification to the Franchisee of a drawing pursuant to subsection c.2. above, the Franchisee shall cause the letter of credit to be restored to the full amount required under this Ordinance. Failure to timely restore the letter of credit shall constitute a material breach of the terms of this Ordinance.

5. The rights reserved to the City with respect to this letter of credit are in addition to all other rights and remedies of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other rights the City may have.

d. Civil Penalties.

In addition to the other remedies provided for in this Section 10, civil penalties in the amounts set forth below may be assessed by the Council to the Franchisee, following the notice and opportunity to cure procedures in subsection e. below, for failure or refusal to comply with any material term or condition of this Ordinance or for any other Uncured Event of Default. In the event the Council determines that the Franchisee has committed, continued, or permitted a material failure or refusal of compliance or other Uncured Event of Default that has not been cured as provided in this Ordinance, the Franchisee shall pay Two Thousand Dollars (\$2,000) per day for each day or part of a day that the material failure or refusal or other Uncured Event of Default is committed, continued, or permitted, unless the Council at the time of imposition of the civil penalty determines that good cause justifies a lesser penalty, based upon the surrounding circumstances, frequency, number, and seriousness of the material violations or Uncured Events of Default in question and the public interest served by imposing a lesser civil penalty.

e. Civil Penalties Procedure.

Civil penalties may be assessed by the Council in accordance with the following procedure:

1. Following notice from the Director, which notice, at the Director's election, may be combined with the notice described in subsection 9.b., the Franchisee shall meet with the Director to attempt to resolve any disagreements on whether civil penalties should be assessed or what civil penalties should be recommended to the Council. If there is no resolution of the issue within fifteen (15) days after the mailing of the notice, then the Director shall present the Director's recommendation regarding civil penalties to the City Manager for review and concurrence. If the City Manager concurs in the Director's recommendation that civil penalties should be assessed, the matter shall be presented to the Council. The Director shall notify the Franchisee of the recommendation of the City Manager to the Council, the time and date of the proposed hearing concerning the issue of civil penalties, and a statement that the Franchisee has a right to appear and be heard before the Council on the matter.

2. Upon presentation of the recommendations of the Director and the City Manager, the Council may decide on one of the following courses of action:

(i) to authorize the City Attorney to proceed against the Franchisee under Section 10.a.2 or 10.a.3;

(ii) to assess a civil penalty in the amount provided above for the applicable material violation or Uncured Event of Default;

(iii) to determine that a civil penalty is not justified under the circumstances and assess no penalty; or

(iv) to remand the matter to the City Manager or the Director for further investigation, consideration, and recommendation to the Council.

3. Assessment of civil penalties by the Council shall be a monetary obligation of the Franchisee to the City in the amount determined by the Council and shall be paid in full by the Franchisee within fifteen (15) business days after the date of assessment by the Council.

4. The procedures stated in this subsection e. do not apply to the Council's determination to impose civil penalties in lieu of a proposed revocation of the Franchise under subsection b.4.

f. Remedies Cumulative.

Subject to applicable law, the rights and remedies of the City set forth in this Section 10 shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the Council determines that a violation by the Franchisee was the Franchisee's fault and within its control, the Council may pursue any or all of the remedies provided in Section 10. The remedies of the City created under this Ordinance shall be cumulative to the maximum extent permitted by law. The exercise by the City of any one or more remedies under this Ordinance shall not preclude the exercise by the City, at the same or different times, of any other remedies for the same material Uncured Event of Default. Notwithstanding any provision of this Ordinance, however, the City shall not recover both civil penalties and actual damages for the same violation, breach, non-compliance, or material Uncured Event of Default.

g. Curable Violations.

The Franchisee shall not be found in violation of this Ordinance or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of the Franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. The Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

h. City Right to Purchase.

In the event the City revokes the Franchise granted under this Ordinance for cause, terminates the Franchise as provided in subsection i. below, or denies renewal of the Franchise granted under this Ordinance, the City shall have the right (but not the obligation) subject to the

applicable provisions of the City Charter, directly or as an intermediary, to purchase the assets of the Solid Waste Collection System.

i. Termination in the Public Interest.

Nothing in this Section shall be construed as affecting the right of the Council under the City Charter to terminate this Ordinance without cause in the public interest when it is deemed inconsistent with the public use of the City's Public Ways or is deemed to cause or constitute a nuisance.

SECTION 11. Providing Information

a. Complete and Accurate Books Required.

The Franchisee shall keep complete and accurate books of account and records of its Solid Waste Collection Service business and operations under and in connection with this Ordinance in accordance with generally accepted accounting principles and generally accepted government auditing standards.

b. City Review of Documentation.

The City may fully review such of the Franchisee's books, accounts, documents, and other records of the Franchisee or the Franchisee's Affiliates during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this Ordinance. All books, accounts, documents, and other records shall be made available at a location in the Authorized Area, or the Franchisee shall pay the City's expenses in traveling to any other location necessary to review the books, accounts, documents, or other records. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records; where possible, such items shall be made available in a CD-ROM disk or other similar format that is readable by the City's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by the Franchisee pursuant to law and the financial information underlying the written report accompanying the Franchise Fee. To

the extent permitted by law, the City agrees to treat any information disclosed by the Franchisee under this Section as confidential, if the Franchisee provides prior written notice that the information is confidential.

c. Additional Reports.

The Franchisee shall, when required by the Council, the City Manager, or the Director, report to the City any reasonably requested information relating to the Franchisee or the Affiliates or necessary for the administration of this Ordinance. The Director shall have the right to establish formats for all reports, determine the time for reports and the frequency with which any reports are to be made, and require that any reports be made under oath.

SECTION 12. General

a. Entire Agreement.

This Ordinance (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between the City and the Franchisee, superseding all oral or written previous negotiations or agreements between the City and the Franchisee relating to matters set forth in this Ordinance. This Ordinance can only be modified by an ordinance amendment approved by Council.

b. Notices.

Except as otherwise provided in subsection 12.c of this Ordinance, any notice, payment, statement, or demand required or permitted to be given under this Ordinance by either party to the other may be effected by any of the means described in subsection 12.d of this Ordinance. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to the City:

City Manager
City of Dallas
Dallas City Hall
1500 Marilla – Room 4/f/North
Dallas, Texas 75201

With a copy to:

Director
Department of Sanitation Services
3112 Canton Street
Dallas, Texas 75226

If to the Franchisee:

Either the City or the Franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this subsection 12.b. Any notice given by either the City or the Franchisee must be signed by an authorized representative.

c. Notice of Claim.

This Ordinance is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Ordinance as if written word for word in this Ordinance. Contractor shall comply with the requirements of Section 2-86 as a precondition of any claim against the City relating to or arising out of this Ordinance.

d. Delivery of Notices.

Notices required to be given under this Ordinance may be transmitted in any of the following four ways:

1. By personal delivery, in which case they are deemed given when delivered.

2. By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.

3. By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three (3) calendar days after having been deposited in the U.S. Mail.

4. By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

e. City/Franchisee Meetings.

The Franchisee shall meet with the Director, the City Manager or the Council at reasonable times to discuss any aspect of this Ordinance or the services or facilities of the Franchisee. At all meetings Franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at City's offices unless otherwise agreed.

f. Legal Construction.

This Ordinance shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

g. No Inducement.

The Franchisee, by accepting this Ordinance, acknowledges that it has not been induced to accept this Ordinance by any promise, oral or written, by or on behalf of the City or by any third person regarding any term or condition not expressed in this Ordinance. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any City employee or official regarding the grant, receipt or award of this Ordinance.

h. Franchisee Acknowledgement.

The Franchisee further acknowledges by acceptance of this Ordinance that it has carefully read the terms and conditions of this Ordinance and accepts the obligations imposed by the terms and conditions herein.

i. No Waiver by City.

No failure by the City to insist upon the strict performance of any covenant, provision, term or condition of this Ordinance, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Ordinance, but each and every covenant, provision, term or condition of this Ordinance shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

j. Governmental Licenses.

The Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the Solid Waste Collection Service in accordance with this Ordinance.

k. Severability.

If any section, paragraph, or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Ordinance.

l. City Retained Powers.

In addition to all rights provided in this Ordinance, the City reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, City Code, and City ordinances which City is allowed to exercise.

m. Material Misinformation.

The provision of information by the Franchisee or any of its Affiliates to the City in connection with any matters under this Ordinance which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this Ordinance and shall be subject to the remedies provided in Section 10. Each day that the Franchisee or an Affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

n. Hearing Procedures.

The following additional procedures shall apply to any hearing held in connection with any action taken by the Council in connection with this Ordinance:

1. The Council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

2. The hearing shall afford the Franchisee rudimentary due process. The Council may by resolution establish other procedural matters in connection with the hearing.

o. Acceptance.

Upon adoption of this Ordinance, the Franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing with the City Secretary, in writing, within thirty (30) days after the date the Council approves this Ordinance, an unconditional acceptance of the Ordinance and promise to comply with and abide by all its provisions, terms, and conditions. The form of unconditional acceptance and promise, attached to and made a part of this Ordinance as Exhibit B, shall be sworn to, by, or on behalf of the Franchisee before a notary public. If the acceptance required by this Ordinance is not properly executed and filed within thirty (30) days after the date the Council approves this Ordinance, then this Ordinance and the rights, permissions, and privileges granted under this Ordinance shall be considered null and void and shall have no force or effect, unless the Franchisee evidences such failure was due to clerical error by someone other than the Franchisee or its Affiliates and then acts promptly to remedy the third party's clerical error. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise or reapplying for a new Franchise until the acceptance required by this subsection is filed as provided herein.

p. Time is of the Essence.

Whenever this Ordinance shall set forth any time for an act to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within time allotted shall always be sufficient grounds for the City to invoke an appropriate remedy, including possible revocation of the Ordinance.

q. Force Majeure.

The time within which Franchisee shall be required to perform any act under this Ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term "force majeure" shall mean delays due to acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of Franchisee. Notwithstanding anything contained anywhere else in this Ordinance, Franchisee shall not be excused from

performance of any of its obligations under this Ordinance by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

r. Recognition of Rights.

The Franchisee agrees that by adopting this Ordinance, neither the City nor the Franchisee have waived any rights, claims, or defenses they may have with respect to the City's rights to impose the requirements contained in this Ordinance in whole or in part upon the Franchisee.

s. Police Powers.

1. In accepting this Ordinance, the Franchisee acknowledges that its rights under this Ordinance are subject to the police power of the City to adopt and enforce general ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Any conflict between the provisions of this Ordinance and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2. The Franchisee recognizes the right of the City to make reasonable amendments to this Ordinance; except that City shall not make amendments materially adversely affecting the Franchisee except under a proper exercise of City's police powers, with notice to the Franchisee and an opportunity to be heard.

3. The Franchisee also recognizes City's right to impose such other regulations of general applicability as shall be determined by the City to be conducive to the safety, welfare, and accommodation of the public.

t. No Presumption of Renewal

This Ordinance and the grant contained herein do not imply, grant, or infer any renewal rights in favor of the Franchisee or its Affiliates.

u. Recognition of City Charter.

The Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this Ordinance are subject to the applicable provisions of Chapter XIV of the Dallas City Charter. Any request by the Franchisee for an amendment to this Ordinance shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

SECTION 13. Outstanding License Fees

This Ordinance shall not take effect until all fees still owed to the City from the existing license previously issued to the Franchisee for solid waste collection, hauling, and disposal service under provisions of the City Code applicable to solid waste collection, hauling, and disposal licenses are paid in full. If the previous license fees owed to the City are not paid by the Franchisee within thirty (30) days after the date the Council approves this Ordinance, then this Ordinance shall be considered null and void and shall have no force or effect. The Director may prevent the Franchisee from operating a Solid Waste Collection Service under this Franchise or reapplying for a new Franchise until the previous license fees have been paid in full.

SECTION 14. Ordinance Effective Date

Subject to the provisions of Subsections 5.e, 12.o, and Section 13, this Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas (the "Effective Date"), and it is accordingly so ordained.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR., City Attorney

BY _____
Assistant City Attorney

Passed _____

Exhibit B
Acceptance

_____ unconditionally accepts and agrees to be bound by all the terms, covenants, and conditions contained in the Solid Waste Collection Service franchise ordinance, Ordinance No. _____, adopted on _____, 20__.

Dated: ____ day of _____, 20__.

FRANCHISEE:

By: _____
President