

AN ORDINANCE No. 2019-291

To provide for the granting by the City of Richmond to the person, firm or corporation to be ascertained in the manner prescribed by law of a franchise for the management of the Hopkins Road Transfer Station located at 3506 Hopkins Road and the East Richmond Road Convenience Center located at 3800 East Richmond Road in accordance with a certain Franchise Agreement.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: NOV 12 2019 AT 6 P.M.

WHEREAS, following the introduction of this ordinance, the City Clerk has caused to be advertised, once a week for two successive weeks in a newspaper of general circulation published in the city of Richmond, a descriptive notice of the Franchise Agreement attached to this ordinance, which notice:

1. included a statement that a copy of the full text of the ordinance is on file in the office of the City Clerk;
2. invited bids for the franchises offered to be granted in and by this ordinance, which bids were to be:

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: NOV 12 2019 REJECTED: _____ STRICKEN: _____

- a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on November 12, 2019, at 6:00 p.m., in open session;
 - b. presented by the presiding officer to the Council; and
 - c. then dealt with and acted upon in the mode prescribed by law;
3. required that all bids for the franchises hereby offered to be granted shall be submitted in writing as required by law; and
 4. reserved the Council's right to reject any and all bids; and

WHEREAS, the deadline for the receipt of bids has passed, all bids have been received, and the Council is prepared to act in accordance with section 15.2-2100 of the Code of Virginia (1950), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That there shall be granted pursuant to section 15.2-2100 of the Code of Virginia (1950), as amended, a certain franchise for the management of the Hopkins Road Transfer Station located at 3506 Hopkins Road and the East Richmond Road Convenience Center located at 3800 East Richmond Road as set forth in the Franchise Agreement, a copy of which is attached to and incorporated into this ordinance, to the following franchisee:

Waste Management of Virginia, Inc.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Franchise Agreement between the City of Richmond as grantor and the franchisee identified in section 1 of this ordinance to grant a franchise for the management of the Hopkins Road Transfer Station located at 3506 Hopkins Road and the East

Richmond Road Convenience Center located at 3800 East Richmond Road by such franchisee, provided that:

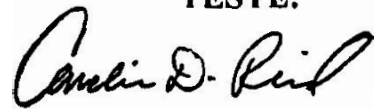
(a) The Franchise Agreement has first been approved as to form by the City Attorney and is substantially in the form of the document attached to this ordinance; and

(b) The franchisee identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$250,000.00 and conditioned upon the management of the Hopkins Road Transfer Station located at 3506 Hopkins Road and the East Richmond Road Convenience Center located at 3800 East Richmond Road as provided for in the granted franchises, with such bond in a form acceptable to the Chief Administrative Officer and approved as to form by the City Attorney.

§ 3. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:

TESTE:

A handwritten signature in black ink, appearing to read "Amelia D. Reed".

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST

4-9271
OCT 10 2019

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: October 8, 2019 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor *[Signature]*

THROUGH: Lenora G. Reid, Acting-Chief Administrative Officer *[Signature]*

THROUGH: John Wack, Director of Finance *[Signature]*

THROUGH: Jay Brown, Director, Budget & Strategic Planning *[Signature]*

THROUGH: Robert Steidel, DCAO, Operations *[Signature]*

FROM: Bobby Vincent Jr., Director of Public Works *[Signature]*

RECEIVED

OCT 11 2019

OFFICE OF THE CITY ATTORNEY

RE: TO AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER TO ENTER INTO A FRANCHISE AGREEMENT FOR THE MANAGEMENT OF THE CITY'S HOPKINS ROAD TRANSFER STATION, AND EAST RICHMOND ROAD CONVENIENCE CENTER

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer (CAO) for and on behalf of the City of Richmond, to enter into a Franchise Agreement with the recommended vendor, for the management of the Hopkins Road Transfer Station and the East Richmond Road Convenience Center. The selected vendor will oversee the purchase, processing, transport and disposal of solid waste collected at 3506 Hopkins Road (Transfer Station), and 3800 East Richmond Road (Convenience Center).

REASON: To allow the CAO to enter into a Franchise Agreement with the selected vendor.

RECOMMENDATION: Approval is recommended by the City Administration.

BACKGROUND: The City of Richmond currently owns and operates the Convenience Center pursuant to City Code § 23-96 and other applicable laws. The City operates the Transfer Facility pursuant to City Code § 23-96 and other applicable laws. The Transfer Facility is a Department of Environmental Quality "permit by rule" transfer facility allowing the City to transfer waste

from the Transfer Facility to a permitted landfill.

Both facilities are currently managed under a contract which ends on December 1, 2019. Through discussions with the current vendor and other local Jurisdictions, it is anticipated that the cost per ton (\$27.50) for waste disposal will likely increase under a new contract. However, this cost may potentially be offset by entering into a Franchise Agreement which will allow the use of third party vendors.

The City accepts residential collection program waste, yard waste and brush, small appliances, scrap metal, small animal remains, tires and recyclable materials including glass bottles, cardboard, aluminum cans, and newspaper at the Transfer Facility. Hazardous waste and other materials prohibited by state and federal law are not accepted at the Transfer Facility. A breakdown of past years average tonnages is shown below:

- Waste From Residents and non-City Residents – 19,060 tons annually
- Waste from the Residential Collection Program – 76,542 tons annually
- Yard Waste – 100 tons annually
- Small appliances – 50 tons annually
- Pick-up and transport and disposal of Grit and Screenings – 1,600 tons annually

The transfer facility is designed to accommodate 1,000 tons of refuse per day and 286,000 tons annually. However, prior year averages indicate underutilization of the facility, there is capacity for an additional 600 tons daily. The Franchise Agreement will allow the third party vendor to use the facility and the city will receive a portion of the revenue generated from that use. This revenue may potentially offset increased cost that may be incurred by entering into a new contract.

FISCAL IMPACT / COST: None

FISCAL IMPLICATIONS: The adoption of this paper allows the city to collect potential revenues from the use of the Transfer Station. This potential revenue may offset any anticipated cost increases, due to current market conditions.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: Source of revenue is from third party vendors, and therefore, cannot be projected at this time; the account stream has not yet been established;

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: October 14, 2019

CITY COUNCIL PUBLIC HEARING DATE: November 14, 2019

REQUESTED AGENDA: Consent

O&R Request

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RECOMMENDED COUNCIL COMMITTEE: Governmental Operations October 24, 2019

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A

AFFECTED AGENCIES: Department of Public Works

RELATIONSHIP TO EXISTING ORD. OR RES.: none

REQUIRED CHANGES TO WORK PROGRAM(S): N/A

ATTACHMENTS: Franchise Agreement

STAFF: Torrence S. Robinson, DPW (804-646-6333)

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the “Agreement”) is made and entered into as of _____, ___, 2019, by and between the City of Richmond, Virginia (the “City”), a political subdivision of the Commonwealth of Virginia and _____, a _____ (“Franchisee”).

RECITALS

- A. The City is the record owner of a convenience center located in the city of Richmond, Commonwealth of Virginia, located at 3800 East Richmond Road (Tax Map Parcel No. E0003305030) (“Convenience Center”) and a transfer facility located at 3506 Hopkins Road (Tax Map Parcel No. S0071217003) (“Transfer Facility”, together with the Convenience Center, the “Facilities”).
- B. The City operates the Convenience Center pursuant to City Code § 23-96 and other applicable laws. The Convenience Center does not operate under a Department of Environmental Quality solid waste permit. The City operates the Transfer Facility pursuant to City Code § 23-96 and other applicable laws. The Transfer Facility is a Department of Environmental Quality “permit by rule” transfer facility allowing the City to transfer waste from the Transfer Facility to a permitted landfill.
- C. The City accepts yard waste and brush, small appliances, scrap metal and tires from residents of the City of Richmond at the Convenience Center. The City does not accept household waste at the Convenience Center.
- D. The City accepts residential collection program waste, yard waste and brush, small appliances, scrap metal, small animal remains, tires and recyclable materials including glass bottles, cardboard, aluminum cans, and newspaper at the Transfer Facility. Hazardous waste and other materials prohibited by state and federal law are not accepted at the Transfer Facility.
- C. The Transfer Facility is designed to handle approximately 1,000 tons of refuse per day and approximately 286,000 tons annually. The City’s residential refuse collection program operations deliver approximately 400 tons of refuse per day to the Transfer Facility, resulting in approximately 600 tons of excess capacity per day.
- E. The City desires to grant to Franchisee in accordance with Va. Code § 15.2-2100, in exchange for Franchisee meeting the Operational Requirements, as such term is hereinafter defined, a Franchise to use the Transfer Facility to accept and charge for the acceptance of Transfer Facility Waste from third parties.

NOW, THEREFORE, in consideration of the Recitals set forth above and good and valuable consideration as set forth below, the parties agree as follows:

1.0 Grant of Franchise.

- 1.1 **Grant of Franchise.** The City grants Franchisee a franchise (the “Franchise”) to occupy and use of the Facilities and upon and subject to the terms and conditions of this Agreement.
- 1.2 **Use.** Franchisee is entitled to exclusive use and control of the Facilities, upon and subject to the terms and conditions of this Agreement, to meet the Operational Requirements in accordance with section 2.0 of this Agreement, and to accept and charge for the acceptance of Transfer Facility Waste in accordance with section 3.0 of this Agreement.
- 1.3 **Term.** This Agreement shall have a term (the “Term”) beginning on December 1, 2019 (the “Effective Date”) and shall expire after five years, unless earlier terminated in accordance with the provisions of this Agreement.
- 1.4 **Condition of the Facilities.** The City grants this Franchise for Facilities “as is” with all faults, without warranty or representation by the City as to condition or usefulness of the Facilities for any purpose. Franchisee covenants that it has inspected and is fully familiar with the Facilities and accepts the Facilities in “as is” condition.
- 1.5 **Access to the Facilities.** The City covenants to provide Franchisee access to the Facilities on the Effective Date, subject to the terms of this Agreement and provided Franchisee is not in default hereunder.
- 2.0 **Operational Requirements.**
- 2.1 **Generally.** For the duration of the Term, Franchisee shall meet all the requirements of this Section 2.0 (“Operational Requirements”), including the following:
 - A. Franchisee shall perform all services required for the operation of the Facilities in accordance with Chapter 23 of the City Code, all federal, state, and local laws, all regulations and standard operating procedures, all Virginia Solid Waste Management Regulations set forth in the Virginia Administrative Code (*see* 9 Virginia Administrative Code 20-81), all requirements of Virginia Pollution Discharge Elimination System Industrial Stormwater General Permit set forth in the Virginia Administrative Code (*see* 9 Virginia Administrative Code 25-151), all Stormwater Pollution Prevention Plan standards provided by the City, and all requirements of the Agreement.
 - B. For both the Convenience Center and the Transfer Facility, Franchisee shall maintain compliance with the Virginia Pollution Discharge Elimination System Industrial Stormwater General Permit as set forth in the Virginia Administrative Code (*see* 9 Virginia Administrative Code 25-151). For both the Convenience Center and the Transfer Facility, Franchisee shall maintain compliance with all Stormwater Pollution Prevention Plan standards provided by the City.

- C. Franchisee shall perform all services required by the Agreement in such a way that odors, dust and noise are not detected in any area of human occupancy or human activity outside of the Facilities.
- D. Franchisee shall perform all services required by the Agreement in accordance with current United States Department of Labor Safety and Health Regulations under the Occupational Safety and Health Act.
- E. Franchisee shall collect and remit to the City all fees required by Chapter 23 of the City Code.

2.2 **Definitions.** Unless the context clearly indicates that another meaning is intended, the following terms, when used in this Agreement, have the meaning ascribed to them in this section:

- A. **Delivery Fee.** "Delivery Fee" means the fee Franchisee may determine and collect from third parties for each ton of Transfer Facility Waste accepted at the Transfer Facility by Franchisee pursuant to section 3.0 of this Agreement.
- B. **Disposal Facility.** "Disposal Facility" means the Class I Landfill permitted facility operated in accordance with all applicable laws utilized by Franchisee to meet the disposal service requirements of this Agreement.
- C. **Host Community Fee.** "Host Community Fee" means the fee paid to the City by Franchisee for each ton of Transfer Facility Waste accepted at the Transfer Facility by Franchisee from third parties pursuant to section 3.0 of this Agreement.
- D. **Transfer Facility Waste.** "Transfer Facility Waste" means refuse as defined in City Code § 23-1, scrap metal, and small animal remains delivered to the Transfer Facility.
- E. **Yard Waste.** "Yard Waste" means yard waste as defined in City Code § 23-1 and tree and shrubbery trimmings as defined in City Code § 23-1.

2.3 **Disposal Facility Requirements.**

Franchisee shall utilize a Class I Landfill permitted facility operated in accordance with all applicable laws for the Disposal Facility required by this Agreement. Franchisee shall, no later than two business days after the Effective Date, provide the City with the address of the Disposal Facility to be utilized by Franchisee under this Agreement. The Disposal Facility may not be changed unless Franchisee receives prior written approval from the City, or in the event Franchisee must proceed in accordance with section 2.8 herein. The City reserves the right to require a review of any Disposal Facility's regulatory history, permit status, and other operational aspects.

2.4 **Convenience Center Facility Services.**

- 2.4.1 **Delivery of Open-Ended Trailers.** Within three days of receiving a request from the City, Franchisee shall deliver to the Convenience Center no fewer than twenty (20) open-ended trailers for the City to use for the acceptance of Convenience Center Waste. The open-ended trailers must comply with all applicable laws and regulations including, but not limited to, the regulations of the Virginia Department of Transportation governing such trailers.
- 2.4.2 **Disposal Operations.** Franchisee shall, within 48 hours of Franchisee's receipt of a request by the City, remove any open-ended trailers from the Convenience Center that are identified by the City as requiring disposal. Franchisee shall immediately remove the open-ended trailers from the Convenience Center and transport the open-ended trailers to the Disposal Facility. Franchisee shall dispose of the Convenience Center Waste contained in the open-ended trailers at the Disposal Facility in accordance with all applicable laws and regulations. Franchisee shall comply with all applicable laws and regulations when transporting the Convenience Center Waste in the open-ended trailers from the Convenience Center to the Disposal Facility and disposing of the Convenience Center Waste in the open-ended trailers at the Disposal Facility.
- 2.4.3 **Convenience Center Hours.** Franchisee shall provide the services required by section 2.3 during the following hours of operation: Monday 7:00 a.m. to 4:30 p.m., Tuesday 7:00 a.m. to 4:30 p.m., Wednesday 7:00 a.m. to 4:30 p.m., Thursday 7:00 a.m. to 4:30 p.m., Friday 7:00 a.m. to 4:30 p.m., and Saturday 9:00 a.m. to 3:30 p.m. Franchisee shall not provide the services required by section 2.3 on any holidays observed by the City, unless specifically requested by the City.
- 2.4.4 **Industrial Waste and Building Materials Prohibited.** Franchisee will not be responsible for the transport or disposal of industrial waste as defined in City Code § 23-1 or building materials as defined in City Code § 23-1 from the Convenience Center.
- 2.4.5 **Compliance with City Laws and Regulations.** Franchisee shall require that all persons utilizing the Convenience Center comply with all City laws and regulations regarding the use of the Convenience Center.
- 2.5 **Transfer Facility Services.**
- 2.5.1 **Operations Generally.** Franchisee shall provide all personnel, equipment and vehicles necessary to operate the Transfer Facility as required by the Agreement. Franchisee shall comply with the 1,000 tons per day maximum capacity limit at the Transfer Facility.
- 2.5.2 **Acceptance of Transfer Facility Waste from City Residents in Accordance with City Code § 23-97.** Franchisee shall accept at the Transfer Facility deliveries of Transfer Facility Waste from residents of the City of Richmond in accordance with City Code § 23-97. Franchisee shall verify the residency of any individual claiming to be a City resident for the purposes of utilizing the Transfer Facility for the delivery of Transfer Facility Waste. Upon delivery, Franchisee shall transfer all Transfer Facility Waste from resident

vehicles to open-ended trailers or storage containers in accordance with all applicable laws and regulations. If a resident is delivering more than 2,000 pounds of Transfer Facility Waste, Franchisee shall weigh-in the vehicle at the scale house upon their arrival at the Transfer Facility in accordance with City Code § 23-97, record all weigh-in information using the computerized scale system required by section 2.5.11 herein, and weigh-out the vehicle after emptying the vehicle of Transfer Facility Waste.

2.5.3 Acceptance of Residential Collection Program Waste. Franchisee shall accept at the Transfer Facility all deliveries of Transfer Facility Waste from City refuse trucks. The City estimates deliveries of Transfer Facility Waste from City refuse trucks will reach or exceed 400 tons per day. Franchisee shall not charge any additional fees to the City if deliveries from City refuse trucks differs from the estimate of 400 tons per day. Franchisee shall weigh-in all City refuse trucks at the scale house upon their arrival at the Transfer Facility. All weigh-in information shall be recorded by Franchisee using the computerized scale system required by section 2.5.11 herein. Upon delivery, Franchisee shall transfer all Transfer Facility Waste from the City refuse trucks to open-ended trailers or storage containers in accordance with all applicable laws and regulations. Franchisee shall complete the weigh-in and the transport of Transfer Facility Waste from City refuse trucks for each City refuse truck within fifteen minutes of that City refuse truck's arrival at the Transfer Facility.

2.5.6 Acceptance and Transport of Yard Waste.

- A. Franchisee shall accept at the Transfer Facility deliveries of Yard Waste in accordance with City Code § 27-93 (c) and (d). Franchisee shall verify the residency of any individual claiming to be a City resident for the purposes of utilizing the Transfer Facility for the delivery of Yard Waste. Upon delivery, Franchisee shall transfer all Yard Waste from vehicles to open-ended trailers or storage containers in the Transfer Facility in accordance with all applicable laws and regulations.
- B. Franchisee shall, on a weekly basis, transport all Yard Waste from the Transfer Facility to the Convenience Center using open-ended trailers or storage containers. Franchisee shall ensure that all Yard Waste is delivered to the Convenience Center loose or contained in biodegradable bags. Franchisee shall seal, cover and tarp all open-ended trailers, storage containers and transfer vehicles used to transport Yard Waste from the Transfer Facility. Franchisee shall comply with all applicable laws and regulations when transporting the Yard Waste from the Transfer Facility to the Convenience Center. Franchisee shall deliver Yard Waste to the Convenience Center only during the following hours of operation: Monday 7:00 a.m. to 4:30 p.m., Tuesday 7:00 a.m. to 4:30 p.m., Wednesday 7:00 a.m. to 4:30 p.m., Thursday 7:00 a.m. to 4:30 p.m., Friday 7:00 a.m. to 4:30 p.m., and Saturday 9:00 a.m. to 3:30 p.m. Franchisee shall not deliver Yard Waste to the Convenience Center on any holidays observed by the City unless specifically requested by the City.

2.5.7 Acceptance and Disposal of Small Appliances.

A. Franchisee shall accept at the Transfer Facility deliveries of small appliances. Upon receipt of the small appliances, Franchisee shall notify the City that small appliances have been received at the Transfer Facility so that the City can arrange for the removal of Freon from the small appliances.

B. Franchisee shall dispose of the small appliances as required by section 2.5.13.

2.5.8 Acceptance and Disposal of Tires.

A. Franchisee shall accept at the Transfer Facility deliveries of tires, both passenger car tires and tires other than passenger car tires, in accordance with City Code § 23-98. In accordance with City Code § 23-98, Franchisee shall collect from the person delivering the tires any required fee set forth in Appendix A of the City Code.

B. Franchisee shall dispose of the tires as required by section 2.5.13.

2.5.9 Industrial Waste, Building Materials and Hazardous Refuse Prohibited. Franchisee shall not accept industrial waste as defined in City Code § 23-1, building materials as defined in City Code § 23-1, or hazardous refuse as defined in City Code § 23-1 at the Transfer Facility.

2.5.10 Operation and Utilization of Truck Scale. Franchisee shall operate, use and maintain the truck scale located at the Transfer Facility. The City will supply the truck scale at the Transfer Facility. Franchisee shall bear all costs and expenses of testing, recalibration, corrective maintenance and preventative maintenance of the truck scale. Franchisee shall ensure the truck scale is capable, at minimum, of calculating the total weight of vehicles, identifying the date of each weight calculated, and identifying the time of each weight calculated. Franchisee shall fully cooperate with any requests received from the City for the inspection or observation by representatives of the City of Franchisee's operation of the truck scale.

2.5.11 Computerized Scale System.

A. Franchisee shall provide and operate a computerized scale system which has the capability to perform the following functions at the Transfer Facility:

1. Organize and track weights of loads delivered to the Transfer Facility, including the date of each weigh-in and weigh-out, the time of each weigh-in and weigh-out, and the identification of the vehicle weighed.
2. Manage calibration schedule for the truck scale installed at the Transfer Facility.
3. Track daily, weekly, and monthly weights of weighed loads delivered to the Transfer Facility.
4. Maintain load records, including date and time.
5. Generate itemized records on a per load basis.

- B. Franchisee shall operate the computerized scale system, use the computerized scale system to track all weighed loads at the Transfer Facility, and produce the following reports, at a minimum, for the City:
 - 1. Daily, weekly, and monthly weight reports.
 - 2. Scale calibration reports.
 - 3. Itemized load reports.
- C. Franchisee shall supply all hardware and software and shall provide all training and technical support for the computerized scale system for the duration of the Agreement. Franchisee shall be responsible for the preventative and corrective maintenance of the computerized scale system.
- D. The computerized scale system must be compatible with the work order system used by the Department of Public Works. The computerized scale system must be compatible with the truck scale installed at the Transfer Facility.
- E. The City and Franchisee must have the ability to obtain detailed and current information relating to the performance and condition of the scale system, itemized load information, scale calibration reports, and load and weight reports. The computerized scale system must allow the City and Franchisee the capability to search data by field, generate automated reports, and perform other analyses. The computerized scale system must retain all data entered into or generated by the computerized scale system for the duration of the Agreement.
- F. Upon the expiration or earlier termination of the Agreement, Franchisee shall convert into a usable format acceptable to the City and transfer to the City, for no further consideration, all data entered into or generated by the computerized scale system during the duration of the Agreement.

2.5.12 Delivery of Open-Ended Trailers and Storage Containers. Franchisee shall deliver open-ended trailers and storage containers to the Transfer Facility at 6 a.m. daily for the acceptance of Transfer Facility Waste, Yard Waste, small appliances, and tires. Franchisee shall provide a sufficient number of open-ended trailers and storage containers to accept 1,000 tons of Transfer Facility Waste, Yard Waste, small appliances, and tires per day. The open-ended trailers and storage containers must comply with all applicable laws and regulations including, but not limited to, the regulations of the Virginia Department of Transportation governing such trailers.

2.5.13 Disposal Operations.

- A. Franchisee shall remove all Transfer Facility Waste from the Transfer Facility on a daily basis, or more frequently if necessary to keep the Transfer Facility in compliance with all applicable laws and regulations.

- B. Franchisee shall remove from the Transfer Facility all small appliances accepted in accordance with section 2.5.7 and tires accepted in accordance with section 2.5.8 once every two weeks, or as frequently as is needed to keep the Transfer Facility in compliance with all applicable laws and regulations. Franchisee shall not remove small appliances from the Transfer Facility until the City has confirmed in writing that all Freon has been removed from the small appliances.
- C. Franchisee shall transport all Transfer Facility Waste, small appliances, and tires from the Transfer Facility to the Disposal Facility using open-ended trailers or storage containers. Franchisee shall seal, cover and tarp all open-ended trailers, storage containers and transfer vehicles used to transport Transfer Facility Waste, small appliances, and tires from the Transfer Facility. Franchisee shall, within six hours of removal from the Transfer Facility, dispose of Transfer Facility Waste, small appliances, and tires at the Disposal Facility in accordance with all applicable laws and regulations. Franchisee shall comply with all applicable laws and regulations when transporting the Transfer Facility Waste, small appliances, and tires from the Transfer Facility to the Disposal Facility and disposing of the Transfer Facility Waste, small appliances, and tires at the Disposal Facility.
- D. Franchisee may store one single, covered transfer trailer at the Transfer Facility for a period of twenty-four hours. If the transfer trailer contains any Transfer Facility Waste, Yard Waste, small appliances, or tires, the transfer trailer must be covered in accordance with all applicable laws and regulations.

2.5.14 Recycling Operations. Franchisee shall accept at the Transfer Facility recyclable materials including glass bottles, cardboard, aluminum cans, and newspaper from City residents. Franchisee shall remove all recyclable materials from the Transfer Facility no less frequently than weekly. Franchisee shall provide for the recycling of the recyclable materials in accordance with all applicable laws and regulations.

2.5.15 Transfer Facility Hours. Franchisee shall operate the Transfer Facility and provide the services required by section 2.4 during the following hours of operation: Monday 7:00 a.m. to 4:30 p.m., Tuesday 7:00 a.m. to 4:30 p.m., Wednesday 7:00 a.m. to 4:30 p.m., Thursday 7:00 a.m. to 4:30 p.m., Friday 7:00 a.m. to 4:30 p.m., and Saturday 9:00 a.m. to 3:30 p.m. Franchisee shall not provide the services required by section 2.4 on any holidays observed by the City, unless specifically requested by the City.

2.5.16 Security at Transfer Facility. Franchisee shall implement, operate and maintain a security system at the Transfer Facility, including any staging areas located along the access roads to the Transfer Facility and perimeter security and fence lines surrounding the Transfer Facility. Franchisee's security system, at minimum, must include:

- A. Patrolling and monitoring of Transfer Facility property twenty-four hours a day seven days a week;
- B. Maintaining security lighting at the Transfer Facility;
- C. Locking all gates, access points, and doors to the Transfer Facility;

- D. Protecting entrances and the perimeter of the Transfer Facility from unauthorized entry twenty-four hours a day seven days a week;
- E. Maintaining the structural integrity of all fence lines of the Transfer Facility; and
- F. Maintaining security alarms and security system components in working order twenty-four hours a day seven days a week.

2.5.17 Cleaning Services. Franchisee shall provide cleaning services at the Transfer Facility including, but not limited to, the following services:

- A. Washing all windows at a minimum of twice per year, or upon request by the City;
- B. Applying floor finish as needed to maintain the appearance of the floors and to comply with all safety standards;
- C. Washing down interior wall surfaces at a minimum of twice per year, or upon request by the City;
- D. Cleaning all restrooms on a daily basis; and
- E. Collecting any waste or litter generated by the operations of the Transfer Facility and disposing of such waste or litter in accordance with section 2.5.13 herein.

2.5.18 Maintenance Requirements.

- A. Franchisee shall operate, maintain, monitor, and adjust all mechanical, plumbing, electrical, and building systems at the Transfer Facility on a daily basis. Franchisee shall perform all predictive, preventative, and corrective maintenance procedures required at the Transfer Facility in accordance with all applicable laws, generally accepted industry maintenance practices, and any applicable standards and regulations for solid waste transfer facilities.
- B. Franchisee shall operate, maintain, monitor, and adjust all mechanical, plumbing, electrical, and building systems at the Transfer Facility on a daily basis. Franchisee shall develop and provide to the City an operations and maintenance plan for all mechanical, plumbing, electrical, and building systems at the Transfer Facility in compliance with all applicable laws, generally accepted industry maintenance practices, and any applicable standards and regulations for solid waste transfer stations. Franchisee shall provide the City with the operations and maintenance plan within thirty (30) business days of the Effective Date of the Agreement. Franchisee shall revise the operations and maintenance plan in accordance with any comments from the City and shall resubmit the operations and maintenance plan to the City within fifteen (15) days of receipt of such comments. Franchisee shall revise the plan at any time upon request of the City.
- C. Upon receipt of the City's approval of the operations and maintenance plan required by section 2.5.18(B) above, Franchisee shall implement the operations and maintenance plan at the Transfer Facility.

2.5.19 **Building Envelope and Structure.** Franchisee shall properly maintain the Transfer Facility and any existing systems in a manner that ensures the integrity of the building and existing systems.

2.5.20 **Compliance with City Law and Regulations.** Franchisee shall require that all persons utilizing the Transfer Facility comply with all City laws and regulations regarding the use of the Transfer Facility.

2.6 **Grounds and Landscape.** Franchisee shall perform all grounds-keeping at the Transfer Facility. "Grounds-keeping" includes all cleaning, mowing, weeding, trimming of lawns and parking areas.

2.7 **No Queuing on Public Roads.** Franchisee shall not allow any vehicles to queue on public roads or highways when entering or exiting the Convenience Center or the Transfer Facility.

2.8 **Emergency Operations Plan.**

A. Franchisee shall, within seven business days of the Effective Date of the Agreement, provide the City with a written comprehensive emergency operations plan outlining Franchisee's alternate means of accepting, transferring, transporting, and disposing of Transfer Facility Waste in accordance with all terms of the Agreement. The emergency operations plan must provide an alternate means of meeting all requirements of this Agreement if Franchisee is unable to meet the requirements of this Agreement through operations at the Transfer Facility or use of the Disposal Facility. Franchisee shall provide in the emergency operations plan 100% redundant capacity for the 1,000 ton daily maximum capacity of the Transfer Facility as set forth in section 2.5.1. The emergency operations plan must require Franchisee to reimburse the City if the emergency operations plan requires additional hauling time or hauling mileage by City vehicles.

B. Upon request by the City, Franchisee shall submit a revised written comprehensive emergency operations plan to the City meeting all requirements in section 2.8(A). No less than annually on the anniversary of the Effective Date of this Agreement, Franchisee shall submit to the City a revised written comprehensive emergency operations plan meeting all requirements in section 2.8(A).

C. Franchisee shall implement the emergency operations plan required by section 2.8(A) if Franchisee is unable to provide the services required under this Agreement. Franchisee shall notify the Director of Public Works and the Deputy Director of Public Works by telephone within one (1) hour of implementation of the emergency operations plan. Franchisee shall, within twenty-four (24) hours of implementation of the emergency operations plan, confirm the implementation of the emergency operations plan for the City through written notice in the form of an email to the Director of Public Works and the Deputy Director of Public Works. Such notice must explain the reason for the implementation, Franchisee's plan for

returning to normal operations, and Franchisee's estimate of how long the emergency operations plan will need to be utilized by Franchisee.

2.9 **Pick-up, Transport and Disposal of Grit and Screenings.** Franchisee shall, upon request from the City, pick-up, transport and dispose of all grit and screenings produced by the City's wastewater treatment operations that are identified by the City as requiring disposal.

- A. The City's Biosolids Supervisor, or his designee, will notify Franchisee by telephone when a pick-up of grit and screenings is necessary. Franchisee shall, within 7 business days of the City's telephone call, deliver to the wastewater treatment facility located at 1400 Brander Street, Richmond, Virginia 23224, no less than five (5) trucks suitable for the transport of grit and screenings to the Disposal Facility.
- B. The City will assist Franchisee with loading the grit and screenings from the grit pad located at 1400 Brander Street, Richmond, Virginia 23224, into the trucks provided by Franchisee. Franchisee shall only pick-up, transport and dispose of the grit and screenings identified by the City Biosolids Supervisor, or his designee.
- C. Franchisee shall, in accordance with all applicable laws, rules, and regulations, properly transport the grit and screenings to the Disposal Facility.
- D. The City will perform a paint filter test on a sample of grit and screenings, no more frequently than twice in a twelve month period, if Franchisee provides the City with a written request for a paint filter test.

2.10 **Inclement Weather.** Franchisee shall report to the Convenience Center and the Transfer Facility within one hour of being notified by the City during any inclement weather events, including, but not limited to, snow, ice, wind, and hail.

3.0 **Acceptance of Transfer Facility Waste from Third Parties and Payment to City of Host Community Fee.**

- A. Over and above the amount of Transfer Facility Waste that Franchisee must accept at the Transfer Facility pursuant to the Operational Requirements, Franchisee may accept deliveries of Transfer Facility Waste from third parties at the Transfer Facility. Franchisee shall weigh-in all vehicles at the scale house upon their arrival at the Transfer Facility in accordance with City Code § 23-97. All weigh-in information shall be recorded using the computerized scale system required by section 2.5.11 herein. Upon delivery, Franchisee shall transfer all Transfer Facility Waste from the third-parties' vehicles to open-ended trailers or storage containers in accordance with all applicable laws and regulations. Franchisee shall weigh-out all vehicles after emptying the vehicles of the Transfer Facility Waste.
- B. Franchisee may collect a Delivery Fee in accordance with the terms of the Agreement from third parties for each ton, or partial ton, of Transfer Facility Waste

accepted by Franchisee at the Transfer Facility in accordance with section 3.0(A) above.

- C. Franchisee shall pay the City a Host Community Fee, as set forth on the Fee Schedule incorporated herein and attached hereto as Exhibit A, for each ton, or partial ton, of Transfer Facility Waste accepted by Franchisee at the Transfer Facility in accordance with section 3.0(A) above.

4.0 Invoicing and Payment.

4.1 Invoicing Requirements.

- A. Monthly invoices must be submitted in accordance with the requirements of this Agreement no later than the 15th day of each month for the previous month. Invoices must include the amount owed by the City and an itemization of all Operational Requirements performed by Franchisee during the previous month. Franchisee shall be entitled to payment for the Operational Requirements in accordance with the Fee Schedule incorporated herein and attached hereto as Exhibit A. The invoices shall detail all the City fees collected by Franchisee as required by Chapter 23 of the City Code and by section 2.1(E) above. Franchisee shall pay the City any Host Community Fees owed by Franchisee pursuant to section 3.0 herein by issuing a credit on all applicable invoices to the City in the amount of the Host Community Fees owed. If the Effective Date is not the first day of a month, the monthly fee must be prorated for the period of time between the Effective Date and the end of the month in which the Commencement Date occurred. If the date on which the Agreement expires or is terminated occurs on a date other than the end of the month, the final monthly invoice must be submitted by the 15th day of the following month, and the monthly fee must be prorated for the period of time between the first day of the month and the date on which the Agreement expires or is terminated.
- B. Franchisee shall submit invoices that include a unique invoice number, reference to this Agreement, and Franchisee's federal Taxpayer Identification Number. All invoices submitted by Franchisee must set forth each item billed in sufficient detail to enable the City to ensure that the amount billed corresponds to the Fee Schedule for such item. If Franchisee does not include all of the required information on the invoice, the City may reject and return the invoice unpaid. Franchisee shall submit the original invoice to the City at either:

accountspayable@richmondgov.com

or

City of Richmond
Accounts Payable
900 East Broad Street
Richmond, VA 23219

The City prefers that the original invoice be sent to the above electronic mail address to facilitate timely payment. Franchisee shall submit a duplicate invoice to:

Attn: Solid Waste Management
1654 Commerce Road
Richmond, VA 23224

- 4.2 **City Fees.** Franchisee shall remit to the City, along with each monthly invoice and in a manner acceptable to the City, all City fees collected on behalf of the City, as required by Chapter 23 of the City Code and by section 2.1(E) above.
- 4.3 **Payment.**
- 4.3.1 **Basis.** Franchisee shall be entitled to payment for the Operational Activities in accordance with the Fee Schedule incorporated herein and attached hereto as Exhibit A.
- 4.3.2 **Schedule.** Franchisee shall invoice the City on a schedule in accordance with this Agreement.
- 4.3.3 **Terms.** The City shall pay Franchisee as follows: Net 45 days.
- 4.3.4 **When City Obligated to Pay.** The City shall not be obligated to pay Franchisee for the Operational Requirements unless and until they are performed.
- 4.3.5 **Taxes.** All fees shall be submitted exclusive of direct Federal, State and Local Taxes. The City shall not be liable for the payment of any taxes levied by any local, state, or federal governmental entity against Franchisee, and Franchisee shall pay all such taxes; furthermore, should the City nevertheless pay any such taxes, Franchisee shall reimburse the City therefor.
- 4.3.6 **Payment by ACH.** Franchisee agrees that the City may make all payments to Franchisee, at the option of the City, of any or all amounts due under this Agreement through the Automated Clearing House network.
- 5.0 **Remedies and Termination.**
- 5.1 **Default.** In case of default of Franchisee or if Franchisee fails to meet any material obligation under this Agreement, the City, after due notice in writing, may ensure the services are otherwise provided and hold Franchisee responsible for any excess cost occasioned thereby. This remedy shall be in addition to any other remedies available to the City.
- 5.2 **Termination with Cause.**

- 5.2.1 **Notice.** The City may terminate this Agreement with cause at any time for Franchisee's failure to perform its obligations under this Agreement or to otherwise adhere to the terms and conditions of this Agreement by delivery of written notice to Franchisee of the intent of the City to so terminate. Such notice shall be delivered at least sixty calendar days prior to the date of termination and shall otherwise be given in accordance with the requirements of this Agreement for the delivery of notices.
- 5.2.2 **Cure.** If Franchisee cures the failure to perform or otherwise adhere to the terms and conditions of this Agreement to the satisfaction of the City, indicated in writing to Franchisee, during thirty days of this issuance of the notice of termination, then the notice of termination with cause shall be deemed null and void.
- 5.2.3 **Effect.** Upon such termination, the City shall be liable only to the extent of costs which may be reimbursable under this Agreement that have been submitted by Franchisee and approved by the City up to the time of termination and only upon delivery to the City of all completed or partially completed work performed by Franchisee.

6.0 **Indemnification, Insurance, and Bonding.**

- 6.1 **Indemnification.** Franchisee shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach by Franchisee of its obligations specified in this Agreement, as well as all claims arising from errors, omissions, negligent acts or intentional acts of Franchisee, its officers, agents and employees. Further, Franchisee shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Franchisee, its contractors, its agents or its employees under or in connection with this Agreement. Franchisee shall hold harmless and indemnify the City, and its agents, volunteers, servants, employees, and officers from and against any and all claims, losses or expenses, including but not limited to court costs and attorneys' fees, which any of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged. Franchisee shall, upon written demand by the City, assume and defend at Franchisee's sole expense any and all such claims or legal actions. The provisions of this section 6.1 shall be in addition to any other obligations and liabilities Franchisee may have to the City at law or equity and shall survive the expiration, or earlier termination, of this Agreement.
- 6.1.2 **Regulatory Compliance.** If Franchisee violates laws or regulations that govern the performance of this Agreement, Franchisee shall defend, hold harmless and indemnify the Authority against any fines or penalties or both that result from such violation. To the extent that such violation is the result of the negligence or other actionable conduct of Franchisee shall defend, hold harmless and indemnify the City against any third party claims, suits, awards, actions, causes of action or judgments, including, but not limited to, all attorneys' fees and costs incurred thereunder, that result from such violation. The provisions of this section 6.1.2 shall be in addition to any other obligations and liabilities Franchisee may

have to the City at law or equity and shall survive the expiration, or earlier termination, of this Agreement.

6.1.3 Hazardous Materials.

- A. For purposes of this Agreement, "Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential threat to human health or the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Materials" may include, without limitation, any substance, waste or material which is or contains asbestos, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum. For purposes of this Agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.
- B. Franchisee shall follow all regulations of any governmental authority having jurisdiction over Hazardous Materials at the Facilities when handling and disposing of any Hazardous Materials. Franchisee shall maintain a hard copy record set of any and all material safety data sheets required by law and pertaining to materials or substances discovered, encountered, disposed of, used or consumed in the performance of the Agreement, regardless of their source. Such material safety data sheets shall be maintained at the Transfer Facility and shall be made available to interested parties on request.
- C. Franchisee hereby agrees to defend, indemnify and hold harmless the City (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines, penalties (insofar as not prohibited by law), costs and expenses (including, without limitation, clean-up costs and reasonable attorneys' and consultants' fees and disbursements), which arise, or are alleged to arise, from or in connection with (i) Franchisee's violation of any environmental laws, (ii) compliance of the City with any environmental laws relating to or arising out of Franchisee's use of the Facilities, (iii) the generation, manufacturing, refining, transportation, treatment, storage, handling, disposal, discharge or spill of any Hazardous Materials at the Facilities, or (iv) any disturbance, migration, leaching or release of any Hazardous Materials on, onto, near, under or otherwise affecting the Facilities. Franchisee shall defend any action, suit or proceeding brought against the City in connection with the foregoing. The provisions of this subsection 6.1.3(C) shall be in addition to any other obligations and liabilities Franchisee may have to the City at law or equity and shall survive the expiration, or earlier termination, of this Agreement.

6.2 Insurance.

6.2 **Insurance.** Franchisee shall provide and maintain throughout the Term of this Agreement insurance in the kinds and amounts specified in this section with an insurer licensed to transact insurance business in the Commonwealth of Virginia. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers and shall be countersigned by duly authorized local agents of such insurers.

6.2.1 **Costs and Premiums.** Franchisee shall pay all premiums and other costs of such insurance. The consideration paid or to be paid to Franchisee for the performance of the Agreement includes the premiums and other costs of such insurance, and neither the City shall be responsible therefor.

6.2.2 **Policy Requirements.** All insurance contracts and policies shall provide, or be endorsed to provide, as follows:

(i) Subrogation against the City shall be waived.

(ii) The City, and its officers, employees, agents and volunteers shall be listed as an additional insured, except for Workers Compensation and Professional Liability.

(iii) Coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without 30 days' written notice to the City.

(iv) The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies.

No insurance contract or policy shall be expanded to afford coverage which is greater than the maximum coverage approved for writing in the Commonwealth of Virginia.

6.2.3 **Evidence to Be Furnished.**

6.2.3.1 **Endorsements.** Franchisee shall furnish the City with a copy of the policy endorsement listing the City, and its officers, employees, agents and volunteers as an additional insured for each policy, other than Workers Compensation and Professional Liability, required under this section 6.2 ("Insurance"). Franchisee shall furnish the City with copies of such other endorsements as may be required under this Agreement upon request by the City therefor.

6.2.3.2 **Certificates of Insurance.** Franchisee shall furnish the City with a certificate of insurance evidencing the above coverage, indicating that the City, and its officers, employees, agents and volunteers are listed as additional insured for each policy, other than Workers Compensation and Professional Liability, and that the coverage will not be canceled, non-renewed or materially modified in a way adverse to the City without 30 days' written notice to the City. All certificates of insurance shall show the Agreement Number assigned to this Agreement by the City.

6.2.3.3 **Contracts and Policies.** Franchisee is not required to furnish the City with copies of insurance contracts or policies required by this section 6.2 (“Insurance”) unless requested at any time by the City’s Director of Public Works.

6.2.4 **Schedule of Coverage.** Franchisee shall provide and maintain the following types of insurance in accordance with the requirements of this section 6.2 (“Insurance”):

- (i) Commercial General Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.
- (ii) Automobile Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.
- (iii) Statutory Workers’ Compensation and Employers’ Liability Insurance with the Alternate Employer Endorsement WC 000301.
- (iv) Errors and Omissions Insurance with limits of not less than \$1,000,000 per occurrence.

6.3 **Performance Bond.** Franchisee shall provide and maintain throughout the Term of this Agreement, at Franchisee’s sole cost and expense, a performance bond in the amount of \$250,000. The bond shall be fully executed by Franchisee and one or more surety companies legally licensed to do business in Virginia. If more than one surety executes a bond, each shall be jointly and severally liable to the City for the entire amount of the bond. Sureties shall be selected by Franchisee, subject to approval by the City. No payment pursuant to this Agreement shall be due and payable to Franchisee until the bond have been approved by the City and the Office of the City Attorney. Alternative forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts, are not acceptable.

7.0 **Miscellaneous Provisions.**

7.1 **Transition.** During the thirty days prior to the expiration of the Term or the effective date of termination in accordance with Section 5.2, Franchisee shall make all reasonable efforts to facilitate the transition of the operation of the Facilities to the City or to any operator designated by the City. Such efforts shall include, but shall not be limited to, reasonable cooperation and coordination both with the City and directly with any operator designated by the City.

7.2 **Utilities.** Franchisee shall pay all costs of utilities for the Transfer Facility including, but not limited to, natural gas, fuel oil, telephone, internet, water and sewer. No later than twenty-four hours after the Effective Date, Franchisee shall register all utilities at the Transfer Facility in Franchisee’s name. Franchisee shall be solely responsible for all charges related to the maintenance of all utilities at the Transfer Facility.

- 7.3 **No Holdover.** Upon expiration or termination of this Agreement, Franchisee shall not holdover, and if Franchisee fails to vacate the Facilities, Franchisee's failure to do so shall not confer any rights to occupy the Facilities or further use to Franchisee regardless of the acts or omissions of the City or any of the City's employees or agents.
- 7.4 **Removal at End of Term.** Franchisee shall, upon expiration of the Term or earlier termination of this Agreement, peacefully surrender possession of the Facilities to the City, caused the Facilities to be cleaned and have removed all trash, have removed all of its personal property, including that attached to the Facilities, from beneath, upon, or above the Facilities, and have restored the Facilities to their condition as when delivered to Franchisee. If Franchisee does not so remove its personal property from the Facilities, the City may do so at Franchisee's cost and expense, without liability to Franchisee for damages that may directly or indirectly result therefrom, or may allow such property to remain at the Facilities, in which case title to such property shall vest in the City. This Section will survive termination or expiration of this Agreement.
- 7.5 **Compliance with Laws.** Franchisee shall comply with the provisions of any statutes, ordinances, rules, regulations, or other laws enacted or otherwise made effective by any local, state, or federal governmental entity which may be applicable to the performance of this Agreement and shall obtain all necessary licenses and permits thereunder.
- 7.6 **Audit.** The City reserves the right to audit all aspects of this Agreement, including but not necessarily limited to (i) Franchisee's financial capability and accounting system, (ii) the basis for progress payments, (iii) Franchisee's compliance with applicable laws and (iv) appropriate vendor records. The City further reserves the right to review, on demand and without notice, all files of Franchisee or any contractor or vendor employed by Franchisee to provide services or commodities under this Agreement where payments by the City are based on records of time, salaries, materials or actual expenses. Franchisee shall maintain all records subject to audit under this provision locally or in a manner deliverable at Franchisee's expense to a location in the metropolitan Richmond area.
- 7.7 **Force Majeure.** If any party is unable to perform its obligations under this Agreement due to acts of God or circumstances beyond its reasonable control, such obligations shall be suspended as long as those circumstances persist, provided that the delaying party promptly notifies the other party of the delay and the causes. Except where the delay is caused by an act or omission of the delaying party, any costs arising from such delay shall be borne by the party incurring the delay.
- 7.8 **Waiver.** No failure of the City or Franchisee to complain of any act or omission on the part of the other no matter how long the same shall continue shall be deemed to be a waiver by the City or Franchisee of any of its rights under this Agreement. No waiver by the City or Franchisee, at any time, express or implied, of any breach of any of the agreements or provisions contained in this Agreement shall be construed to be a waiver of any subsequent breach of the same or of any other provisions in this Agreement. No acceptance by the City of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

- 7.9 **Amendment to Agreement.** This Agreement may be amended, modified and supplemented only by the written consent of the City and Franchisee preceded by all formalities required as prerequisites to the signature by each party of this Agreement.
- 7.10 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and Franchisee in connection with this Agreement, shall be governed and regulated by, and interpreted and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. This Section will survive termination or expiration of this Agreement. This Section will survive termination or expiration of this Agreement.
- 7.11 **Venue.** Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court for the City of Richmond, Virginia. Franchisee accepts the personal jurisdiction of any court in which an action is brought pursuant to this section for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action. Except as expressly provided in other provisions of this Agreement, each party shall be responsible for its own attorneys' fees in the event this Agreement is subject to litigation. This Section will survive termination or expiration of this Agreement.
- 7.12 **Entire Agreement.** No oral statement or prior written matter shall have any force or effect. Franchisee agrees that it is not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be modified or canceled except by writing subscribed by all parties. This Section will survive termination or expiration of this Agreement.
- 7.13 **Parties; No Third-Party Beneficiaries.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the City and Franchisee and their respective successors and assigns. Notwithstanding any other provision of this Agreement, the City and Franchisee hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or Franchisee; (iii) no individual or entity shall obtain any right to make any claim against the City or Franchisee under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

- 7.14 **No Joint Venture.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Agreement of which they are a part, shall be construed as creating or constituting the City as co-partner or joint venturer with Franchisee, nor shall same be construed in any manner as making the City liable for the debts, defaults, obligations or lawsuits of Franchisee, or its sub-franchisees and assigns. This Section will survive termination or expiration of this Agreement.
- 7.15 **Assignment, Delegation and Subcontracting.**
- A. **By the City.** The City may assign its rights or delegate its duties, in whole or in part, under this Agreement by written notice delivered to Franchisee. Such transfer of rights or duties shall take effect upon the date specified in the notice or upon the assumption, if necessary, of the delegated duties by the assignee, whichever is later.
 - B. **By Franchisee.** Franchisee shall not assign its rights or delegate its duties, or any part thereof, under this Agreement without the prior written consent of the City. Further, Franchisee shall not assign, sublet or transfer its interest or any part thereof in this Agreement by means or as part of any sale, merger, consolidation, assignment or any other event that would result in new or different ownership, control, operation or administration of Franchisee's business affairs without the prior written consent of the City.
- 7.16 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Agreement.
- 7.17 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original of such instrument, but all of which together shall constitute one and the same instrument, and facsimile signatures shall have the same binding effect as manual signatures.
- 7.18 **Franchisee's Representations, Warranties, and Covenants.** Franchisee represents, warrants, and covenants to the City, as of the date hereof and as of the Effective Date, as to each of the following statements:
- A. **Organization.** Franchisee is a duly organized business organization, validly existing under the laws of the Commonwealth of Virginia.
 - B. **Authorization.** Franchisee has full power and authority and has taken all required action necessary to permit Franchisee to execute and deliver this Agreement and to carry out its terms.
 - C. **Capacity to Perform.** Franchisee is currently in the business of solid waste transportation and disposal and holds all necessary licenses and permits and has the financial capacity to meet all its obligations and requirements under this Agreement.

D. **No Conflicts; Consents.** The execution and delivery by Franchisee of this Agreement does not violate, conflict with, result in a breach of, result in or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of (i) the laws of the Commonwealth or Franchisee's organizing documents; (ii) to Franchisee's knowledge, any material contract, or (iii) to Franchisee's knowledge, any order, writ, judgment, injunction, or decree applicable to Franchisee or the Premises.

E. **Disclosure.** No provision of this Agreement or other information furnished by Franchisee to the City in connection with the execution, delivery and performance of this Agreement contains or will contain any knowingly untrue statements of a material fact or knowingly omits or will omit to state a material fact required to be stated to make the statement in light of the circumstances in which it is made, not misleading.

7.19 **Captions and Headings.** The captions and headings used herein are intended only for convenience and are not to be used in construing this instrument.

7.20 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the City:

Attn: Chief Administrative Officer
900 E. Broad Street, Room 200
Richmond, Virginia 23219

with a copy to:

City Attorney
900 E. Broad Street, Suite 400
Richmond, Virginia 23219

B. To Franchisee:

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

7.21 **Subject to Appropriation.** All payments and other performances by the City under this Agreement are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the parties that the City will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

FRANCHISEE

By: _____
Name: _____
Title: _____

THE CITY OF RICHMOND, VIRGINIA
A political subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:



Assistant City Attorney

**Exhibit A
Fee Schedule**

Item No.	Section from Agreement	Service Description	Unit of Measure	Fee ¹	Estimated Quantity ²	Estimated Cost to City ³
1	2.4	Convenience Center Facility Services	Monthly Operating Cost	\$ _____ U.S. Dollars	12 months	\$ _____ U.S. Dollars
2	2.5.2	Acceptance of Transfer Facility Waste from City Residents and non-City Residents	per ton	\$ _____ U.S. Dollars	19,060 tons	\$ _____ U.S. Dollars
3	2.5.3	Acceptance of Residential Collection Program Waste	per ton	\$ _____ U.S. Dollars	76,542 tons	\$ _____ U.S. Dollars
4	2.5.6	Acceptance and Transport of Yard Waste	per ton	\$ _____ U.S. Dollars	100 tons	\$ _____ U.S. Dollars
5	2.5.7	Acceptance and Transport of Small Appliances	per ton	\$ _____ U.S. Dollars	50 tons	\$ _____ U.S. Dollars
6	2.5.8	Acceptance and Disposal of Tires	per ton	\$ _____ U.S. Dollars	300 tons	\$ _____ U.S. Dollars
7	2.5.14	Pick-up, Transport, and Disposal of Grit and Screenings	per ton	\$ _____ U.S. Dollars	1,600 tons	\$ _____ U.S. Dollars
8	2.9	Recycling Operations	Monthly Operating Cost	\$ _____ U.S. Dollars	12 months	\$ _____ U.S. Dollars
9	2.5	Other Transfer Facility Services	Monthly Operating Cost	\$ _____ U.S. Dollars	12 months	\$ _____ U.S. Dollars
10	3.0	Host Community Fee (TO BE PAID BY FRANCHISEE TO CITY)	per ton	\$ _____ U.S. Dollars	_____ tons	\$ _____ U.S. Dollars

1. These proposed fees are to be submitted by all those bidding for the award of this Franchise. The fees submitted by the bidder to whom the Franchise is awarded shall become part of Exhibit A to the Agreement and shall be binding upon Franchisee. 2. These estimated quantities are provided for informational purposes only, and are to be used to calculate the estimated cost to City. Bidders are to provide the estimated quantity of for line 10. 3, 4. The Estimated Cost to City and Estimated Total Annual Cost are included nly for purposes of evaluating bids.

Estimated Total Annual Cost⁴ = \$ _____ U.S. Dollars
(equals the estimated sum of the Cost to the City for items 1 through 9 less the estimated amount of item 10 to be paid to City)