

**AGENDA ITEM # 6**

**STRATEGIC PRIORITY:** Public Safety

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 3

**DEPARTMENT:** Department of Aviation

**CMO:** Jody Puckett, 670-3390

**MAPSCO:** 63L

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**SUBJECT**

Authorize **(1)** acceptance of the FY 2018 grant (Grant No. M1818 DLEX) from the Texas Department of Transportation (TxDOT) Aviation Division for the Routine Annual Maintenance Program at Dallas Executive Airport in an amount not to exceed \$50,000 or 50% of eligible project costs whichever is less; **(2)** a local cash match in the amount of \$50,000 for airport maintenance projects; **(3)** establishment of appropriations in an amount not to exceed \$50,000 in the TxDOT 2018 Routine Airport Maintenance-RAMP Project Fund; **(4)** receipt and deposit of funds in an amount not to exceed \$50,000 in the TxDOT 2018 Routine Airport Maintenance-RAMP Project Fund; and **(5)** execution of the grant agreement - Total not to exceed \$100,000 - Financing: Aviation Current Funds (\$50,000) (subject to appropriations) and Texas Department of Transportation Grant Funds (\$50,000)

**BACKGROUND**

The Routine Airport Maintenance Project (RAMP) is a State assisted airport maintenance program through a grant reimbursement that will enable the Department of Aviation to conduct needed repairs on the airport for annual maintenance. Some examples of the programs in the RAMP include Runway crack seal and Ramp area crack seal. The primary objective of the project is to:

- Conduct repairs as needed under the Routine Airport Maintenance Program under the guidelines of Texas Department of Transportation (TxDOT).

TxDOT will determine if the repairs are within the scope of eligible projects for the TxDOT Grant for Routine Airport Maintenance Program Funds and will participate in an amount equal to 50% of the eligible project costs with TxDOT's reimbursement not to exceed \$50,000.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On May 13, 2015, City Council authorized a grant reimbursement for the RAMP projects for fiscal year 2015, by Resolution No. 15-0834.

On May 25, 2016, City Council authorized a grant reimbursement for the RAMP projects for fiscal year 2016, by Resolution No. 16-0794.

On March 22, 2017, City Council authorized a grant reimbursement for the RAMP projects for fiscal year 2017, by Resolution No. 17-0474.

Information about this item will be provided to the Mobility Solutions, Infrastructure and Sustainability Committee on February 12, 2018.

### **FISCAL INFORMATION**

Aviation Current Funds - \$50,000 (subject to appropriations)

Texas Department of Transportation Grant Funds - \$50,000

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**WHEREAS**, the City of Dallas intends to enhance the city's economic vibrancy; particularly within the city's southern sector; and

**WHEREAS**, Dallas Executive Airport has proven to be a significant economic generator within the city's southern sector; and

**WHEREAS**, it is desirable to maintain the airport infrastructure to provide a safe and attractive environment for aircraft owners and operators to conduct business at Dallas Executive Airport; and

**WHEREAS**, the Texas Department of Transportation (TxDOT) has indicated that routine airport maintenance is a program that is eligible for state funding through their grant for Routine Airport Maintenance Program (RAMP) and will participate in an amount equal to 50% of the eligible costs, not to exceed \$50,000; and

**WHEREAS**, the City of Dallas and TxDOT participated in the RAMP program for fiscal year 2016 and accepted reimbursement funds from TxDOT for eligible costs for routine airport maintenance at Dallas Executive Airport per the agreement; and

**WHEREAS**, the total maintenance cost estimated for the fiscal year 2018 agreement is expected to be up to \$100,000 and the City of Dallas will be responsible for the total project costs with a reimbursement by TxDOT of 50% of the total project cost up to and not to exceed \$50,000.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Manager is hereby authorized to apply for and accept the FY 2018 grant (Grant No. M1818 DLEX) from the Texas Department of Transportation Aviation Division in an amount not to exceed \$50,000 or 50% of eligible project costs, whichever is less, related to the Routine Annual Maintenance Program (RAMP); provide a local cash match in the amount of \$50,000 for airport maintenance projects; and sign the grant agreement with the Texas Department of Transportation, approved as to form by the City Attorney.

**SECTION 2.** That the City Manager is hereby authorized to establish appropriations in an amount not to exceed \$50,000 in the TxDOT 2018 Routine Airport Maintenance-RAMP Project Fund, Fund S320, Department AVI, Unit 3567, Object 3099.

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**SECTION 3.** That the Chief Financial Officer is hereby authorized to receive and deposit the grant reimbursements in an amount not to exceed \$50,000 in the TxDOT 2018 Routine Airport Maintenance-RAMP Project Fund, Fund S320, Department AVI, Unit 3567, Revenue Source 6516.

**SECTION 4.** That the City Manager is hereby authorized to increase appropriations in an amount not to exceed \$50,000 in the Aviation Current Fund, Fund 0130 Department AVI, Unit 7731, Object 3099 and Object 5011 for the approved amount by TxDOT for each fiscal year reimbursement.

**SECTION 5.** That the Chief Financial Officer is hereby authorized to reimburse the Aviation Current Fund, Fund 0130, Department AVI, Unit 7731, Object 5011 from the TxDOT 2018 Routine Airport Maintenance-RAMP Project Fund, Fund S320, Department AVI, Unit 3567, Object 3099 for the amount that is approved by TxDOT for reimbursement not to exceed \$50,000.

**SECTION 6.** That the City Manager is hereby authorized to reimburse the granting agency any expenditure identified as ineligible and notify the appropriate City Council Committee of expenditures identified as ineligible not later than 30 days after the reimbursement.

**SECTION 7.** That the City Manager shall keep the appropriate City Council Committee informed of all final granting agency monitoring reports not later than 30 days after the receipt of the report.

**SECTION 8.** That this contract is designated as Contract No. AVI-2018-00005383.

**SECTION 9.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**AGENDA ITEM # 9**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** N/A

**DEPARTMENT:** Department of Sanitation Services

**CMO:** Jody Puckett, 670-3390

**MAPSCO:** N/A

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**SUBJECT**

Authorize consent to a transfer of control of 100 percent of the ownership interests of Hart Waste Removal, L.P., a solid waste franchisee, from JHart Enterprises, L.C., a Texas limited liability company, formerly known as Hart Brothers Waste Removal, L.P., its general partner, and Jeffrey L. Hart, Jerry K. Hart and Jack M. Hart, Jr., its limited partners (the “Hart Owners”) to Ash Creek GP, LLC and Zach Whitt, in accordance with the terms of the franchise ordinance, Chapter XIV of the City Charter and Chapter 18, Article IV, of the Dallas City Code - Financing: No cost consideration to the City

**BACKGROUND**

Hart Waste Removal, L.P., a Texas limited partnership, (“Hart Waste”) formerly known as Hart Brothers Waste Removal, L.P., holds a solid waste disposal franchise pursuant to Ordinance No. 26640, adopted by the City Council on March 28, 2007 (“the Ordinance”), for use of the city streets to operate a solid waste collection service, in accordance with the regulations of Chapter XIV of the City Charter and Chapter 18, Article IV, of the Dallas City Code.

On October 31, 2017, Hart Waste gave notice that its owner, JHart Enterprises, L.C., a Texas limited liability company, formerly known as Hart Brothers Waste Removal, L.P., its general partner, and Jeffrey L. Hart, Jerry K. Hart and Jack M. Hart, Jr. had entered into an interest purchase agreement with Ash Creek GP, LLC and Zach Whitt for the purchase of 100 percent of the ownership interests of Hart Waste with a closing date of November 16, 2017. Section 8 of the Ordinance requires that there shall be no transfer or acquisition of control of the franchisee without the prior written consent of the City Council.

## **BACKGROUND** (continued)

Before the City Council shall give its consent, Ash Creek GP, LLC and Zach Whitt, the proposed transferee of the ownership interests, and Hart Waste Removal, L.P., the franchisee, shall provide the Director of the Department of Sanitation Services with certain materials:

1. A written agreement to comply with, and accept all terms of the Ordinance;
2. Evidence of insurance required by the Ordinance;
3. The legal name and address of the transferee, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notice;
4. Payment of outstanding franchise fees and any other fees, taxes and payments, including fees, interest and penalties, due from franchisee to the City; and
5. Evidence satisfactory to the Director of the Department of Sanitation Services that the transferee has the legal, technical and financial ability to properly perform and discharge all obligations and liabilities of the Ordinance.

On November 17, 2017, the materials were provided, and the City is not waiving its right to audit the monthly and annual reports to determine that the amounts owed to the City have been correctly calculated and paid, therefore, the Director of the Department of Sanitation Services recommends that the City Council consent to the change of control of Hart Waste Removal, L.P.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On March 28, 2007, City Council granted a franchise to operate a solid waste collection service, pursuant to Chapter XIV of the City Charter, and Chapter 18, Article IV, of the Dallas City Code, to Hart Waste Removal, L.P. by Resolution No. 07-1000; Ordinance No. 26640. The franchise was accepted by the franchisee and became effective on March 28, 2007.

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

## **FISCAL INFORMATION**

No cost consideration to the City.

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**WHEREAS**, Hart Waste Removal, L.P., a Texas limited partnership, ("Hart Waste") holds a solid waste disposal franchise pursuant to Ordinance No. 26640 adopted by the City Council on March 28, 2007 ("the Ordinance"), for use of the city streets to operate a solid waste collection service, in accordance with the regulations of Chapter XIV of the City Charter and Chapter 18, Article IV, of the Dallas City Code; and

**WHEREAS**, Section 8, **Transfers of ownership and control**, of Subsection (c), **Transfer of control**, of the Ordinance requires the prior written consent of the City Council for a transfer or acquisition of control of the franchisee; and

**WHEREAS**, on October 31, 2017, Hart Waste gave notice that its owner, JHart Enterprises, L. C., a Texas limited liability company, its general partner, and Jeffrey L. Hart, Jerry K. Hart and Jack M. Hart, Jr., its limited partners (the "Hart Owners"), had entered into an interest purchase agreement with Ash Creek GP, LLC and Zach Whitt for the purchase of 100 percent of the ownership interests of the Hart Owners which closed on November 16, 2017; and

**WHEREAS**, Hart Waste submitted a complete and accurate application for consent on November 17, 2017, and Hart Waste has complied with the City's approval requirements of the Ordinance, except for obtaining City Council approval prior to the close of the transaction; and

**WHEREAS**, the City Council has 120 days from the date of submission of a complete and accurate application to act upon the application for consent, and the City Council shall not unreasonably withhold its consent, but the City Council may grant such consent with conditions which it finds are necessary to ensure performance by Hart Waste under the Ordinance; and

**WHEREAS**, due to the representation by Hart Waste that economic circumstances prevented the delay of the transfer until City Council consent was obtained, the Director of the Department of Sanitation Services requests that the City Council approve the transfer of control with the understanding that the City Council's granting of consent in this one instance shall not require it to grant consent in other instances.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Council consents to the transfer of control of 100 percent of the ownership interest of Hart Waste Removal, L.P., a solid waste franchisee, from the Hart Owners, to Ash Creek GP, LLC and Zach Whitt.

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**SECTION 2.** That nothing in this consent shall be construed to waive or release any rights of the City of Dallas to require prior written consent of the City Council for any transfer of control, acquisition, or assignment of any solid waste franchise ordinance granted by the City Council or to the right to audit and to require payment of any past due fees owed to the City.

**SECTION 3.** That the granting of this consent by the City Council does not authorize future transfers of control, acquisition, or assignment by Hart Waste Removal, L. P., or Ash Creek GP, LLC and Zach Whitt without first obtaining the prior consent of the City Council.

**SECTION 4.** That this contract is designated as Contract No. SAN-2018-00005007.

**SECTION 5.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**AGENDA ITEM # 10**

**STRATEGIC PRIORITY:** Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** N/A

**DEPARTMENT:** Department of Sanitation Services

**CMO:** Jody Puckett, 670-3390

**MAPSCO:** N/A

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**SUBJECT**

Authorize ordinances granting five franchises for solid waste collection and hauling, pursuant to Chapter XIV, of the City Charter, and Chapter 18, Article IV, of the Dallas City Code (list attached) - Estimated Annual Revenue: \$16,032

**BACKGROUND**

Each solid waste hauler operating in Dallas must apply for and receive a franchise to operate a solid waste collection service in the city. For a company to be submitted to City Council for franchise consideration, Sanitation Services requires the company to meet certain preliminary minimum provisions before a franchise application will be considered. Preliminary provisions include providing proof of meeting minimum insurance requirements, confirmation that the company is registered to do business in the State of Texas, the company's intent to pick up and haul solid waste in the City of Dallas, a list of vehicles that are code compliant, payment of all city taxes (if applicable) and no past history by principals of the company operating a franchised hauling business as a principal that went out of business owing the City franchise fees or disposal fees. These businesses have met all of the preliminary requirements to be considered for a franchise ordinance.

These franchise ordinances, like the franchisees adopted since January 25, 2017, require the City to approve transfer of ownership or sale of assets in accordance with the City Charter, have tightened reporting and payment provisions for franchisees, require strict compliance with annual certificate of insurance renewal submissions, are for a franchise term of five years, and allow the City Council to amend the franchise, if needed, more easily and have a clearer acceptance process.

## **BACKGROUND** (continued)

There are currently 229 approved franchise ordinances in Dallas. As part of the franchise agreement, franchisees shall pay a fee of not less than four percent of the gross receipts resulting from the operation of the solid waste collection service within the City.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On September 27, 2006, City Council authorized an amendment to Chapter 18 of the Dallas City Code to revise fees for private solid waste haulers and establish a franchise fee method for regulating solid waste haulers by Resolution No. 06-2638; Ordinance No. 26480.

On October 12, 2015, the Quality of Life & Environment Committee was provided information regarding changes to ordinances related to new solid waste collection service franchise agreements.

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

## **FISCAL INFORMATION**

Estimated Annual Revenue - \$16,032

### **Franchises for Solid Waste Collection Services**

<b><u>Proposed Franchise Haulers</u></b>	<b><u>Estimated Annual Franchise Revenue</u></b>
Antonio Esquivel, Owner - dba A & A Construction Company	\$ 4,800.00
Cowboy and Sons, LLC - dba Cowboy Trucking	\$ 1,152.00
G.L. Morris Enterprises, Inc. - dba Sunbelt Industrial Services	\$ 1,440.00
Royalty Recycling & Waste, LLC	\$ 1,440.00
Sun Drywall, Limited Liability Company	<u>\$ 7,200.00</u>
Total	\$16,032.00

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a franchise to Antonio Esquivel, Owner, d/b/a A & A Construction Company, a sole proprietorship, with its principal address at 11271 Mosier Valley Road, Euless, Texas 76040, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the 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 liquidated damages 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.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment that contributes substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

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 preamble 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 means 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 means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means 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 franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. 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 city by its charter or by general law relating to the administration and enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, 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 means Antonio Esquivel, Owner, d/b/a A & A Construction Company, a sole proprietorship, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means 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 does not include property of 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.

(m) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

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, city hereby grants

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. 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, 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. Franchisee shall immediately notify 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 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. 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. Franchisee acknowledges and accepts at its own risk, provided that city has the

legal authority for the use or uses in question, that 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 franchisee's use of such public ways for the solid waste collection service, and in that event franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. 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 city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(f) Compliance with law and standards of operation. 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.

(g) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(h) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(i) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. 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.

(j) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that 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 franchisee has the non-exclusive right, to the extent permitted by this ordinance, to collect and transport solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Notwithstanding the exclusion for residential service, city reserves the right during the term of this franchise ordinance to collect and transport solid waste and other materials from any source whatsoever, including but not limited to apartment complexes, motels, and any commercial venue without any amendment or modification of this franchise ordinance. Franchisee shall, at its own expense, furnish personnel and equipment to collect and transport, solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by 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 franchisee. All vehicles and containers owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by 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, franchisee shall comply with the requirements for solid waste collection vehicles and containers contained in Sections 18-45 and 18-50 (b) of the Dallas City Code.

(c) 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 franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by the city or by other responsible governmental agencies having jurisdiction must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill, pursuant to Chapter 18 of the city code, as amended. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill in accordance with the Dallas City Code.

**SECTION 5. Indemnity and insurance.**

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS 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; 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 FRANCHISEE OR 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 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 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 FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING 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 CITY AND 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. 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 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 FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR 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, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with**

legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such matter on behalf of the indemnitees without 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 franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give 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. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense, provided that the participation has been requested or required by 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 city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, 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 city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 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.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become effective. Certificates of insurance reflecting the annual renewal, replacement insurance or coverage changes must be submitted when such policies become effective to provide evidence of continuing insurance coverage. Although certificates are routinely accepted as substitutes for copies of insurance policies, the city shall have the right to access and copy any such policy of insurance. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. 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 Office of Risk Management. Any adjustments shall be mutually agreeable to city and franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

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

#### SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by 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, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the "franchise fee").

(b) Payment procedures. Franchisee shall pay the franchise fee to 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 (30th) calendar 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, and in the month of February, the payment is due on February 28th. 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 received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of 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. Franchisee shall file with city by February 1 of each calendar year an annual report 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.

(d) City audit. City may audit franchisee (or any affiliate of 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 city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate prescribed in Section 2-1.1 of the Dallas City Code, c, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an

invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

**SECTION 7. Term; performance evaluation.**

(a) Term and extensions. The term of this ordinance shall be five (5) years from the effective date of this ordinance.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of 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 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 city and franchisee, city may schedule a performance evaluation no more often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

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

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (A) compliance of franchisee's vehicles with solid waste and air quality requirements;
- (B) customer service, including but not limited to a listing of customer complaints and their resolution;
- (C) history in regard to prompt and accurate payment of franchise fees;
- (D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

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

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

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. 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 franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. As provided in Chapter XIV, Section 2(5) of the Dallas City Charter, no franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred, or conveyed to any other person, firm, corporation, or other business entity without the consent of the city first had and obtained by ordinance or resolution, unless otherwise specifically provided in this franchise ordinance. If the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the city council when permission for merger is granted. Franchisee shall not directly or indirectly transfer or assign, in whole or in part, the

operation, management, ownership, 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 franchisee's employment contracts and other personnel decisions, nor shall it prohibit 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 franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five 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 franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of 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 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 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 60 days before such transfer occurs.

(2) 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 franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. 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 franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, 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 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 120 days, such application shall be deemed as consented to unless city and 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 franchisee or its successor under this 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 city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

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

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its

right to request that its attorney's fees and other costs be reimbursed by court order in any litigation 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, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (v) evidence satisfactory to the director that transferee has the legal, technical, and financial ability 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 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 franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

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

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

(4) Franchisee's failure or refusal to pay or cause to be paid any of 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 franchisee in which another party becomes entitled to possession of substantially all of 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 45 or more days following entry of the judgment.

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

(7) 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 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 franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) 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, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of 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) 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 city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before 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 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 liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this 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, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, 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 franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any objections or defenses 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 franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. 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 liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal 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 on a cash basis from any source derived at any location regardless of whether those receipts were earned entirely within the authorized area. 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 equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. 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 shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) 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 of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs, including attorney's fees; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law.

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

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the

balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. 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 city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, 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 city with respect to this letter of credit are in addition to all other rights and remedies of 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 city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) 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 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, franchisee shall pay \$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.

(f) Liquidated damages procedure. Liquidated damages 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 Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of 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 franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by 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, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. 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 franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) 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 city's public ways or is deemed to cause or constitute a nuisance.

## SECTION 11. Providing Information.

(a) Complete and accurate books required. 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. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or 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 single location in the Dallas-Fort Worth metropolitan area. 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 platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, 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 city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can be amended by an ordinance enacted by the council. Such action by council does not require the hearing procedures for revocation set forth in Subsection 10(4)(b) of this ordinance, but only the posting of an agenda item and the opportunity for speakers to be heard on the item.

(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 days after mailing.

### If to 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, Suite 200  
Dallas, Texas 75226

If to Franchisee:

Antonio Esquivel, Owner  
A & A Construction Company  
11271 Mosier Valley Road  
Euless, Texas 76040

Either city or 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 city or 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, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code 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 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 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. 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 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. Exclusive venue for any litigation that may be filed in connection with this ordinance shall be in Dallas County, Texas. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. 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 city or by any third person regarding any term or condition not expressed in this ordinance. 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. 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 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. 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, 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 franchisee or any of its affiliates to 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 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 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, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing the original with the city secretary and a copy with the director, in writing, within 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 franchisee before a notary public. If within 30 days after the date the council approves the ordinance, franchisee fails to (1) submit and file the properly executed acceptance, (2) pay all taxes due, and (3) submit the letter of credit and required certificate of insurance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to remedy the third party's clerical error. The director may prevent 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 franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for 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. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of 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 city pursuant to such powers. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard in a regular public meeting of the council considering the ordinance or amendment. Franchisee acknowledges that this is the extent of its rights to a hearing respecting franchise ordinance amendments under the charter.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by 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 franchisee or its affiliates.

(u) Recognition of city charter. 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 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 city from the existing license previously issued to 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 city are not paid by franchisee within 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 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 Subsection 5(e), Subsection 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:

LARRY E. CASTO, City Attorney

BY \_\_\_\_\_  
Assistant City Attorney

Passed February 14, 2018

## **Exhibit A**

### **INSURANCE COVERAGE REQUIRED**

SECTION C. Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at FRANCHISEE'S sole expense, insurance coverage in the following type(s) and amounts:

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

### **REQUIRED PROVISIONS**

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Sanitation Services, Attention: Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
  - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

### **CITY NOT LIABLE**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

**Exhibit B**

**Acceptance**

Antonio Esquivel, Owner, d/b/a A & A Construction Company, a sole proprietorship, 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. \_\_\_\_\_, passed on February 14, 2018.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2018.

**FRANCHISEE:**

Antonio Esquivel, Owner  
d/b/a A & A Construction Company  
a sole proprietorship

By: \_\_\_\_\_  
Antonio Esquivel, Owner

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by  
Antonio Esquivel, Owner of A & A Construction Company, a sole proprietorship, on behalf of  
himself as Owner.

( Seal)

\_\_\_\_\_  
Notary Public's Signature

**Exhibit C**  
**Affidavit of Ownership or Control**

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a franchise to Cowboy and Sons, LLC dba Cowboy Trucking, a Texas limited liability company, with its principal address at 5812 Whispering Cedar Drive, Dallas, Texas 75236, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the 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 liquidated damages 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.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment that contributes substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

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 preamble 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 means 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 means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means 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 franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. 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 city by its charter or by general law relating to the administration and enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, 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 means Cowboy and Sons, LLC dba Cowboy Trucking, a limited liability company, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means 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 does not include property of 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.

(m) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

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, city hereby grants

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. 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, 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. Franchisee shall immediately notify 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 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. 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. Franchisee acknowledges and accepts at its own risk, provided that city has the

legal authority for the use or uses in question, that 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 franchisee's use of such public ways for the solid waste collection service, and in that event franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. 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 city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(f) Compliance with law and standards of operation. 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.

(g) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(h) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(i) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. 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.

(j) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that 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 franchisee has the non-exclusive right, to the extent permitted by this ordinance, to collect and transport solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Notwithstanding the exclusion for residential service, city reserves the right during the term of this franchise ordinance to collect and transport solid waste and other materials from any source whatsoever, including but not limited to apartment complexes, motels, and any commercial venue without any amendment or modification of this franchise ordinance. Franchisee shall, at its own expense, furnish personnel and equipment to collect and transport, solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by 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 franchisee. All vehicles and containers owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by 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, franchisee shall comply with the requirements for solid waste collection vehicles and containers contained in Sections 18-45 and 18-50 (b) of the Dallas City Code.

(c) 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 franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by the city or by other responsible governmental agencies having jurisdiction must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill, pursuant to Chapter 18 of the city code, as amended. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill in accordance with the Dallas City Code.

**SECTION 5. Indemnity and insurance.**

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS 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; 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 FRANCHISEE OR 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 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 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 FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING 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 CITY AND 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. 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 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 FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR 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, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with**

legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such matter on behalf of the indemnitees without 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 franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give 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. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense, provided that the participation has been requested or required by 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 city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, 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 city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 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.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become effective. Certificates of insurance reflecting the annual renewal, replacement insurance or coverage changes must be submitted when such policies become effective to provide evidence of continuing insurance coverage. Although certificates are routinely accepted as substitutes for copies of insurance policies, the city shall have the right to access and copy any such policy of insurance. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. 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 Office of Risk Management. Any adjustments shall be mutually agreeable to city and franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

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

#### SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by 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, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the "franchise fee").

(b) Payment procedures. Franchisee shall pay the franchise fee to 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 (30th) calendar 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, and in the month of February, the payment is due on February 28th. 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 received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of 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. Franchisee shall file with city by February 1 of each calendar year an annual report 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.

(d) City audit. City may audit franchisee (or any affiliate of 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 city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate prescribed in Section 2-1.1 of the Dallas City Code, c, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an

invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

**SECTION 7. Term; performance evaluation.**

(a) Term and extensions. The term of this ordinance shall be five (5) years from the effective date of this ordinance.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of 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 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 city and franchisee, city may schedule a performance evaluation no more often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

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

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (A) compliance of franchisee's vehicles with solid waste and air quality requirements;
- (B) customer service, including but not limited to a listing of customer complaints and their resolution;
- (C) history in regard to prompt and accurate payment of franchise fees;
- (D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

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

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

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. 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 franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. As provided in Chapter XIV, Section 2(5) of the Dallas City Charter, no franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred, or conveyed to any other person, firm, corporation, or other business entity without the consent of the city first had and obtained by ordinance or resolution, unless otherwise specifically provided in this franchise ordinance. If the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the city council when permission for merger is granted. Franchisee shall not directly or indirectly transfer or assign, in whole or in part, the

operation, management, ownership, 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 franchisee's employment contracts and other personnel decisions, nor shall it prohibit 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 franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five 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 franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of 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 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 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 60 days before such transfer occurs.

(2) 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 franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. 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 franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, 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 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 120 days, such application shall be deemed as consented to unless city and 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 franchisee or its successor under this 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 city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

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

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its

right to request that its attorney's fees and other costs be reimbursed by court order in any litigation 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, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (v) evidence satisfactory to the director that transferee has the legal, technical, and financial ability 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 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 franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

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

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

(4) Franchisee's failure or refusal to pay or cause to be paid any of 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 franchisee in which another party becomes entitled to possession of substantially all of 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 45 or more days following entry of the judgment.

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

(7) 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 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 franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) 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, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of 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) 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 city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before 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 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 liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this 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, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, 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 franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any objections or defenses 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 franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. 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 liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal 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 on a cash basis from any source derived at any location regardless of whether those receipts were earned entirely within the authorized area. 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 equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. 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 shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) 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 of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs, including attorney's fees; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law.

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

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the

balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. 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 city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, 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 city with respect to this letter of credit are in addition to all other rights and remedies of 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 city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) 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 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, franchisee shall pay \$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.

(f) Liquidated damages procedure. Liquidated damages 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 Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of 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 franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by 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, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. 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 franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) 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 city's public ways or is deemed to cause or constitute a nuisance.

## SECTION 11. Providing Information.

(a) Complete and accurate books required. 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. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or 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 single location in the Dallas-Fort Worth metropolitan area. 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 platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, 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 city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can be amended by an ordinance enacted by the council. Such action by council does not require the hearing procedures for revocation set forth in Subsection 10(4)(b) of this ordinance, but only the posting of an agenda item and the opportunity for speakers to be heard on the item.

(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 days after mailing.

### If to 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, Suite 200  
Dallas, Texas 75226

If to Franchisee:

Romona M. Diaz, Co-owner  
Cowboy and Sons, LLC  
dba Cowboy Trucking  
5812 Whispering Cedar Drive  
Dallas, Texas 75236

Elfego V. Diaz, Co-Owner  
Cowboy and Sons, LLC  
dba Cowboy Trucking  
5812 Whispering Cedar Drive  
Dallas, Texas 75236

Either city or 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 city or 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, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code 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 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 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. 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 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. Exclusive venue for any litigation that may be filed in connection with this ordinance shall be in Dallas County, Texas. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. 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 city or by any third person regarding any term or condition not expressed in this ordinance. 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. 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 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. 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, 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 franchisee or any of its affiliates to 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 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 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, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing the original with the city secretary and a copy with the director, in writing, within 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 franchisee before a notary public. If within 30 days after the date the council approves the ordinance, franchisee fails to (1) submit and file the properly executed acceptance, (2) pay all taxes due, and (3) submit the letter of credit and required certificate of insurance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to

remedy the third party's clerical error. The director may prevent 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 franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for 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. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of 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 city pursuant to such powers. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard in a regular public meeting of the council considering the ordinance or amendment. Franchisee acknowledges that this is the extent of its rights to a hearing respecting franchise ordinance amendments under the charter.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by 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 franchisee or its affiliates.

(u) Recognition of city charter. 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 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 city from the existing license previously issued to 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 city are not paid by franchisee within 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 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 Subsection 5(e), Subsection 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:

LARRY E. CASTO, City Attorney

BY \_\_\_\_\_  
Assistant City Attorney

Passed February 14, 2018

## **Exhibit A**

### **INSURANCE COVERAGE REQUIRED**

SECTION C. Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at FRANCHISEE'S sole expense, insurance coverage in the following type(s) and amounts:

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

### **REQUIRED PROVISIONS**

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Sanitation Services, Attention: Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
  - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

### **CITY NOT LIABLE**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

**Exhibit B**  
**Acceptance**

Cowboy and Sons, LLC dba Cowboy Trucking, a Texas limited liability company, 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. \_\_\_\_\_, passed on February 14, 2018.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2018.

**FRANCHISEE:**

Cowboy and Sons, LLC  
dba Cowboy Trucking,  
a Texas limited liability company

By: \_\_\_\_\_  
Romona M. Diaz, Co-Owner

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Romona M. Diaz, Co-Owner of Cowboy and Sons, LLC dba Cowboy Trucking, a Texas limited liability company, on behalf of said company.

(Seal)

\_\_\_\_\_  
Notary Public's Signature

By: \_\_\_\_\_  
Elfego V. Diaz, Co-Owner

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Elfego V. Diaz, Co-Owner of Cowboy and Sons, LLC dba Cowboy Trucking, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_(Seal)

\_\_\_\_\_  
Notary Public's Signature

**Exhibit C**  
**Affidavit of Ownership or Control**

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a franchise to G.L. Morris Enterprises, Inc. dba Sunbelt Industrial Services, a Texas corporation, with its principal address at 2415 Cullen Street, Fort Worth, Texas 76107, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the 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 liquidated damages 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.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment that contributes substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

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 preamble 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 means 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 means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means 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 franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. 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 city by its charter or by general law relating to the administration and enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, 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 means G.L. Morris Enterprises, Inc. dba Sunbelt Industrial Services, a Texas corporation, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means 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 does not include property of 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.

(m) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

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, city hereby grants

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. 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, 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. Franchisee shall immediately notify 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 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. 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. Franchisee acknowledges and accepts at its own risk, provided that city has the

legal authority for the use or uses in question, that 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 franchisee's use of such public ways for the solid waste collection service, and in that event franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. 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 city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(f) Compliance with law and standards of operation. 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.

(g) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(h) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(i) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. 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.

(j) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that 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 franchisee has the non-exclusive right, to the extent permitted by this ordinance, to collect and transport solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Notwithstanding the exclusion for residential service, city reserves the right during the term of this franchise ordinance to collect and transport solid waste and other materials from any source whatsoever, including but not limited to apartment complexes, motels, and any commercial venue without any amendment or modification of this franchise ordinance. Franchisee shall, at its own expense, furnish personnel and equipment to collect and transport, solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by 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 franchisee. All vehicles and containers owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by 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, franchisee shall comply with the requirements for solid waste collection vehicles and containers contained in Sections 18-45 and 18-50 (b) of the Dallas City Code.

(c) 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 franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by the city or by other responsible governmental agencies having jurisdiction must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill, pursuant to Chapter 18 of the city code, as amended. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill in accordance with the Dallas City Code.

## **SECTION 5. Indemnity and insurance.**

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS 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; 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 FRANCHISEE OR 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 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 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 FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING 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 CITY AND 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. 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 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 FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR 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, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such

matter on behalf of the indemnitees without 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 franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give 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. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense, provided that the participation has been requested or required by 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 city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, 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 city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all

endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 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.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become effective. Certificates of insurance reflecting the annual renewal, replacement insurance or coverage changes must be submitted when such policies become effective to provide evidence of continuing insurance coverage. Although certificates are routinely accepted as substitutes for copies of insurance policies, the city shall have the right to access and copy any such policy of insurance. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. 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 Office of Risk Management. Any adjustments shall be mutually agreeable to city and

franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

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

#### SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by 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, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the "franchise fee").

(b) Payment procedures. Franchisee shall pay the franchise fee to 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 (30th) calendar 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, and in the month of

February, the payment is due on February 28th. 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 received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of 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. Franchisee shall file with city by February 1 of each calendar year an annual report 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.

(d) City audit. City may audit franchisee (or any affiliate of 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 city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate prescribed in Section 2-1.1 of the Dallas City Code, c, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed

for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

**SECTION 7. Term; performance evaluation.**

(a) Term and extensions. The term of this ordinance shall be five (5) years from the effective date of this ordinance.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of 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 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 city and franchisee, city may schedule a performance evaluation no more often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

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

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of

franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (A) compliance of franchisee's vehicles with solid waste and air quality requirements;
- (B) customer service, including but not limited to a listing of customer complaints and their resolution;
- (C) history in regard to prompt and accurate payment of franchise fees;
- (D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

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

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

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city

proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. 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 franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. As provided in Chapter XIV, Section 2(5) of the Dallas City Charter, no franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred, or conveyed to any other person, firm, corporation, or other business entity without the consent of the city first had and obtained by ordinance or resolution, unless otherwise specifically provided in this franchise ordinance. If the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the city council when permission for merger is granted. Franchisee shall not directly or indirectly transfer or assign, in whole or in part, the operation, management, ownership, 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 franchisee's employment contracts and other personnel decisions, nor shall it prohibit 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 franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five 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 franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of 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 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 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 60 days before such transfer occurs.

(2) 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 franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. 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 franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, 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 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 120 days, such application shall be deemed as consented to unless city and 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 franchisee or its successor under this 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 city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

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

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its right to request that its attorney's fees and other costs be reimbursed by court order in any litigation 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, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (v) evidence satisfactory to the director that transferee has the legal, technical, and financial ability 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 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 franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

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

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

(4) Franchisee's failure or refusal to pay or cause to be paid any of 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 franchisee in which another party becomes entitled to possession of substantially all of 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 45 or more days following entry of the judgment.

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

(7) 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 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 franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) 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, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of 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) 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 city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before 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 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 liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this 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, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, 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 franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any objections or defenses 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 franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. 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 liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal 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 on a cash basis from any source derived at any location regardless of whether those receipts were earned entirely within the authorized area. 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 equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. 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 shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) 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 of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs, including attorney's fees; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law.

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

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the

balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. 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 city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, 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 city with respect to this letter of credit are in addition to all other rights and remedies of 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 city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) 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 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, franchisee shall pay \$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.

(f) Liquidated damages procedure. Liquidated damages 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 Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of 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 franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by 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, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. 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 franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) 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 city's public ways or is deemed to cause or constitute a nuisance.

## SECTION 11. Providing Information.

(a) Complete and accurate books required. 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. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or 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 single location in the Dallas-Fort Worth metropolitan area. 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 platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, 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 city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can be amended by an ordinance enacted by the council. Such action by council does not require the hearing procedures for revocation set forth in Subsection 10(4)(b) of this ordinance, but only the posting of an agenda item and the opportunity for speakers to be heard on the item.

(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 days after mailing.

### If to 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, Suite 200  
Dallas, Texas 75226

If to Franchisee:

Marla K. Murphy, President  
G.L. Morris Enterprises, Inc.  
dba Sunbelt Industrial Services  
2415 Cullen Street  
Fort Worth, Texas 76107

Either city or 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 city or 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, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code 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 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 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. 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 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. Exclusive venue for any litigation that may be filed in connection with this ordinance shall be in Dallas County, Texas. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. 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 city or by any third person regarding any term or condition not expressed in this ordinance. 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. 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 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. 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, 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 franchisee or any of its affiliates to 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 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 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, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing the original with the city secretary and a copy with the director, in writing, within 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 franchisee before a notary public. If within 30 days after the date the council approves the ordinance, franchisee fails to (1) submit and file the properly executed acceptance, (2) pay all taxes due, and (3) submit the letter of credit and required certificate of insurance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to remedy the third party's clerical error. The director may prevent 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 franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for 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. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of 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 city pursuant to such powers. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard in a regular public meeting of the council considering the ordinance or amendment. Franchisee acknowledges that this is the extent of its rights to a hearing respecting franchise ordinance amendments under the charter.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by 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 franchisee or its affiliates.

(u) Recognition of city charter. 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 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 city from the existing license previously issued to 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 city are not paid by franchisee within 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 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 Subsection 5(e), Subsection 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:

LARRY E. CASTO, City Attorney

BY \_\_\_\_\_  
Assistant City Attorney

Passed February 14, 2018

## **Exhibit A**

### **INSURANCE COVERAGE REQUIRED**

SECTION C. Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at FRANCHISEE'S sole expense, insurance coverage in the following type(s) and amounts:

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

### **REQUIRED PROVISIONS**

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Sanitation Services, Attention: Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
  - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

### **CITY NOT LIABLE**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

**Exhibit B**

**Acceptance**

G.L. Morris Enterprises, Inc. dba Sunbelt Industrial Services, a Texas corporation, 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. \_\_\_\_\_, passed on February 14, 2018.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2018.

FRANCHISEE:

G.L. Morris Enterprises, Inc.  
dba Sunbelt Industrial Services,  
a Texas corporation

By: \_\_\_\_\_  
Marla K. Murphy, President

State of Texas  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Marla K. Murphy, President of G.L. Morris Enterprises, Inc. dba Sunbelt Industrial Services, a Texas, on behalf of said corporation.

(Seal)

\_\_\_\_\_  
Notary Public's Signature

**Exhibit C**  
**Affidavit of Ownership or Control**

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a franchise to Royalty Recycling & Waste, LLC, a Texas limited liability company, with its principal address at 1316 Flanders Street, Dallas, Texas 75208, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the 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 liquidated damages 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.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment that contributes substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

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 preamble 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 means 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 means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means 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 franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. 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 city by its charter or by general law relating to the administration and enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, 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 means Royalty Recycling & Waste, LLC, a Texas limited liability company, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means 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 does not include property of 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.

(m) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

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, city hereby grants

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. 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, 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. Franchisee shall immediately notify 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 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. 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. Franchisee acknowledges and accepts at its own risk, provided that city has the

legal authority for the use or uses in question, that 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 franchisee's use of such public ways for the solid waste collection service, and in that event franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. 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 city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(f) Compliance with law and standards of operation. 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.

(g) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(h) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(i) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. 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.

(j) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that 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 franchisee has the non-exclusive right, to the extent permitted by this ordinance, to collect and transport solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Notwithstanding the exclusion for residential service, city reserves the right during the term of this franchise ordinance to collect and transport solid waste and other materials from any source whatsoever, including but not limited to apartment complexes, motels, and any commercial venue without any amendment or modification of this franchise ordinance. Franchisee shall, at its own expense, furnish personnel and equipment to collect and transport, solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by 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 franchisee. All vehicles and containers owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by 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, franchisee shall comply with the requirements for solid waste collection vehicles and containers contained in Sections 18-45 and 18-50 (b) of the Dallas City Code.

(c) 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 franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by the city or by other responsible governmental agencies having jurisdiction must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill, pursuant to Chapter 18 of the city code, as amended. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill in accordance with the Dallas City Code.

**SECTION 5. Indemnity and insurance.**

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS 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; 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 FRANCHISEE OR 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 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 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 FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING 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 CITY AND 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. 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 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 FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR 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, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with**

legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such matter on behalf of the indemnitees without 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 franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give 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. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense, provided that the participation has been requested or required by 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 city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, 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 city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 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.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become effective. Certificates of insurance reflecting the annual renewal, replacement insurance or coverage changes must be submitted when such policies become effective to provide evidence of continuing insurance coverage. Although certificates are routinely accepted as substitutes for copies of insurance policies, the city shall have the right to access and copy any such policy of insurance. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. 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 Office of Risk Management. Any adjustments shall be mutually agreeable to city and franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

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

#### SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by 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, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the "franchise fee").

(b) Payment procedures. Franchisee shall pay the franchise fee to 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 (30th) calendar 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, and in the month of February, the payment is due on February 28th. 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 received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of 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. Franchisee shall file with city by February 1 of each calendar year an annual report 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.

(d) City audit. City may audit franchisee (or any affiliate of 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 city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate prescribed in Section 2-1.1 of the Dallas City Code, c, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an

invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

**SECTION 7. Term; performance evaluation.**

(a) Term and extensions. The term of this ordinance shall be five (5) years from the effective date of this ordinance.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of 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 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 city and franchisee, city may schedule a performance evaluation no more often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

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

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (A) compliance of franchisee's vehicles with solid waste and air quality requirements;
- (B) customer service, including but not limited to a listing of customer complaints and their resolution;
- (C) history in regard to prompt and accurate payment of franchise fees;
- (D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

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

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

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. 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 franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. As provided in Chapter XIV, Section 2(5) of the Dallas City Charter, no franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred, or conveyed to any other person, firm, corporation, or other business entity without the consent of the city first had and obtained by ordinance or resolution, unless otherwise specifically provided in this franchise ordinance. If the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the city council when permission for merger is granted. Franchisee shall not directly or indirectly transfer or assign, in whole or in part, the

operation, management, ownership, 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 franchisee's employment contracts and other personnel decisions, nor shall it prohibit 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 franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five 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 franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of 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 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 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 60 days before such transfer occurs.

(2) 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 franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. 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 franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, 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 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 120 days, such application shall be deemed as consented to unless city and 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 franchisee or its successor under this 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 city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

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

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its

right to request that its attorney's fees and other costs be reimbursed by court order in any litigation 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, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (v) evidence satisfactory to the director that transferee has the legal, technical, and financial ability 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 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 franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

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

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

(4) Franchisee's failure or refusal to pay or cause to be paid any of 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 franchisee in which another party becomes entitled to possession of substantially all of 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 45 or more days following entry of the judgment.

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

(7) 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 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 franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) 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, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of 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) 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 city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before 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 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 liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this 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, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, 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 franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any objections or defenses 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 franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. 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 liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal 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 on a cash basis from any source derived at any location regardless of whether those receipts were earned entirely within the authorized area. 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 equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. 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 shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) 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 of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs, including attorney's fees; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law.

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

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the

balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. 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 city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, 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 city with respect to this letter of credit are in addition to all other rights and remedies of 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 city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) 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 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, franchisee shall pay \$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.

(f) Liquidated damages procedure. Liquidated damages 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 Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of 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 franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by 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, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. 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 franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) 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 city's public ways or is deemed to cause or constitute a nuisance.

## SECTION 11. Providing Information.

(a) Complete and accurate books required. 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. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or 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 single location in the Dallas-Fort Worth metropolitan area. 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 platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, 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 city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can be amended by an ordinance enacted by the council. Such action by council does not require the hearing procedures for revocation set forth in Subsection 10(4)(b) of this ordinance, but only the posting of an agenda item and the opportunity for speakers to be heard on the item.

(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 days after mailing.

### If to 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, Suite 200  
Dallas, Texas 75226

If to Franchisee:

Juan C. Flores, Co-Owner  
Royalty Recycling & Waste, LLC  
1316 Flanders Street  
Dallas, Texas 75208

Juan M. Perez Maldonado, Co-Owner  
Royalty Recycling & Waste, LLC  
1316 Flanders Street  
Dallas, Texas 75208

Either city or 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 city or 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, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code 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 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 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. 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 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. Exclusive venue for any litigation that may be filed in connection with this ordinance shall be in Dallas County, Texas. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. 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 city or by any third person regarding any term or condition not expressed in this ordinance. 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. 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 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. 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, 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 franchisee or any of its affiliates to 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 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 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, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing the original with the city secretary and a copy with the director, in writing, within 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 franchisee before a notary public. If within 30 days after the date the council approves the ordinance, franchisee fails to (1) submit and file the properly executed acceptance, (2) pay all taxes due, and (3) submit the letter of credit and required certificate of insurance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to

remedy the third party's clerical error. The director may prevent 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 franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for 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. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of 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 city pursuant to such powers. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard in a regular public meeting of the council considering the ordinance or amendment. Franchisee acknowledges that this is the extent of its rights to a hearing respecting franchise ordinance amendments under the charter.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by 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 franchisee or its affiliates.

(u) Recognition of city charter. 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 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 city from the existing license previously issued to 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 city are not paid by franchisee within 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 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 Subsection 5(e), Subsection 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:

LARRY E. CASTO, City Attorney

BY \_\_\_\_\_  
Assistant City Attorney

Passed February 14, 2018

## **Exhibit A**

### **INSURANCE COVERAGE REQUIRED**

SECTION C. Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at FRANCHISEE'S sole expense, insurance coverage in the following type(s) and amounts:

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

### **REQUIRED PROVISIONS**

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Sanitation Services, Attention: Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
  - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

### **CITY NOT LIABLE**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

**Exhibit B**  
**Acceptance**

Royalty Recycling & Waste, LLC, a Texas limited liability company, 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. \_\_\_\_\_, passed on February 14, 2018.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2018.

FRANCHISEE:

Royalty Recycling & Waste, LLC  
a Texas limited liability company

By: \_\_\_\_\_  
Juan C. Flores, Co-Owner

State of Texas  
County of Dallas

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Juan C. Flores, a Co-Owner of Royalty Recycling & Waste, LLC, a Texas limited liability company, on behalf of said company.

( Seal)

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Notary Public's Signature

By: \_\_\_\_\_  
Juan M. Perez Maldonado, Co-Owner

State of Texas  
County of Dallas

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Juan M. Perez Maldonado, a Co-Owner of Royalty Recycling & Waste, LLC, a Texas limited liability company, on behalf of said company.

( Seal)

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Notary Public's Signature

**Exhibit C**  
**Affidavit of Ownership or Control**

01-03-2018

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a franchise to Sun Drywall Limited Liability Company, a Texas limited liability company, with its principal address at 10314 Brockwood Road, Dallas, Texas 75238, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the 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 liquidated damages 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.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment that contributes substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

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 preamble 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 means 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 means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means 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 franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. 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 city by its charter or by general law relating to the administration and enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, 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 means Sun Drywall Limited Liability Company, a Texas limited liability company, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means 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 does not include property of 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.

(m) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

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, city hereby grants

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. 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, 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. Franchisee shall immediately notify 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 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. 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. Franchisee acknowledges and accepts at its own risk, provided that city has the

legal authority for the use or uses in question, that 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 franchisee's use of such public ways for the solid waste collection service, and in that event franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. 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 city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(f) Compliance with law and standards of operation. 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.

(g) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(h) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(i) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. 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.

(j) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that 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 franchisee has the non-exclusive right, to the extent permitted by this ordinance, to collect and transport solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Notwithstanding the exclusion for residential service, city reserves the right during the term of this franchise ordinance to collect and transport solid waste and other materials from any source whatsoever, including but not limited to apartment complexes, motels, and any commercial venue without any amendment or modification of this franchise ordinance. Franchisee shall, at its own expense, furnish personnel and equipment to collect and transport, solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by 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 franchisee. All vehicles and containers owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by 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, franchisee shall comply with the requirements for solid waste collection vehicles and containers contained in Sections 18-45 and 18-50 (b) of the Dallas City Code.

(c) 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 franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by the city or by other responsible governmental agencies having jurisdiction must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill, pursuant to Chapter 18 of the city code, as amended. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an approved solid waste disposal, collection, or processing facility, transfer station or landfill in accordance with the Dallas City Code.

## **SECTION 5. Indemnity and insurance.**

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS 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; 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 FRANCHISEE OR 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 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 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 FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING 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 CITY AND 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. 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 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 FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR 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, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such

matter on behalf of the indemnitees without 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 franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give 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. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense, provided that the participation has been requested or required by 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 city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided the Indemnitees by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, 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 city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all

endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 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.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become effective. Certificates of insurance reflecting the annual renewal, replacement insurance or coverage changes must be submitted when such policies become effective to provide evidence of continuing insurance coverage. Although certificates are routinely accepted as substitutes for copies of insurance policies, the city shall have the right to access and copy any such policy of insurance. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. 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 Office of Risk Management. Any adjustments shall be mutually agreeable to city and

franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

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

#### SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by 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, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the "franchise fee").

(b) Payment procedures. Franchisee shall pay the franchise fee to 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 (30th) calendar 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, and in the month of

February, the payment is due on February 28th. 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 received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of 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. Franchisee shall file with city by February 1 of each calendar year an annual report 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.

(d) City audit. City may audit franchisee (or any affiliate of 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 city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate prescribed in Section 2-1.1 of the Dallas City Code, c, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed

for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

**SECTION 7. Term; performance evaluation.**

(a) Term and extensions. The term of this ordinance shall be five (5) years from the effective date of this ordinance.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of 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 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 city and franchisee, city may schedule a performance evaluation no more often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

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

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of

franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

- (A) compliance of franchisee's vehicles with solid waste and air quality requirements;
- (B) customer service, including but not limited to a listing of customer complaints and their resolution;
- (C) history in regard to prompt and accurate payment of franchise fees;
- (D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

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

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

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city

proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. 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 franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. As provided in Chapter XIV, Section 2(5) of the Dallas City Charter, no franchise, nor the assets held by the franchise holder, may be sold, assigned, transferred, or conveyed to any other person, firm, corporation, or other business entity without the consent of the city first had and obtained by ordinance or resolution, unless otherwise specifically provided in this franchise ordinance. If the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon terms and conditions as may be set out by the city council when permission for merger is granted. Franchisee shall not directly or indirectly transfer or assign, in whole or in part, the operation, management, ownership, 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 franchisee's employment contracts and other personnel decisions, nor shall it prohibit 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 franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five 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 franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of 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 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 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 60 days before such transfer occurs.

(2) 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 franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. 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 franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, 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 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 120 days, such application shall be deemed as consented to unless city and 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 franchisee or its successor under this 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 city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

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

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its right to request that its attorney's fees and other costs be reimbursed by court order in any litigation 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, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (v) evidence satisfactory to the director that transferee has the legal, technical, and financial ability 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 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 franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

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

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

(4) Franchisee's failure or refusal to pay or cause to be paid any of 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 franchisee in which another party becomes entitled to possession of substantially all of 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 45 or more days following entry of the judgment.

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

(7) 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 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 franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) 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, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of 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) 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 city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before 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 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 liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this 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, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, 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 franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any objections or defenses 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 franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. 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 liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal 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 on a cash basis from any source derived at any location regardless of whether those receipts were earned entirely within the authorized area. 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 equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. 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 shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) 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 of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs, including attorney's fees; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law.

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

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the

balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. 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 city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, 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 city with respect to this letter of credit are in addition to all other rights and remedies of 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 city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) 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 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, franchisee shall pay \$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.

(f) Liquidated damages procedure. Liquidated damages 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 Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of 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 franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by 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, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. 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 franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) 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 city's public ways or is deemed to cause or constitute a nuisance.

## SECTION 11. Providing Information.

(a) Complete and accurate books required. 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. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or 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 single location in the Dallas-Fort Worth metropolitan area. 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 platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, 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 city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can be amended by an ordinance enacted by the council. Such action by council does not require the hearing procedures for revocation set forth in Subsection 10(4)(b) of this ordinance, but only the posting of an agenda item and the opportunity for speakers to be heard on the item.

(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 days after mailing.

### If to 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, Suite 200  
Dallas, Texas 75226

If to Franchisee:

Yolanda Enriquez, Owner  
Sun Drywall Limited Liability Company  
10314 Brockwood Road  
Dallas, Texas 75238

Either city or 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 city or 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, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code 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 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 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. 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 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. Exclusive venue for any litigation that may be filed in connection with this ordinance shall be in Dallas County, Texas. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. 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 city or by any third person regarding any term or condition not expressed in this ordinance. 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. 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 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. 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, 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 franchisee or any of its affiliates to 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 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 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, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing the original with the city secretary and a copy with the director, in writing, within 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 franchisee before a notary public. If within 30 days after the date the council approves the ordinance, franchisee fails to (1) submit and file the properly executed acceptance, (2) pay all taxes due, and (3) submit the letter of credit and required certificate of insurance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to remedy the third party's clerical error. The director may prevent 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 franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for 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. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of 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 city pursuant to such powers. Any conflict between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard in a regular public meeting of the council considering the ordinance or amendment. Franchisee acknowledges that this is the extent of its rights to a hearing respecting franchise ordinance amendments under the charter.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by 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 franchisee or its affiliates.

(u) Recognition of city charter. 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 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 city from the existing license previously issued to 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 city are not paid by franchisee within 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 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 Subsection 5(e), Subsection 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:

LARRY E. CASTO, City Attorney

BY \_\_\_\_\_  
Assistant City Attorney

Passed February 14, 2018

## **Exhibit A**

### **INSURANCE COVERAGE REQUIRED**

SECTION C. Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at FRANCHISEE'S sole expense, insurance coverage in the following type(s) and amounts:

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

### **REQUIRED PROVISIONS**

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
  - (i) Sanitation Services, Attention: Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
  - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

### **CITY NOT LIABLE**

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

**Exhibit B**

**Acceptance**

Sun Drywall Limited Liability Company, a Texas limited liability company, 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. \_\_\_\_\_, passed on February 14, 2018.

Dated: \_\_\_\_ day of \_\_\_\_\_, 2018.

FRANCHISEE:

Sun Drywall Limited Liability Company,  
a Texas limited liability company

By: \_\_\_\_\_  
Yolanda Enriquez, Owner

State of Texas  
County of Dallas

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Yolanda Enriquez, owner of Sun Drywall Limited Liability Company, a Texas limited liability company, on behalf of said company.

( Seal)

\_\_\_\_\_  
Notary Public's Signature

**Exhibit C**  
**Affidavit of Ownership or Control**

**AGENDA ITEM # 11**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 2, 4, 5, 6, 7, 8

**DEPARTMENT:** Department of Sustainable Development and Construction

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 44 J 46 C U V X 55 F N Z 56 B C X 59 X 65 B 69 A N

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**SUBJECT**

Authorize **(1)** the quitclaim of 17 properties acquired by the taxing authorities from the Tax Foreclosure Sheriff's Sale that will be sold to the highest qualified bidders; and **(2)** the execution of release of liens for any non-tax liens that may have been filed by the City and were included in the foreclosure judgment (list attached) - Estimated Revenue: \$137,000

**BACKGROUND**

This item authorizes the quitclaim of 17 properties that were foreclosed by the Sheriff's Department for unpaid taxes pursuant to judgments or seizure warrants from a District Court and the release of liens for any non-tax liens that may have been filed by the City and were included in the foreclosure judgment. These properties will be sold to the highest qualified bidder and will return to the tax rolls upon conveyance.

Successful bidders will be required to sign a certification stating that they are not purchasing these properties on behalf of the foreclosed owners and that they have no debts owed to the City, no pending code violations, and are not chronic code violators.

All properties were reviewed by the Housing and Neighborhood Revitalization Department for infill houses and were not desired for that program.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

**FISCAL INFORMATION**

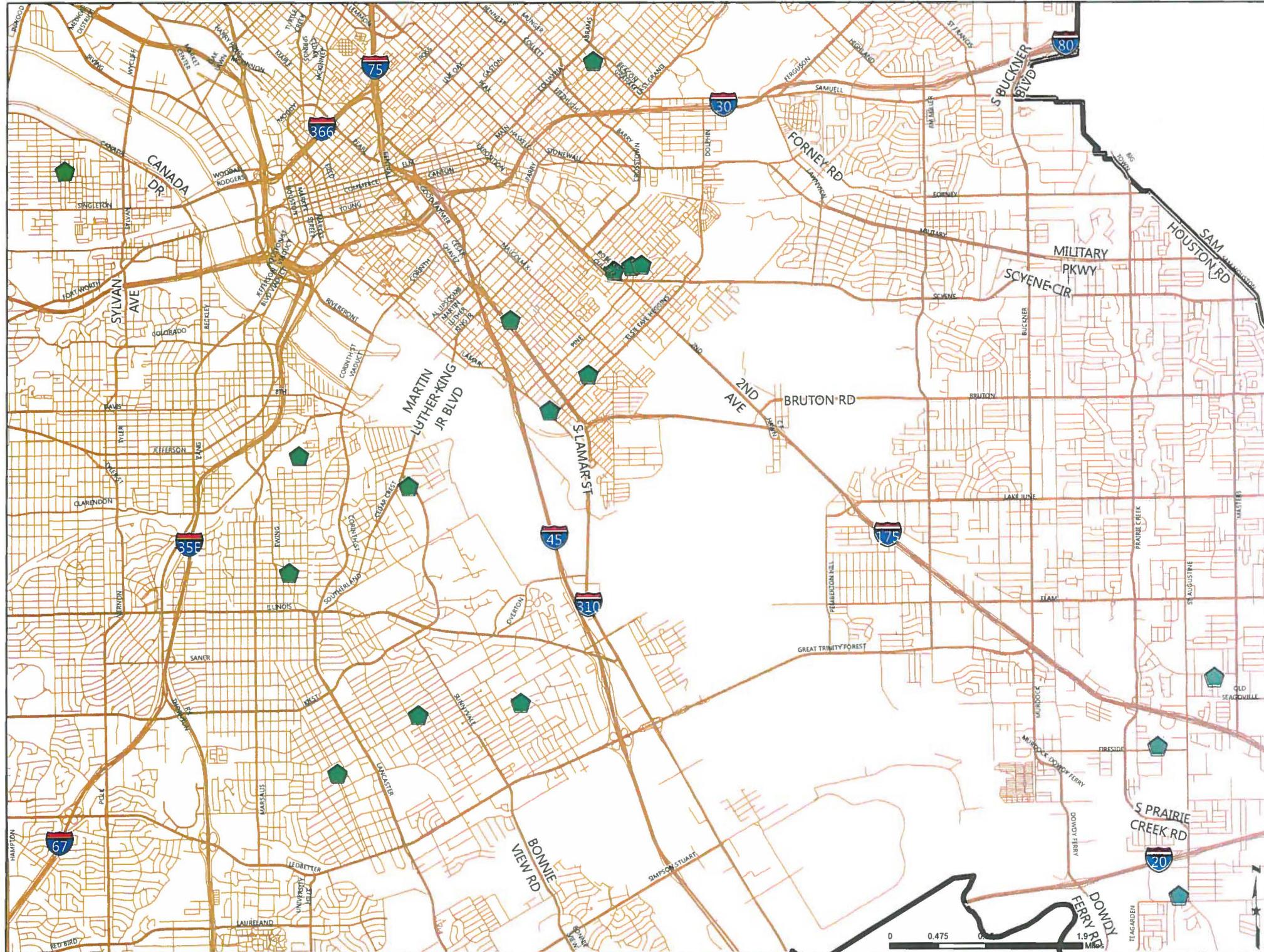
Estimated Revenue - \$137,000

**MAP**

Attached

**TAX FORECLOSED AND SEIZURE WARRANT PROPERTY RESALES  
PROPERTY LIST**

<b>ITEM #</b>	<b>STREET ADDRESS</b>	<b>VAC/ IMP</b>	<b>COUNCIL DISTRICT</b>	<b>ZONING</b>	<b>PARCEL SIZE</b>	<b>STRUCKOFF AMOUNT</b>	<b>DCAD</b>
1	5509 ALTON	V	2	D(A)	.2038	\$71,050.00	\$71,050.00
2	1619 BANNOCK	V	7	PD-595	.1721	\$6,750.00	\$6,750.00
3	3429 CHIHUAHUA	V	6	R5A	.1990	\$4,500.00	\$5,900.00
4	1205 COMPTON	V	4	LI	.0697	\$1,030.00	\$1,710.00
5	2721 CROSS	V	7	PD-595	.0646	\$16,960.00	\$2,500.00
6	1835 FERNWOOD	V	4	R-7.5(A)	.3498	\$19,500.00	\$22,500.00
7	1610 FORDHAM	V	4	R-7.5(A)	.2122	\$19,280.00	\$19,280.00
8	3514 FRANK	V	7	PD-595	.2806	\$25,070.00	\$7,500.00
9	3710 HAMILTON	I	7	PD-595	.1436	\$56,284.00	\$73,430.00
10	2411 JENNINGS	I	4	R-7.5(A)	.1482	\$34,010.00	\$37,560.00
11	3407 KIMBLE	V	7	PD-595	.0931	\$6,000.00	\$6,000.00
12	9515 MICKEY	V	8	R-10(A)	1.7530	\$22,380.00	\$29,750.00
13	9912 SEAGOVILLE	V	5	R-5(A)	.1370	\$27,241.00	\$9,000.00
14	2924 SEATON	V	4	R-7.5(A)	.2665	\$12,000.00	\$15,000.00
15	2527 SOUTHLAND	I	7	PD-595	.1584	\$42,045.00	\$46,130.00
16	3808 SPRING	V	7	PD-595	.0406	\$5,000.00	\$5,000.00
17	861 WIXOM	V	8	R-7.5(A)	.4783	\$24,500.00	\$24,500.00



February 14, 2018

**WHEREAS**, the City of Dallas (“City”), the State of Texas (“State”), the County of Dallas, (“County”), and/or Dallas Independent School District (“DISD”) acquired Sheriff Deeds to properties (“Properties”) at a sheriff tax sale (“the First Sale”) authorized by a Judicial Foreclosure (“Judgment”) in a District Court in Dallas County, Texas. The Sheriff’s Deeds were recorded in the real property records of Dallas County, Texas as described on “Exhibit A,” attached herein and incorporated by reference; and

**WHEREAS**, pursuant to the Texas Attorney General Opinion No. JM-1232 and Section 34.05(a) of the Texas Property Tax Code, the City may re-sell the Properties (“the Second Sale”) subject to any right of redemption existing at the time of the Second Sale; and

**WHEREAS**, pursuant to the provisions of Chapter 34, Section 34.05 of the Texas Property Tax Code, a taxing entity is authorized to re-sell the Properties (“the Second Sale”); and

**WHEREAS**, by accepting its pro rata proceeds from the Second Sale, the State agrees to the transfer of Properties in which it has an interest; and

**WHEREAS**, the City Manager, acting on behalf of the County pursuant to a County Commissioner’s Court Order, and acting on behalf of DISD pursuant to a School Board Resolution have the authority to execute Quitclaim Deeds to the purchasers of Properties at the Second Sale, and transfer any rights, title, or interests acquired or held by each taxing entity that was a party to the Judgment at the First Sale; and

**WHEREAS**, the Properties will be advertised in the Dallas Morning News to be offered for re-sale; and

**WHEREAS**, the City Council has previously approved the re-sale of other Properties where funds were not received, nor disbursed prior to the April 1, 2001 Tax Collection Consolidation with Dallas County; and

**WHEREAS**, the distribution of the proceeds from the resale of the Properties will be in accordance with Chapter 34, Section 34.06 of the Texas Property Tax Code.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That upon receipt of the monetary consideration from the purchasers, and upon consent by the County and DISD, the City Manager after approval as to form by the City Attorney and attested by the City Secretary, is hereby authorized to execute Quitclaim Deeds to the Properties to be sold to the highest qualified bidders, conveying to the purchasers the right, title, and interest acquired or held by each taxing entity that

February 14, 2018

**SECTION 1.** (continued)

was a party to the Judgment, subject to any right of redemption, post-Judgment taxes and post Judgment non-municipal liens, and in accordance with the written agreement of the terms, conditions, and release of the taxing entities.

**SECTION 2.** That the consideration received from the Second Sale shall be distributed pursuant to Chapter 34, Section 34.06 of the Texas Property Tax Code, and applied to the payment of the court costs, interest, and cost of sale and applied to the amount of delinquent taxes, penalties, and non-tax municipal liens as set forth in the Judgment and pursuant to the order of the court.

**SECTION 3.** That all purchasers shall be responsible for the pro rata portion of property taxes for the remaining part of the current calendar year that will be assessed from the date of closing of the Second Sale. Purchasers shall also be responsible for any post-Judgment taxes, penalties and interest, pursuant to the Texas Property Tax Code, and post-Judgment non-municipal liens. The Properties shall be replaced on the tax rolls as of the date of execution of Quitclaim Deeds.

**SECTION 4.** That to the extent authorized by law, any liens securing taxes referenced in Section 2 above are hereby released. That the City Manager, after approval as to form by the City Attorney, is hereby authorized to execute a release(s) of lien for any non-tax municipal lien(s) which (i) are included in the Judgments issued in the foreclosure suits filed by the City on the lot(s) shown on Exhibit "A"; or (ii) arise or are filed of record post Judgment and prior to the Second Sale by the City on the lot(s) shown on Exhibit "A".

**SECTION 5.** That any and all proceeds from the Second Sale, including funds not received, nor disbursed prior to the April 1, 2001 Tax Collection Consolidation with Dallas County will be deposited to General Fund, Fund 0001, Department DEV, Balance Sheet Account 0519.

**SECTION 6.** That upon receipt of the consideration from the Second Sale, the Chief Financial Officer is hereby authorized to disburse the proceeds in accordance with Chapter 34, Section 34.06 of the Texas Property Tax Code. Calculations for disbursements shall be provided by the Director of Sustainable Development and Construction to the City of Dallas Land Based Receivables, the Dallas County District Clerk, and the Dallas County Tax Office from the account specified in Section 5, above.

**SECTION 7.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**TAX FORECLOSED AND SEIZURE WARRANT PROPERTY RESALES**  
**EXHIBIT A**

ITEM #	STREET ADDRESS	LEGAL DESCRIPTION	VAC/IMP	OWNED BY TAXING ENTITIES
1	5509 ALTON	LOT 16, BLOCK K/698	V	1, 2, 3
2	1619 BANNOCK	LOT 10, BLOCK C/1687	V	1, 2, 3
3	3429 CHIHUAHUA	LOT 8, BLOCK B/7115	V	1, 2, 3
4	1205 COMPTON	LOT 10, BLOCK A/3391-1/2	V	1, 2, 3
5	2721 CROSS	LOT 15, BLOCK 9/1829	V	1, 2, 3
6	1835 FERNWOOD	LOT 8, BLOCK 25/3705	V	1, 2, 3
7	1610 FORDHAM	LOT 16, BLOCK 23/4319	V	1, 2, 3
8	3514 FRANK	LOTS 5 AND 6, BLOCK 1/1828	V	1, 2, 3
9	3710 HAMILTON	LOT 17, BLOCK E/1628	I	1, 2, 3
10	2411 JENNINGS	LOT 1, BLOCK 16/5855	I	1, 2, 3
11	3407 KIMBLE	LOT 2, BLOCK A2/1230	V	1, 2, 3
12	9515 MICKEY	BLOCK 1179	V	1, 2, 3
13	9912 SEAGOVILLE	LOT 24, BLOCK A/7883	V	1, 2, 3
14	2924 SEATON	LOT 13, BLOCK /8631	V	1, 2, 3
15	2527 SOUTHLAND	LOT 4, BLOCK A/1957	I	1, 2, 3
16	3808 SPRING	LOT 2, BLOCK 1830	V	1, 2, 3
17	861 WIXOM	LOTS 2A AND 3, BLOCK 7817	V	1, 2, 3

\*1=CITY, 2=DISD, 3=COUNTY, 4=STATE (All properties are located in the City of Dallas, Dallas County, Texas)

**AGENDA ITEM # 12**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 2

**DEPARTMENT:** Department of Sustainable Development and Construction

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 46J

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**SUBJECT**

An ordinance abandoning two portions of Trunk Avenue to Tall Cotton Properties, LTD. and Baylor Health Care System, the abutting owners, containing a total of approximately 9,808 square feet of land, located near its intersection with Elm Street; and authorizing the quitclaim - Revenue: \$220,680, plus the \$20 ordinance publication fee

**BACKGROUND**

This item authorizes the abandonment of two portions of Trunk Avenue to Tall Cotton Properties, LTD., and Baylor Health Care System, the abutting owners. The area will be included with the property of the abutting owners for the renovation of the Continental Gin property. The abandonment fee is based on an independent appraisal.

Notices were sent to 20 property owners located within 300 feet of the proposed abandonment area. There was one response received in opposition to this request.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

**FISCAL INFORMATION**

Revenue - \$220,680, plus the \$20 ordinance publication fee

## **OWNERS**

**Tall Cotton Properties, LTD.**

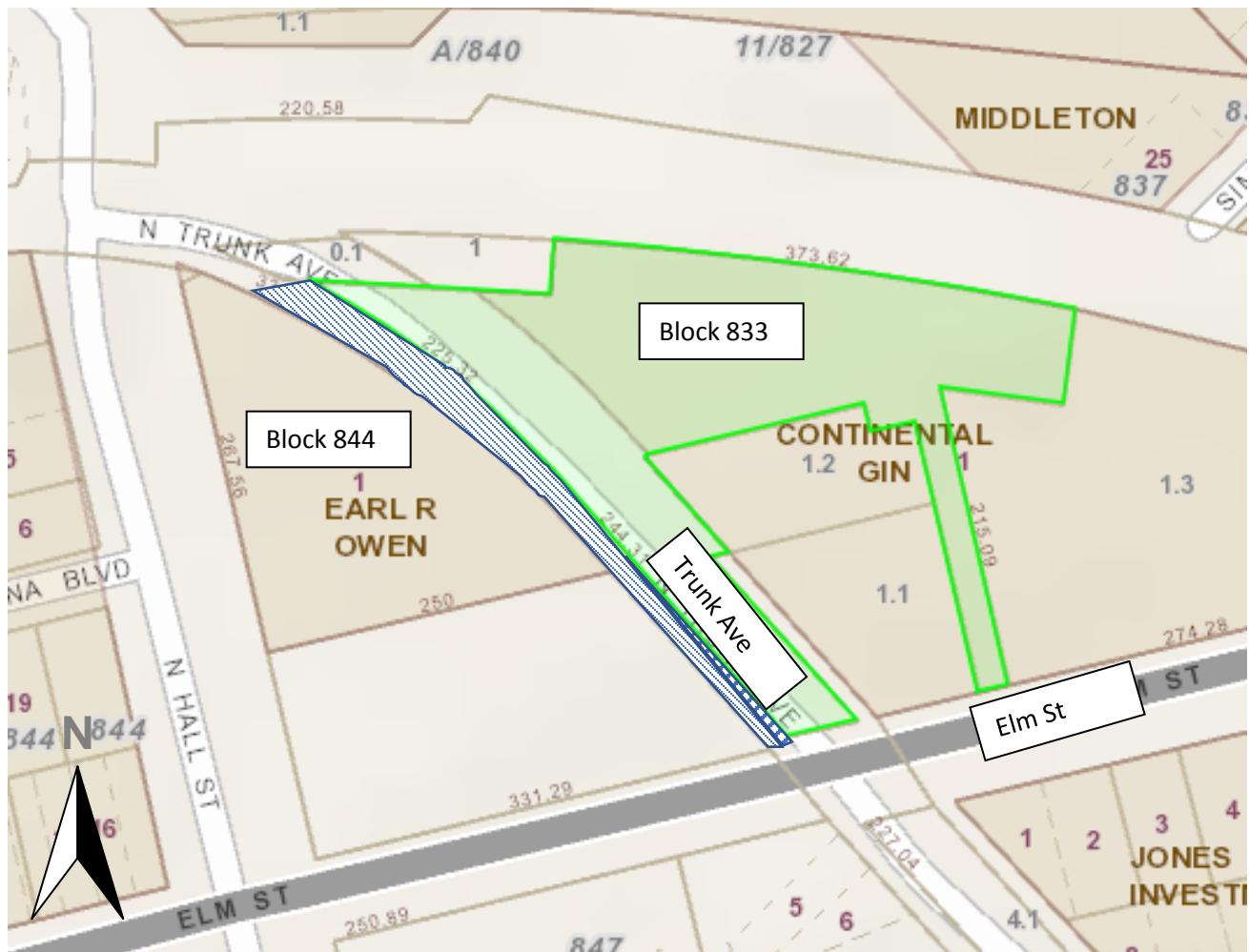
John C. Tatum, General Partner

**Baylor Health Care System**

Erle A. Nye, Assistant Vice President

## **MAP**

Attached



Abandonment areas:



**ORDINANCE NO. \_\_\_\_\_**

An ordinance providing for the abandonment of two portions of Trunk Avenue located adjacent to City Blocks 833 and 844 in the City of Dallas and County of Dallas, Texas; subject to a reverter; providing for the quitclaim thereof to Tall Cotton Properties, LTD., and Baylor Health Care System; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for barricading; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing for the payment of the publication fee; providing a future effective date for this abandonment; and providing an effective date for this ordinance.

**ooooooo**

**WHEREAS**, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of Tall Cotton Properties, LTD., a Texas limited partnership, and Baylor Health Care System, a Texas non-profit corporation, hereinafter referred to collectively as **GRANTEE**, deems it advisable to abandon and quitclaim, subject to a reverter interest, the hereinafter described tracts of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions and reverter herein provided, said portions of Trunk Avenue are not needed for public use, and same should be abandoned and quitclaimed to **GRANTEE**, as hereinafter stated; and

**WHEREAS**, the City Council of the City of Dallas is of the opinion that the best interest and welfare of the public will be served by abandoning and quitclaiming the same to **GRANTEE** for the consideration and subject to the terms and conditions and reverter hereinafter more fully set forth.

**Now, Therefore,**

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

**SECTION 1.** That the tracts of land described in Exhibit A, which is attached hereto and made a part hereof for all purposes, be and the same is abandoned, vacated and closed insofar as the right, title and interest of the public are concerned; subject,

**SECTION 1.** (continued)

however, to the reverter and the conditions and future effective date hereinafter more fully set out.

**SECTION 2.** That for and in monetary consideration of the sum of **TWO HUNDRED TWENTY THOUSAND SIX HUNDRED EIGHTY AND NO/100 DOLLARS (\$220,680.00)** paid by **GRANTEE**, and the further consideration described in Sections 8, 9, 10, 11, 12 and 13, the City of Dallas does by these presents **QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, future effective date, the reverter, and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all of its right, title and interest in and to the certain tract of land hereinabove described in Exhibit A as follows: unto Tall Cotton Properties, LTD., and Baylor Health Care System, all of its right, title and interest in Tract 1 and Tract 2 of Exhibit A in proportion to their abutting ownership per Texas Local Government Code 272.001. Provided however, that if **GRANTEE**, their successors and assigns, fails to file a final replat of the adjoining properties as required in Section 9 of this ordinance by the earlier of (i) the date applicable pursuant to the requirements of the Dallas Development Code Chapter 51A-8.403(a)(4)(D) which provides in pertinent part, as may be amended:

“(D) Except as provided in this subparagraph, a preliminary plat approved by the commission expires five years after the commission action date approving the plat if no progress has been made toward completion of the project in accordance with Texas Local Government Code Section 245.005. An approved minor plat, amending plat (minor), or an administrative plat expires two years after the commission action date approving the plat or within two years after the date of the subdivision administrator’s action letter approving the administrative plat if no progress has been made toward completion of the project in accordance with Texas Local Government Code Section 245.005”;

or (ii) the date that is the sixth anniversary of the passage of this ordinance; **THEN** this ordinance and quitclaim shall be rendered null and void and the right, title and easement of the public shall absolutely revert without any necessity for suit or re-entry by the City; and no act or omission on the part of the City, its successors and assigns,

**SECTION 2.** (continued)

shall be a waiver of the operation or enforcement of this ordinance. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE**.

**SECTION 3.** That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions, future effective date and conditions of this ordinance.

**SECTION 4.** That the Chief Financial Officer is hereby authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund, Fund 0001, Department DEV, Balance Sheet 0519 and Department of Sustainable Development and Construction-Real Estate Division shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in General Fund, Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund, Fund 0625, Department BMS, Unit 8888, Revenue Code 8416.

**SECTION 5.** That the abandonment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise, and are further subject to the conditions contained in Exhibit B, which is attached hereto and made a part hereof for all purposes.

**SECTION 6.** That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, their successors and assigns.

**SECTION 7.** That the abandonment and quitclaim provided for herein shall extend only to the public right, title, easement and interest, and shall be construed to extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon and vacate.

**SECTION 8.** That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, their successors and assigns, agree to indemnify, defend, release and hold harmless the City of Dallas as to

**SECTION 8.** (continued)

any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the areas described in Exhibit A by **GRANTEE**, their successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the areas set out in Exhibit A; (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the areas described in Exhibit A, which **GRANTEE**, their successors and assigns, agree to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the areas set out in Exhibit A. **GRANTEE**, their successors and assigns, hereby agree to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgment or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended; (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended; (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils; (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended; (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

**SECTION 9.** That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall record a final replat of the adjoining properties showing dedication of a sidewalk easement as needed upon the

## **SECTION 9.** (continued)

approval and acceptance of the Director of Sustainable Development and Construction prior to the issuance of any building permits affecting the tract of land abandoned and quitclaimed herein. This final replat shall be recorded by **GRANTEE** in the official real property records of the county in which the abandoned area is located after its approval by the City Plan Commission of the City of Dallas. Failure to record a final replat in accordance with the terms of this section shall render this ordinance null and void and of no further effect.

**SECTION 10.** That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall:

- (a) not build any structure over the abandonment areas.
- (b) provide adequate access to the adjacent property owner located at 232 Trunk Avenue to Hall Street.
- (c) ensure approval is obtained from the City of Dallas Planning Department granting a pedestrian access and connection through the abandonment areas.
- (d) maintain the following conditions for the intersection of Trunk Avenue and Elm Street: (i) not impede or remove on-street parking or require signage; (ii) not impeded to the addition of on-street parking or required signage; (iii) install no special pavers, stone or decorative concrete within 24 inches of the curb or edge of the loading dock unless, easily adapted to support the placement of poles for governmental signs and/or parking meters with (1) the removal of sections of the area (to be backfilled with concrete) or (2) drilled into for placement of items or (3) portholes left in place or created for the placement of governmental signage and/or parking meters. Placement is subject to the approval of the Director of the Transportation Department.
- (e) acknowledge a municipal wastewater easement shall be maintained in the abandonment area, until such time as **GRANTEE** shall relocate said facilities in accordance with Exhibit B.
- (f) acknowledge existing Atmos facilities are in the abandonment area. If conflicts exist, **GRANTEE** would be responsible for cost to relocate those facilities otherwise, Exhibit B would apply.

**SECTION 11.** That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, Baylor Health Care System shall convey or cause to be conveyed a quitclaim deed to Tall Cotton Properties, LTD., within 90 days of the effective date of this ordinance, relinquishing interest, if any, to said abandonment areas, a description of which is attached hereto and made a part hereof as Exhibit A, recorded in the Real Property Records of Dallas County, Texas. Failure to convey the above described property as set forth shall render this ordinance null and void and of no further effect.

**SECTION 12.** That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall convey or cause to be conveyed an Access Easement to Baylor Health Care System, within 90 days of the effective date of this ordinance, being a parcel of land in City Blocks 833 and 844 containing approximately 2,415 square feet, a description of which is attached hereto and made a part hereof as Exhibit C.

**SECTION 13.** That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall, immediately upon the effectiveness of this ordinance, close, barricade and/or place signs in the area described in Exhibit A in accordance with detailed plans approved by the Director of Department of Sustainable Development and Construction. **GRANTEE's** responsibility for keeping the area described in Exhibit A closed, barricaded and/or the signs in place shall continue until the street improvements and intersection returns are removed by **GRANTEE**, their successors and assigns, to the satisfaction of the Director of Department of Sustainable Development and Construction.

**SECTION 14.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the official real property records of the county in which the abandonment areas are located, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, and completion of instruments conveying real estate interest set forth in Sections 11 and 12, the Director

**SECTION 14.** (continued)

of Department of Sustainable Development and Construction, or designee: (i) shall deliver to **GRANTEE** a certified copy of this ordinance, and (ii) is authorized to and shall prepare and deliver a **QUITCLAIM DEED** with regard to the areas abandoned herein, subject to a reverter interest, to **GRANTEE** hereunder, same to be executed by the City Manager on behalf of the City of Dallas, attested by the City Secretary and approved as to form by the City Attorney. The Director of Department of Sustainable Development and Construction, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

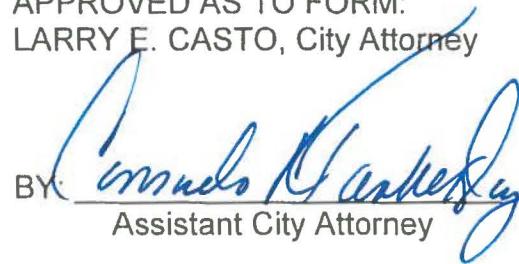
**SECTION 15.** That this contract is designated as Contract No. DEV-2018-00004549.

**SECTION 16.** That 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, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

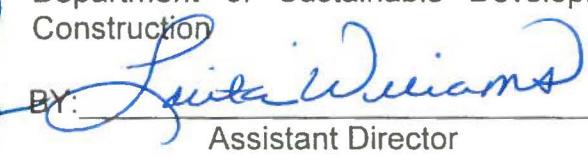
BY:

  
Assistant City Attorney

DAVID COSSUM, Director

Department of Sustainable Development and  
Construction

BY:

  
Assistant Director

Passed \_\_\_\_\_.

# STREET RIGHT OF WAY ABANDONMENT

Portion of Trunk Avenue  
Adjacent to Block 833 and Block 844  
John Grigsby Survey, Abstract No. 495  
City of Dallas, Dallas County, Texas

EXHIBIT A-TRACT 1

BEING a 9,366 square foot, 0.2150 acre tract of land situated in the John Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas and being a portion of Trunk Avenue (variable width R.O.W.) conveyed by Deed, recorded in Volume 317, Page 105 of the Deed Records, Dallas County, Texas (D.R.D.C.T.), being adjacent to a tract of land conveyed to Tall Cotton Properties, LTD. by Special Warranty Deed recorded in Instrument Number 200600208731 of the Official Public Records, Dallas County, Texas (O.P.R.D.C.T.) and by Correction to Special Warranty Deed, recorded in Instrument Number 201600329008 (O.P.R.D.C.T.), a tract of land conveyed to the City of Dallas, by Quitclaim Deed recorded in Instrument Number 20080151603 (D.R.D.C.T.), Elm Street (variable width Right-of-way), a tract of land conveyed to Baylor Health Care System (here on referred to as Baylor Tract 1) by Special Warranty Deed, recorded in Instrument Number 20080364660 (D.R.D.C.T.), a tract of land conveyed to Baylor Health Care System (here on referred to as Baylor Tract 2) by Special Warranty Deed, recorded in Instrument Number 201200177795 (O.P.R.D.C.T.), a tract of land conveyed to Patricia L. Stahl by Deed without Warranty, recorded in Instrument Number 201100137089 (O.P.R.D.C.T.) and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod found in the northeast line of said Trunk Avenue, same being the North corner of said City of Dallas tract, and also being in the southwest line of said Tall Cotton Properties, LTD. tract;

THENCE S 42°41'27" E, along the northeast line of said Trunk Avenue and the southwest line of said City of Dallas Tract, a distance of 237.26 feet to a 5/8-inch "BDD" capped iron rod set for corner at the intersection of the northeast line of said Trunk Avenue and the northwest line of said Elm Street;

THENCE S 71°41'28" W, departing the northeast line of said Trunk Avenue and along the northwest line of said Elm Street, a distance of 16.70 feet to a 5/8-inch "BDD" capped iron rod set for corner at the intersection of the northwest line of said Elm Street and the southwest line of said Trunk Avenue, same being the East corner of said Baylor Tract 1;

THENCE N 43°06'27" W, passing at a distance of 168.86 feet, the North corner of said Baylor Tract 1, same being the East corner of said Baylor Tract 2, continuing for a total distance of 197.99 feet to 5/8-inch "BDD" capped iron rod set for the beginning of a tangent curve to the left;

THENCE along said tangent curve to the left and along the North line of said Baylor Tract 2, through a central angle of 24°21'49", an arc length of 311.35 feet, having a radius of 732.20 feet and a chord bearing and distance of N 55°17'21" W, 309.01 feet to a 5/8-inch "BDD" capped iron rod set for corner;

THENCE S 88°13'23" E, passing at a distance of 39.15 feet the South corner of said Patricia L. Stahl tract, continuing for a total distance of 59.88 feet to a 5/8-inch "BDD" capped iron rod set in the southeast line of said Patricia L. Stahl tract, same being the southwest corner of said Tall Cotton Properties, LTD. tract, said point also being the beginning of a non-tangent curve to the right;

THENCE along said non-tangent curve to the right and the southwest line of said Tall Cotton Properties tract, through a central angle of 21°15'15", having an arc length of 225.32 feet, a radius of 607.41 feet and a chord bearing and distance of S 53°19'04" E, 224.03 feet to a 5/8-inch iron rod found for corner;

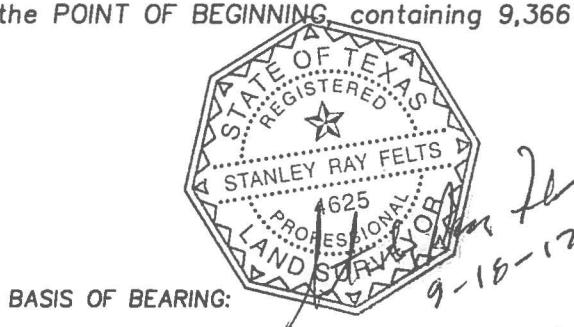
THENCE S 42°41'27" E, a distance of 7.05 feet to the POINT OF BEGINNING containing 9,366 square feet or 0.2150 acres of land, more or less.

(For SPRG use only)

Reviewed by: *JP*  
Date: 10/2/2017  
SPRG NO.: 4193

**B BROCKETTE · DAVIS · DRAKE , Inc.**  
**DD consulting engineers**

Civil & Structural Engineering Surveying  
4144 North Central Expressway, Suite 1100 Dallas, Texas 75204  
(214) 824-3647, fax (214) 824-7064



BASIS OF BEARING:

Bearings are based upon the Texas State Plane Coordinate System, North Central Zone (4202), North American Datum of 1983 (NAD83), Adjustment Realization 2011.

(For SPRG use only)

Reviewed by: JP  
Date: 10/2/2017  
SPRG NO.: 4193

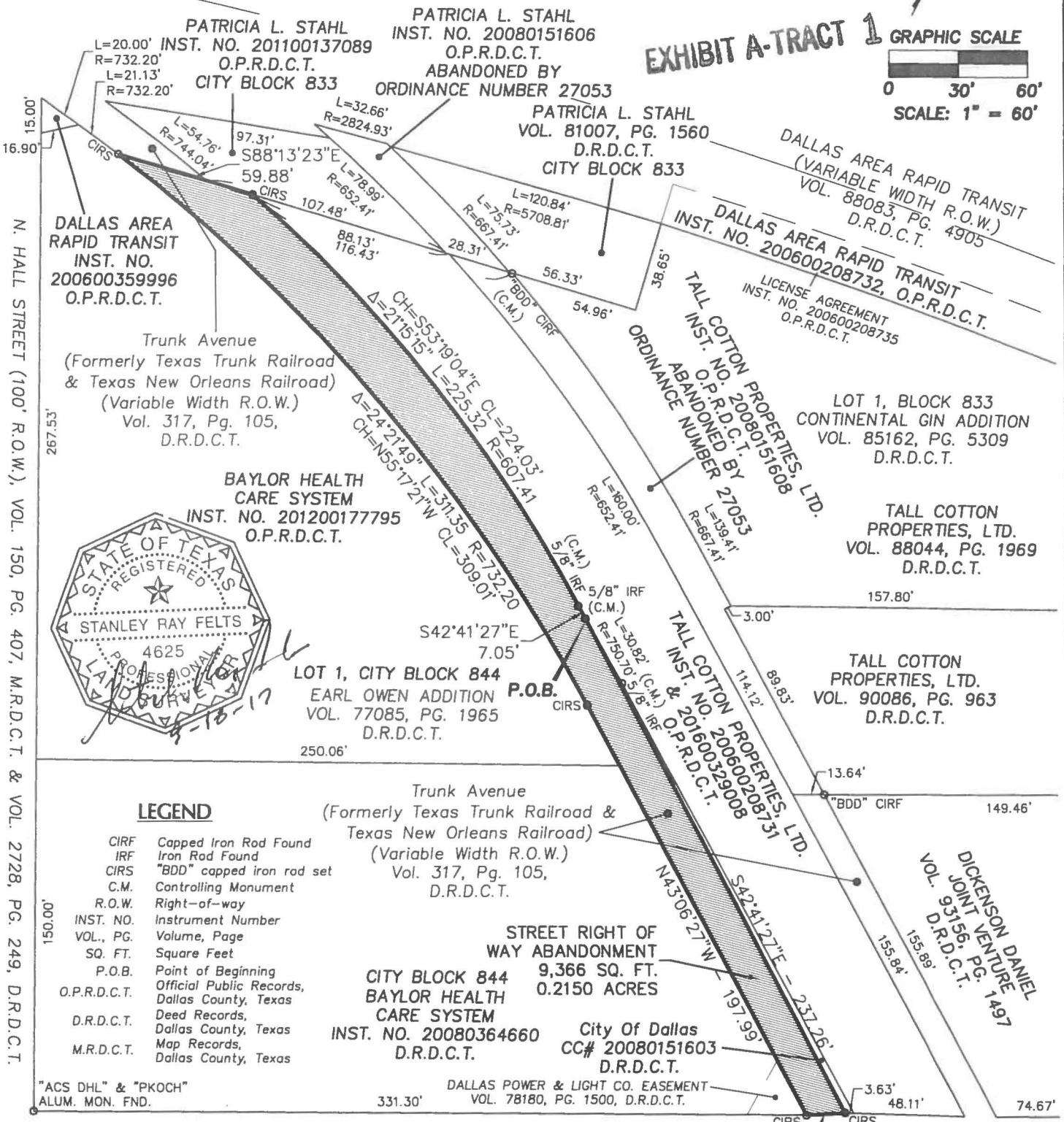
# STREET RIGHT OF WAY ABANDONMENT

Portion of Trunk Avenue  
Adjacent to Block 833 and Block 844  
John Grigsby Survey, Abstract No. 495  
City of Dallas, Dallas County, Texas



GRAPHIC SCALE  
0 30' 60'  
SCALE: 1" = 60'

EXHIBIT A-TRACT 1



Bearings are based upon the Texas State Plane Coordinate System, North Central Zone (4202), North American Datum of 1983 (NAD83), Adjustment Realization 2011.

**BROCKETTE · DAMS · DRAKE, Inc.**  
**consulting engineers**  
Civil & Structural Engineering Surveying  
4144 North Central Expressway, Suite 1100 Dallas, Texas 75204  
(214) 824-3647, fax (214) 824-7064

# STREET RIGHT OF WAY ABANDONMENT

All of a 442 Sq. Ft. Tract of Land  
Situated Between City Block 833 and Block 844  
John Grigsby Survey, Abstract No. 495  
City of Dallas, Dallas County, Texas

EXHIBIT A-TRACT 2

BEING a 442 square foot, 0.0101 acre tract of land situated in the John Grigsby Survey, Abstract No. 495, City of Dallas, Dallas County, Texas and being all of that tract of land conveyed to the City of Dallas by Warranty Deed, recorded in Instrument Number 20080151603 of the Official Public Records, Dallas County, Texas (O.P.R.D.C.T.), said 442 square foot tract being adjacent to a part of Trunk Avenue (variable width R.O.W.) conveyed by Deed, recorded in Volume 317, Page 105 of the Deed Records, Dallas County, Texas (D.R.D.C.T.), being adjacent to a tract of land conveyed to Tall Cotton Properties, LTD. by Special Warranty Deed recorded in Instrument Number 200600208731 (O.P.R.D.C.T.) and by Correction to Special Warranty Deed, recorded in Instrument Number 201600329008 (O.P.R.D.C.T.) and being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod found in the northeast right-of-way line of Trunk Avenue (variable width R.O.W.), same being the southwest line of a tract of land conveyed to Tall Cotton Properties, LTD., by Special Warranty Deed recorded in Instrument Number 200600208731 (O.P.R.D.C.T.), said corner being the beginning of a non-tangent curve to the right;

THENCE along said non-tangent curve to the right and the southwest line of said Tall Cotton Properties, LTD., through a central angle of 02°21'08", having an arc length of 30.82 feet, a radius of 750.70 feet and a chord bearing and distance of S 44°26'13" E, 30.82 feet to a 5/8-inch iron rod found for corner;

THENCE S 43°18'09" E, continuing along the southwest line of said Tall Cotton Properties, LTD., a distance of 208.25 feet to a "X" cut set for corner, same being the southwest corner of said Tall Cotton Properties, LTD. and the northwest right-of-way line of Elm Street (variable width R.O.W.);

THENCE S 76°43'02" W, along the northwest line of said Elm Street, a distance of 3.63 feet to a 5/8-inch steel rebar with yellow plastic cap stamped "BDD" set for corner at the intersection of the northwest line of said Elm Street and the northeast right-of-way line of Trunk Avenue (variable width R.O.W.);

THENCE N 42°41'27" W, departing the northwest line of said Elm Street and along the northeast line of said Trunk Avenue, a distance of 237.26 feet to the POINT OF BEGINNING, containing 442 square feet or 0.0101 acres of land, more or less.

(For SPRG use only)

Reviewed by: *JD*  
Date: *10/2/2017*  
SPRG NO.: 4192

BROCKETTE · DAVIS · DRAKE , Inc.  
 DD consulting engineers

Civil & Structural Engineering Surveying  
4144 North Central Expressway, Suite 1100 Dallas, Texas 75204  
(214)824-3647, fax (214) 824-7084



## BASIS OF BEARING:

Bearings are based upon the Texas State Plane Coordinate System, North Central Zone (4202), NAD83, Adjustment Realization 2011.

(For SPRG use only)

Reviewed by: JD  
Date: 10/2/2017  
SPRG NO.: 4192

# STREET RIGHT OF WAY ABANDONMENT

All of a 442 Sq. Ft. Tract of Land  
Situated Between City Block 833 and Block 844  
John Grigsby Survey, Abstract No. 495  
City of Dallas, Dallas County, Texas



GRAPHIC SCALE  
0 30' 60'  
SCALE: 1" = 60'

EXHIBIT A-TRACT 2

PATRICIA L. STAHL  
INST. NO. 201100137089  
O.P.R.D.C.T.  
CITY BLOCK 833

PATRICIA L. STAHL  
INST. NO. 20080151606  
O.P.R.D.C.T.

PATRICIA L. STAHL  
VOL. 81007, PG. 1560  
D.R.D.C.T.

DALLAS AREA RAPID TRANSIT  
(VARIABLE WIDTH R.O.W.)  
VOL. 88083, PG. 4905  
D.R.D.C.T.

DALLAS AREA RAPID TRANSIT  
INST. NO. 200600208732, O.P.R.D.C.T.  
LICENSE AGREEMENT  
INST. NO. 200600208735  
O.P.R.D.C.T.

N. HALL STREET (100' R.O.W.), VOL. 150, PG. 407, M.R.D.C.T. & VOL. 2728, PG. 249, D.R.D.C.T.

DALLAS AREA  
RAPID TRANSIT  
INST. NO.  
200600359966  
O.P.R.D.C.T.

BAYLOR HEALTH  
CARE SYSTEM  
INST. NO. 201200177795  
O.P.R.D.C.T.

LOT 1, CITY BLOCK 844

EARL OWEN ADDITION  
VOL. 77085, PG. 1965  
D.R.D.C.T.



## LEGEND

"X" SET	"X" cut set
CIRS	"BDD" capped iron rod set
CIRF	Capped Iron Rod Found
IRF	Iron Rod Found
C.M.	Controlling Monument
R.O.W.	Right-of-way
INST. NO.	Instrument Number
VOL., PG.	Volume, Page
SQ. FT.	Square Feet
P.O.C.	Point of Commencing
P.O.B.	Point of Beginning
O.P.R.D.C.T.	Official Public Records, Dallas County, Texas
D.R.D.C.T.	Deed Records, Dallas County, Texas
M.R.D.C.T.	Map Records, Dallas County, Texas
"ACS DHL" & "PKOCH"	
ALUM. MON. FND.	

Trunk Avenue  
(Formerly Texas Trunk Railroad & Texas New Orleans Railroad)  
(Variable Width R.O.W.)  
Vol. 317, Pg. 105,  
D.R.D.C.T.

STREET RIGHT OF WAY ABANDONMENT  
442 SQ. FT.  
CITY BLOCK 844 0.0101 ACRES  
BAYLOR HEALTH CARE SYSTEM N42°41'27"W  
INST. NO. 20080364660 City Of Dallas 237.26'  
D.R.D.C.T. INST. NO. 20080151603  
D.R.D.C.T.  
DALLAS POWER & LIGHT CO. EASEMENT  
VOL. 78180, PG. 1500, D.R.D.C.T.  
331.30' S76°43'02"W 3.63'

ELM STREET (VARIABLE WIDTH R.O.W.)  
NO STREET RIGHT-OF-WAY DEDICATION FOUND  
BY USE AND OCCUPATION

## BASIS OF BEARING:

Bearings are based upon the Texas State Plane Coordinate System, North Central Zone (4202), NAD83, Adjustment Realization 2011.

**BROCKETTE · DAVIS · DRAKE , Inc.**  
**consulting engineers**

Civil & Structural Engineering Surveying  
4144 North Central Expressway, Suite 1100 Dallas, Texas 75204  
(214) 824-3647, fax (214) 824-7064

# **EXHIBIT B**

## **ADDITIONAL ABANDONMENT PROVISIONS**

That as a condition hereof, this abandonment is subject to any utilities or communication facilities, including without limitation water and wastewater lines, gas lines, and storm sewers, ("Facilities") presently located within the abandoned area described in Exhibit "A", owned and/or operated by the City of Dallas or any utility or communications company, public or private, ("Utility") and to the rights of any Utility for the use of the abandoned area for its Facilities. It is the intent of the foregoing to confirm and maintain and there is hereby reserved and excepted unto the City of Dallas, and not abandoned or conveyed hereunder, an easement (to which this abandonment is made expressly subject) over, upon, under, through, in, and across the abandoned area for each Utility for its respective Facilities located therein at the time of this abandonment, together with the right to make any subsequent alterations, additions, expansions, upgrades or modifications to such Facilities as may, from time to time be deemed necessary or convenient by the Utility owning and/or operating same. No buildings, structures (above or below ground) or trees shall be constructed or placed within the abandoned area without written consent of each affected Utility. Each Utility shall have the full right to remove and keep removed all or part of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective Facilities lying within the abandoned area and shall at all times have the full right of ingress and egress to or from and upon the abandoned area for the purposes of reconstructing, removing, relocating, inspecting, patrolling, maintaining, expanding, upgrading, and/or adding to all or part of its Facilities without the necessity at any time of procuring the permission of anyone. The easement reserved hereunder and the conditions and restrictions to which this abandonment is subject shall remain for the benefit of the applicable Utility and/or operators of the Facilities until said Facilities are removed and relocated from the abandoned area. The relocation, removal or adjustment of any or all such Facilities, if made necessary by GRANTEE'S (whether one or more natural persons or legal entities) use of the abandonment area, shall be at the expense of GRANTEE herein, or GRANTEE'S successors and assigns. Should GRANTEE'S relocation or removal of the Facilities require the obtaining of new easements, the acquisition of same shall be at the expense of GRANTEE, GRANTEE'S successors and assigns. If any of the Facilities (or relocations thereof) are allowed to remain on any part of the abandoned area, the easements and buildings restrictions provided herein shall remain thereon. Upon removal or relocation of all of the Facilities, any easements reserved or created herein relating to such removed or relocated Facilities shall terminate, and any building restrictions herein created shall cease.

# EXHIBIT C

## ACCESS EASEMENT

Situated between Block 844 and Block 833,  
Official Numbers of the City of Dallas, Texas  
John Grigsby Survey, Abstract No. 495  
*City of Dallas, Dallas County, Texas*

**DESCRIPTION**, of a 2,415 square foot (0.055 acre) tract of land situated in the John Grigsby Survey, Abstract No. 495, Dallas County, Texas and between Block 844 and Block 833, Official Block Numbers of the City of Dallas, Texas; said tract being part of Trunk Avenue (formerly the Texas Trunk Railroad, formerly the Texas New Orleans Railroad and formerly College Avenue), part of that certain tract of land described in Correction Special Warranty Deed to Tall Cotton Properties, Ltd. recorded in Instrument No. 201600329008 of the Official Public Records of Dallas County, Texas and part of that certain tract of land described in Warranty Deed to the City of Dallas recorded in Instrument No. 20080151603 of said Official Public Records; said 2,415 square foot being more particularly described as follows (bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas North Central Zone 4202):

**BEGINNING**, at a point for corner at the intersection of the northwest right-of-way line of Elm Street (a variable width right-of-way) with the southwest line of said Trunk Avenue; said point being the easternmost corner of that certain tract of land described in Special Warranty Deed to Baylor Health Care System recorded in Instrument No. 20080364660 of said Official Public Records;

**THENCE**, North 43 degrees, 02 minutes, 53 seconds West, departing the said northwest line of Elm Street and along the said southwest line of Trunk Avenue and the northeast line of said Baylor Health Care System tract, a distance of 30.68 feet to a point for corner; said point being the beginning of a non-tangent curve to the left;

**THENCE**, in a northeasterly direction, departing the said southwest line of Trunk Avenue and the northeast line of said Baylor Health Care System tract and crossing into said Trunk Avenue right-of-way along said curve to the left, having a central angle of 52 degrees, 48 minutes, 54 seconds, a radius of 15.00 feet, a chord bearing and distance of North 31 degrees, 06 minutes, 44 seconds East, 13.34 feet, an arc distance of 13.83 feet to a point at the end of said curve; said point being the beginning of a compound curve to the left;

**THENCE**, in a northerly direction, continuing across said Trunk Avenue right-of-way along said curve to the left, having a central angle of 28 degrees, 12 minutes, 00 seconds, a radius of 20.00 feet, a chord bearing and distance of North 09 degrees, 23 minutes, 42 seconds West, 9.74 feet, at an arc distance of 4.11 feet passing the westernmost northeast right-of-way line of said Trunk Avenue and the southwest line of said City of Dallas tract, then continuing into and across said City of Dallas tract, in all a total arc distance of 9.84 feet to a point for corner at the end of said curve; said point being in the northeast line of said City of Dallas tract;

**THENCE**, North 43 degrees, 07 minutes, 45 seconds West, along the said northeast line of the City of Dallas tract, a distance of 12.64 feet to a point for corner;

**THENCE**, departing the said northeast line of the City of Dallas tract and traversing into and across the said Tall Cotton Properties tract, the following two (2) calls:

# EXHIBIT C

## ACCESS EASEMENT

(Continued)

North 46 degrees, 52 minutes, 15 seconds East, a distance of 24.00 feet to a point for corner;

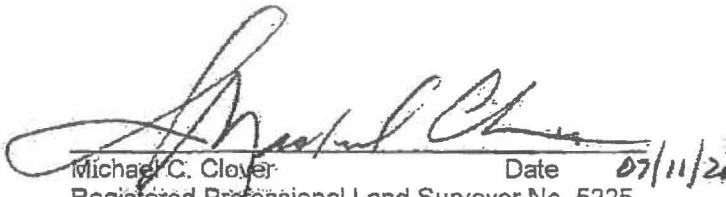
South 43 degrees, 07 minutes, 45 seconds East, a distance of 78.05 feet to a point for corner in the said northwest line of Elm Street and the southeast line of said Tall Cotton Properties tract;

THENCE, South 75 degrees, 24 minutes, 04 seconds West, along the said northwest line of Elm Street and the said southeast line of the Tall Cotton Properties tract, a distance of 48.14 feet to the POINT OF BEGINNING;

CONTAINING, 2,415 square feet or 0.055 acres of land, more or less.

*(A survey plat of even survey date herewith accompanies this description.)*

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the easement tract described.



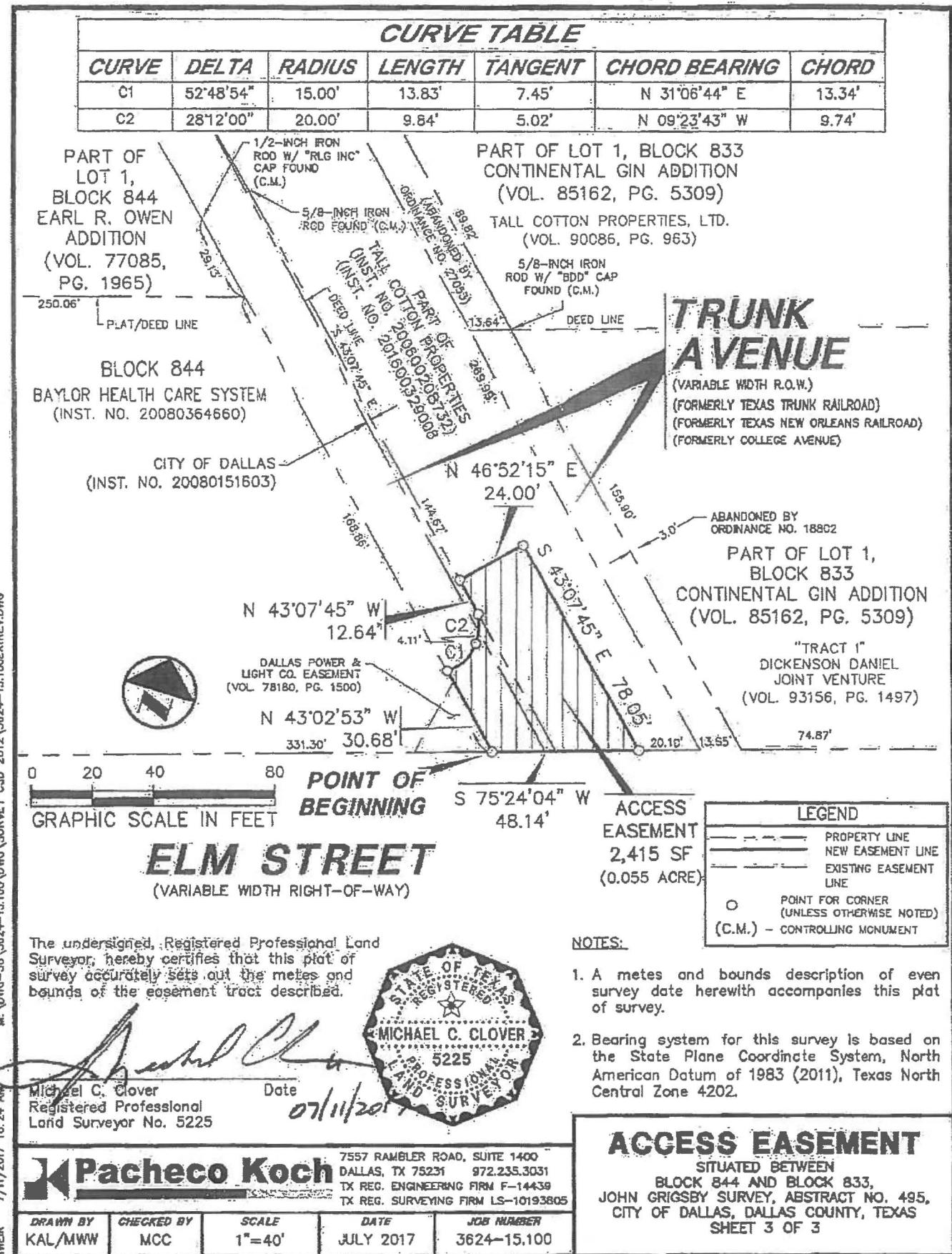
Michael C. Clover  
Registered Professional Land Surveyor No. 5225  
Pacheco Koch, LLC  
7557 Rambler Road, Suite 1400, Dallas TX 75231  
(972) 235-3031  
TX Reg. Surveying Firm LS-10193805

Date 07/11/2017



3624-15.100EX1REV.doc  
3624-15.100EX1REV.dwg MWW

# EXHIBIT C



# EXHIBIT C

2,415 SF Access Esmt 2017-07-10 mcc

North: 6972913.18' East: 2498484.37'

Segment #1 : Line

Course: N43°02'53"W Length: 30.68'

North: 6972935.60' East: 2498463.42'

Segment #2 : Curve

Length: 13.83' Radius: 15.00'

Delta: 52°48'54" Tangent: 7.45'

Chord: 13.34' Course: N31°06'44"E

Course In: N32°28'49"W Course Out: S85°17'43"E

RP North: 6972948.25' East: 2498455.37'

End North: 6972947.02' East: 2498470.32'

Segment #3 : Curve

Length: 9.84' Radius: 20.00'

Delta: 28°12'00" Tangent: 5.02'

Chord: 9.74' Course: N9°23'43"W

Course In: N85°17'43"W Course Out: N66°30'17"E

RP North: 6972948.66' East: 2498450.39'

End North: 6972956.64' East: 2498468.73'

Segment #4 : Line

Course: N43°07'45"W Length: 12.64'

North: 6972965.86' East: 2498460.09'

Segment #5 : Line

Course: N46°52'15"E Length: 24.00'

North: 6972982.27' East: 2498477.60'

Segment #6 : Line

Course: S43°07'45"E Length: 78.05'

North: 6972925.31' East: 2498530.96'

Segment #7 : Line

Course: S75°24'04"W Length: 48.14'

North: 6972913.17' East: 2498484.38'

Perimeter: 217.18' Area: 2,415 Sq. Ft. / 0.055 Acre

Error Closure: 0.01 Course: S54°21'58"E

Error North: -0.006 East: 0.008

Precision 1: 21718.00

**AGENDA ITEM # 13**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 8

**DEPARTMENT:** Department of Sustainable Development and Construction

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 76B C

---

**SUBJECT**

An ordinance abandoning a detention area easement to R.W. Timms TX Investments, LLC, the abutting owner, containing approximately 23,982 square feet of land, located near the intersection of Cleveland Road and Cedardale Drive; and providing for the dedication of approximately 25,620 square feet of land needed for a detention area easement - Revenue: \$5,400, plus the \$20 ordinance publication fee

**BACKGROUND**

This item authorizes the abandonment of a detention area easement to R.W. Timms TX Investments, LLC, the abutting owner. The area will be included with the property of the abutting owner for the construction of an industrial building. The owner will dedicate approximately 25,620 square feet of land needed for a detention area easement. The cost for this abandonment is the minimum processing fee pursuant to the Dallas City Code, therefore, no appraisal is required.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

**FISCAL INFORMATION**

Revenue - \$5,400, plus the \$20 ordinance publication fee

**OWNER**

**R.W. Timms TX Investments, LLC**

Randy Timms, Manager

**MAP**

Attached



Abandonment Area:



Dedication Area:



**ORDINANCE NO. \_\_\_\_\_**

An ordinance providing for the abandonment and relinquishment of a detention area easement, located in City Block A/8291 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to R.W. Timms TX Investments, LLC; providing for the terms and conditions of the abandonment, relinquishment and quitclaim made herein; providing for the conveyance of a new easement to the City of Dallas and the relocation of existing facilities; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing a future effective date for the abandonment, relinquishment and quitclaim made herein; providing for the payment of the publication fee; and providing an effective date for this ordinance.

**ooo0ooo**

**WHEREAS**, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of R.W. Timms TX Investments, LLC, a Texas limited liability company; hereinafter referred to as **GRANTEE**, deems it advisable to abandon, relinquish and quitclaim the City of Dallas' right, title and interest in and to the hereinafter described tract of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions herein provided, said detention area easement is no longer needed for municipal use, and same should be abandoned, relinquished and quitclaimed to **GRANTEE** as hereinafter provided, for the consideration hereinafter stated; and

**WHEREAS**, the City Council of the City of Dallas is of the opinion that the best interest and welfare of the City will be served by abandoning, relinquishing and quitclaiming the same to **GRANTEE** for the consideration and subject to the terms and conditions hereinafter more fully set forth.

**Now, Therefore,**

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

**SECTION 1.** That the City of Dallas hereby abandons and relinquishes all of its right, title and interest in and to the tract of land described in Exhibit A, attached hereto and

**SECTION 1.** (continued)

made a part hereof; subject, however, to the conditions and future effective date hereinafter more fully set out.

**SECTION 2.** That for and in monetary consideration of the sum of **FIVE THOUSAND FOUR HUNDRED AND NO/100 (\$5,400.00) DOLLARS** paid by **GRANTEE**, and the further consideration described in Sections 8, 9 and 10, the City of Dallas does by these presents **FOREVER QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations, future effective date and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all its right, title and interest in and to the certain tract or parcel of land hereinabove described in Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

**SECTION 3.** That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions, and conditions of this ordinance.

**SECTION 4.** That the Chief Financial Officer is hereby authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund, Fund 0001, Department DEV, Balance Sheet 0519 and Department of Sustainable Development and Construction-Real Estate Division shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in the General Fund, Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund, Fund 0625, Department BMS, Unit 8888, Revenue Code 8416.

**SECTION 5.** That the abandonment, relinquishment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise.

**SECTION 6.** That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

**SECTION 7.** That the abandonment, relinquishment and quitclaim provided for herein shall extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon, relinquish and quitclaim.

**SECTION 8.** That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold harmless the City of Dallas as to any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the area described in Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the area set out in Exhibit A, (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the area described in Exhibit A, which **GRANTEE**, its successors and assigns agree to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the area set out in Exhibit A. **GRANTEE**, its successors and assigns hereby agree to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgment or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended; (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended; (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils; (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended; (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended.

**SECTION 8.** (continued)

References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

**SECTION 9.** That this abandonment, relinquishment and quitclaim of the City's right, title and interest in and to said detention area easement shall not become effective until and unless: (i) the existing installations and facilities are relocated, at **GRANTEE**'s expense, to the new easement to be provided by **GRANTEE** and acceptable to the Director of Department of Sustainable Development and Construction, as is hereinafter provided; and (ii) plans for the construction and relocation of installations within the new easement are approved by the Director of Department of Sustainable Development and Construction; and (iii) said construction and relocation of installations are completed, approved and accepted in writing by the Director of Department of Sustainable Development and Construction. **GRANTEE** will grant the new easement at no cost consideration to the City and all work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Department of Sustainable Development and Construction. Failure to relocate the new easement in accordance with the terms of this section shall render this ordinance null and void and of no further effect.

**SECTION 10.** That as a condition of this abandonment and relinquishment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall record a final replat of adjoining properties within one year after passage of this ordinance showing the dedication of not less than 25,620 square feet for a detention area easement in City Block A/8291 satisfactory to the Director of Department of Sustainable Development and Construction. This final replat shall be recorded by **GRANTEE** in the Deed Records of Dallas County, Texas after its approval by the City Plan Commission of the City of Dallas. Failure to record a final replat in accordance with the terms of this section shall render this ordinance null and void, and of no further effect. Further, the final replat shall be filed with the Department of Sustainable Development and Construction of the City of Dallas before a certified copy of this ordinance shall be delivered to **GRANTEE**.

**SECTION 11.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or designee. Upon receipt of the monetary consideration set forth in Section 2, the recording of the final replat as set forth in Section 10, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or designee shall deliver to **GRANTEE** a certified copy of this ordinance. The Director of Department of Sustainable Development and Construction, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

**SECTION 12.** That this contract is designated as Contract No. DEV-2018-00004721.

**SECTION 13.** That 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, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

BY:

  
Assistant City Attorney

DAVID COSSUM, Director  
Department of Sustainable Development and Construction

BY:

  
SJR Assistant Director

Passed \_\_\_\_\_.

# Exhibit A

DETENTION AREA EASEMENT ABANDONDMENT  
PART OF LOT 1, BLOCK A/8291  
CANTERBURY FIELD ADDITION  
LEVI DIXON SURVEY, ABSTRACT NO. 380  
DALLAS, DALLAS COUNTY, TEXAS

BEING a 23,982 square feet or 0.551 acres tract of land situated in the Levi Dixon Survey, Abstract No. 380, City of Dallas, Dallas County, Texas, said tract being part of Lot 1, Block A/8291 of the Canterbury Field Addition as recorded in Instrument Number 201100335986, Official Public Records of Dallas County, Texas and said tract being part of a tract of land conveyed to R.W. Timms TX Investments, LLC by Warranty Deed with Vendor's Lien recorded in Instrument Number 201700265774, Official Public Records of Dallas County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch found iron rod for a corner in the southeast line of Interstate Highway 20 aka LBJ Freeway (a variable width right of way), and said point being the north corner of the said Lot 1, Block A/8291 and west corner of a called 1.791 acre tract of land conveyed to RW Timms TX Investments LLC by Special Warranty Deed recorded in Instrument No. 201700053081, Official Public Records of Dallas County, Texas;

- Thence, S 71°32'35" W, with the southeast line of Interstate Highway 20, and the northwest line of said Lot 1, Block A/8291, a distance of 300.74 feet to a point for a corner;
- Thence, S 18°27'25" E, departing the southeast line of Interstate Highway 20, a distance of 6.85 feet to a point for a corner at the Point of Beginning of the said tract;

THENCE, S 88°43'11" E, a distance of 60.01 feet to the beginning of a non-tangent curve to the right with a central angle of 62°34'03", a radius of 172.18 feet, a chord bearing of S 29°34'39" E and a chord distance of 178.82 feet;

THENCE, Southeasterly, along said curve, an arc distance of 188.03 feet to a point for a corner;

THENCE, S 42°25'22" W, a distance of 98.72 feet to a point for a corner;

THENCE, N 29°53'05" W, a distance of 114.09 feet to a point for a corner;

THENCE, N 60°06'55" E, a distance of 10.75 feet to a point for a corner;

THENCE, N 29°53'05" W, a distance of 15.50 feet to a point for a corner;

(For SPRG Use Only)	
Reviewed By: <u>G.S.</u>	
Date: <u>11-14-17</u>	
SPRG No <u>4179</u>	

# Exhibit A

DETENTION AREA EASEMENT ABANDONDMENT  
PART OF LOT 1, BLOCK A/8291  
CANTERBURY FIELD ADDITION  
LEVI DIXON SURVEY, ABSTRACT NO. 380  
DALLAS, DALLAS COUNTY, TEXAS

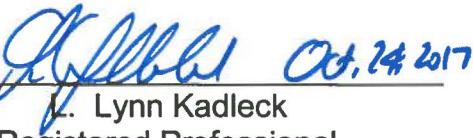
THENCE, S 60°06'55" W, a distance of 10.75 feet to a point for a corner;  
THENCE, N 29°53'05" W, a distance of 16.11 feet to a point for a corner;  
THENCE, N 70°12'19" W, a distance of 28.76 feet to a point for a corner;  
THENCE, N 04°36'13" E, a distance of 32.86 feet to a point for a corner;  
THENCE, N 29°53'05" W, a distance of 54.00 feet to a point for a corner;  
THENCE, N 71°32'35" E, a distance of 44.55 feet to the Point of Beginning and containing 23,982 square feet or 0.551 acres of land.

## SURVEYOR'S CERTIFICATE

The undersigned hereby certifies that the description hereon and the accompanying map or plat of even date represents an accurate depiction of the easement abandonment area and was prepared from the deed legal description and a survey on the adjoining property.

Dated: October 24, 2017

Job No. 0011801

  
Oct. 24 2017  
L. Lynn Kadleck  
Registered Professional  
Land Surveyor No. 3952



Note: The bearing basis for this description is a bearing of N 71°32'35" E for the southeast line of Interstate Highway 20 as indicated in the deed to the State of Texas recorded in Volume 68124, Page 1829, Deed Records of Dallas County, Texas.

(For SPRG Use Only)

Reviewed By: G.S.

Date: 11-14-17

SPRG No 4179

**Exhibit A**  
**DETENTION AREA EASEMENT ABANDONMENT**  
**PART OF LOT 1, BLOCK A/8291**  
**CANTERBURY FIELD ADDITION**  
**LEVI DIXON SURVEY, ABSTRACT NO. 380**  
**CITY OF DALLAS, DALLAS COUNTY, TEXAS**



SCALE: 1"=100'

0 50 100

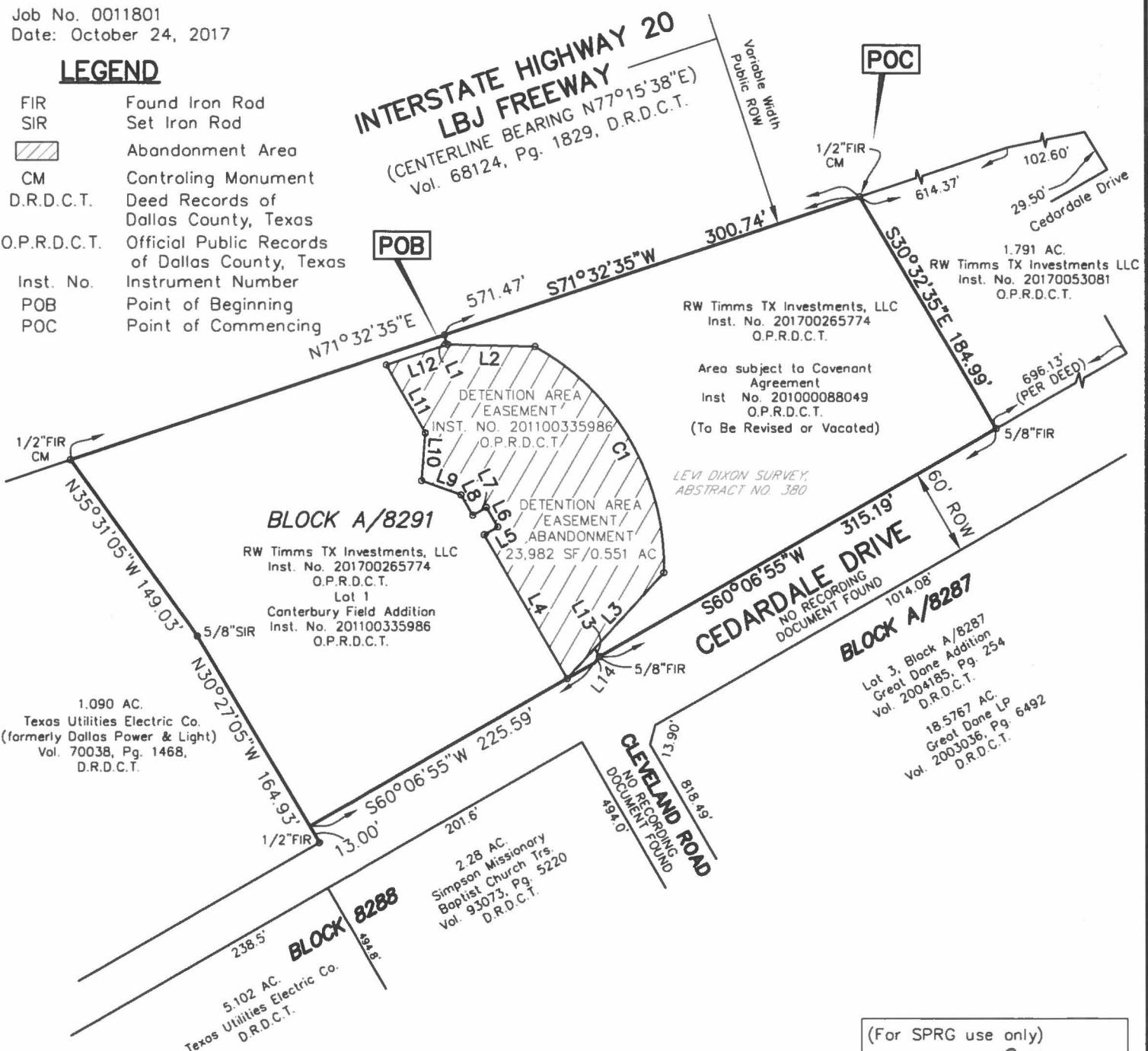


Job No. 0011801

Date: October 24, 2017

**LEGEND**

FIR	Found Iron Rod
SIR	Set Iron Rod
	Abandonment Area
CM	Controling Monument
D.R.D.C.T.	Deed Records of Dallas County, Texas
O.P.R.D.C.T.	Official Public Records of Dallas County, Texas
Inst. No.	Instrument Number
POB	Point of Beginning
POC	Point of Commencing



(For SPRG use only)	
Reviewed by:	G.S.
Date:	11-14-17
SPRG No.	4179

**KADLECK & ASSOCIATES**  
a Division of **Westwood**

Westwood Professional Services, Inc. [westwoodps.com](http://westwoodps.com)  
2740 Dallas Pkwy., Ste. 280 Plano, TX 75093  
Phone (214) 473-4640 Toll Free (888) 937-5150  
TBPE Firm Reg. No. 11756 TBPLS Firm Reg. No. 10074301

**Exhibit A**  
**DETENTION AREA EASEMENT ABANDONMENT**  
PART OF CITY BLOCK 8291  
CANTERBURY FIELD ADDITION  
LEVI DIXON SURVEY, ABSTRACT NO. 380  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

## CURVE TABLE

NUM	ARC	RADIUS	DELTA	CHORD BEARING	CHORD DISTANCE
C1	188.03'	172.18'	62°34'03"	S29°34'39"E	178.82'

## LINE TABLE

NUM	BEARING	DISTANCE
L1	S18°27'25"E	6.85'
L2	S88°43'11"E	60.01'
L3	S42°25'22"W	98.72'
L4	N29°53'05"W	114.09'
L5	N60°06'55"E	10.75'
L6	N29°53'05"W	15.50'
L7	S60°06'55"W	10.75'
L8	N29°53'05"W	16.11'
L9	N70°12'19"W	28.76'
L10	N04°36'13"E	32.86'
L11	N29°53'05"W	54.00'
L12	N71°32'35"E	44.55'
L13	S29°53'05"E	6.51'
L14	S39°26'43"W	42.56'

(For SPRG use only)  
Reviewed by: G.S.  
Date: 11-14-17  
SPRG No. 4179

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TBPE Firm Reg. No. 11756 TBPLS Firm Reg. No. 1007430



L. Lynn Kadleck  
Registered Professional  
Land Surveyor No. 3952  
Page 4

**AGENDA ITEM # 14**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 13

**DEPARTMENT:** Department of Sustainable Development and Construction

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 24U T X

---

**SUBJECT**

An ordinance abandoning a portion of a water easement to HEB Grocery Company, LP, the abutting owner, containing approximately 220 square feet of land, located near the intersection of Midway Road and Northwest Highway - Revenue: \$5,400, plus the \$20 ordinance publication fee

**BACKGROUND**

This item authorizes the abandonment of a portion of a water easement to HEB Grocery Company, LP, the abutting owner. The area will be included with the property of the abutting owner for expanding the existing grocery store. The cost for this abandonment is the minimum processing fee pursuant to the Dallas City Code, therefore, no appraisal is required.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure & Sustainability Committee on February 12, 2018.

**FISCAL INFORMATION**

Revenue - \$5,400, plus the \$20 ordinance publication fee

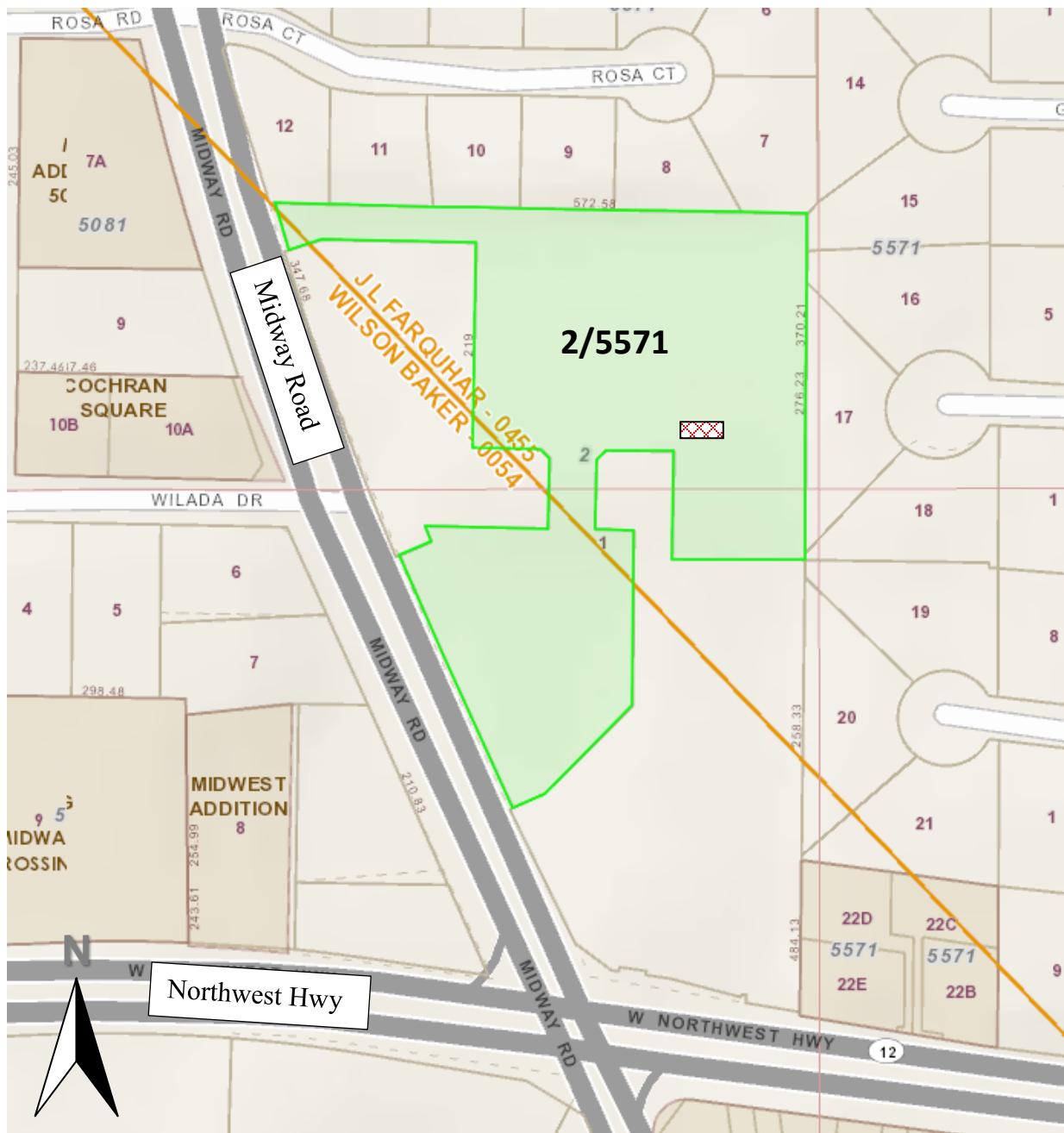
**OWNER**

**HEB Grocery Company, LP**

Charles C. Butt, Chief Executive Officer

**MAP**

Attached



## Abandonment Areas:

**ORDINANCE NO. \_\_\_\_\_**

An ordinance providing for the abandonment and relinquishment of a portion of a water easement, located in City Block 2/5571 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to HEB Grocery Company, LP; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing for the payment of the publication fee; and providing an effective date for this ordinance.

ooooooo

**WHEREAS**, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of HEB Grocery Company, LP, a Texas limited partnership; hereinafter referred to as **GRANTEE**, deems it advisable to abandon, relinquish and quitclaim the City of Dallas' right, title and interest in and to the hereinafter described tract of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions herein provided, said portion of easement is no longer needed for municipal use, and same should be abandoned, relinquished and quitclaimed to **GRANTEE** as hereinafter provided, for the consideration hereinafter stated; and

**WHEREAS**, the City Council of the City of Dallas is of the opinion that the best interest and welfare of the City will be served by abandoning, relinquishing and quitclaiming the same to **GRANTEE** for the consideration and subject to the terms and conditions hereinafter more fully set forth.

**Now, Therefore,**

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

**SECTION 1.** That the City of Dallas hereby abandons and relinquishes all of its right, title and interest in and to the tract of land described in Exhibit A, attached hereto and made a part hereof; subject, however, to the conditions.

**SECTION 2.** That for and in monetary consideration of the sum of **FIVE THOUSAND FOUR HUNDRED AND NO/100 (\$5,400.00) DOLLARS** paid by **GRANTEE**, and the further consideration described in Section 8, the City of Dallas does by these presents **FOREVER QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all its right, title and interest in and to the certain tract or parcel of land hereinabove described in Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

**SECTION 3.** That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions, and conditions of this ordinance.

**SECTION 4.** That the Chief Financial Officer is hereby authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund, Fund 0001, Department DEV, Balance Sheet 0519 and Department of Sustainable Development and Construction-Real Estate Division shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in the General Fund, Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund, Fund 0625, Department BMS, Unit 8888, Revenue Code 8416.

**SECTION 5.** That the abandonment, relinquishment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise.

**SECTION 6.** That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

**SECTION 7.** That the abandonment, relinquishment and quitclaim provided for herein shall extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon, relinquish and quitclaim.

**SECTION 8.** That as a condition of this abandonment and as a part of the consideration for the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold harmless the City of Dallas as to any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the area described in Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the area set out in Exhibit A, (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the area described in Exhibit A, which **GRANTEE**, its successors and assigns agree to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the area set out in Exhibit A. **GRANTEE**, its successors and assigns hereby agree to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgment or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended; (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended; (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils; (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended; (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

**SECTION 9.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or designee shall deliver to **GRANTEE** a certified copy of this ordinance. The Director of Department of Sustainable Development and Construction, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

**SECTION 10.** That this contract is designated as Contract No. DEV-2017-00002065.

**SECTION 11.** That 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, and it is accordingly so ordained.

APPROVED AS TO FORM:

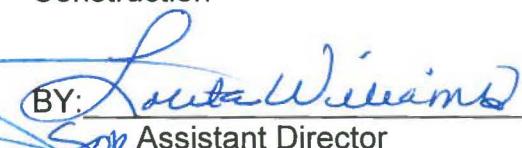
LARRY E. CASTO, City Attorney

BY: 

Assistant City Attorney

DAVID COSSUM, Director

Department of Sustainable Development and Construction

BY: 

SOK Assistant Director

Passed \_\_\_\_\_.

WATER EASEMENT ABANDONMENT  
PT. LOT 1, BLOCK 2/5571  
BLUFFVIEW VILLAGE ADDITION  
JAMES FARQUAHAR SURVEY, ABSTRACT NO. 455  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

## Exhibit A

BEING A 0.0051 ACRES OR 220 SQUARE FEET, TRACT OR PARCEL OF LAND SITUATED IN THE JAMES FARQUAHAR SURVEY, ABSTRACT NO. 455, IN THE CITY OF DALLAS, DALLAS COUNTY, TEXAS, AND BEING A PORTION OF LOT 1, CITY OF DALLAS BLOCK NO. 2/5571, OF THE BLUFFVIEW VILLAGE ADDITION, AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 83107, PAGE 3555 OF THE DEED RECORDS, DALLAS COUNTY, TEXAS, AND BEING A PORTION OF A 10 FOOT WATER LINE EASEMENT RECORDED BY SAID PLAT, AND ALSO BEING A PORTION OF THE 3.9598 ACRE TRACT DESCRIBED IN SPECIAL WARRANTY DEED TO HEB GROCERY COMPANY, LP, RECORDED UNDER COUNTY CLERK'S FILE NUMBER 201600249967 OF THE OFFICIAL PUBLIC RECORDS OF DALLAS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A POINT IN THE EAST LINE OF SAID LOT 1, AND BEING THE NORTHWEST CORNER OF LOT 18 IN BLOCK 1/5571 OF MIDWAY-NORTHWEST HIGHWAY ESTATES, AN ADDITION TO THE CITY OF DALLAS ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 83107, PAGE 3546 OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS; SAID POINT BEARS SOUTH 00° 30' 00" EAST A DISTANCE OF 360.30 FEET FROM A 1/2" IRON ROD (CONTROLLING MONUMENT) AND BEARS NORTH 00° 30' 00" WEST A DISTANCE OF 484.89 FEET FROM A 1/2" IRON ROD (CONTROLLING MONUMENT);

THENCE NORTH 41° 58' 37" WEST, OVER AND ACROSS SAID LOT 1 AND SAID HEB TRACT FOR A DISTANCE OF 161.02 FEET TO A POINT ON A CORNER OF SAID 10 FOOT WATER LINE EASEMENT, AND ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 89° 46' 10" WEST AND FOLLOWING ALONG THE LINE OF SAID 10 FOOT WATER LINE EASEMENT FOR A DISTANCE OF 22.00 FEET TO A POINT FOR CORNER;

THENCE NORTH 00° 13' 50" EAST FOR A DISTANCE OF 10.00 FEET TO A POINT FOR CORNER;

THENCE SOUTH 89° 46' 10" EAST FOR A DISTANCE OF 22.00 FEET TO A POINT FOR CORNER;

THENCE SOUTH 00° 13' 50" WEST FOR A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING, AND CONTAINING 0.0051 ACRES (220 SQUARE FEET) OF LAND, MORE OR LESS.

(For SPRG use only)	
Reviewed by:	G.S.
Date:	11-13-17
SPRG No.	4207



DATE: 11-06-2017

*David Petree*

DAVID PETREE  
REGISTERED PROFESSIONAL LAND  
SURVEYOR NO. 1890

BASIS OF BEARING IS EAST LINE OF LOT 1, BLOCK 2/5571,  
PER PLAT RECORDED IN VOLUME 83107, PAGE 3555 OF THE  
DEED RECORDS OF DALLAS COUNTY, TEXAS

PAGE 1 OF 3



BLUE SKY SURVEYING  
& MAPPING, CORPORATION  
11015 MIDWAY ROAD  
DALLAS, TEXAS 75229  
PHONE: (214) 358-4500  
FAX: (214) 358-4600  
DRPETREE@BLUESKYSURVEYING.COM  
TBPLS REGISTRATION No. 10105700

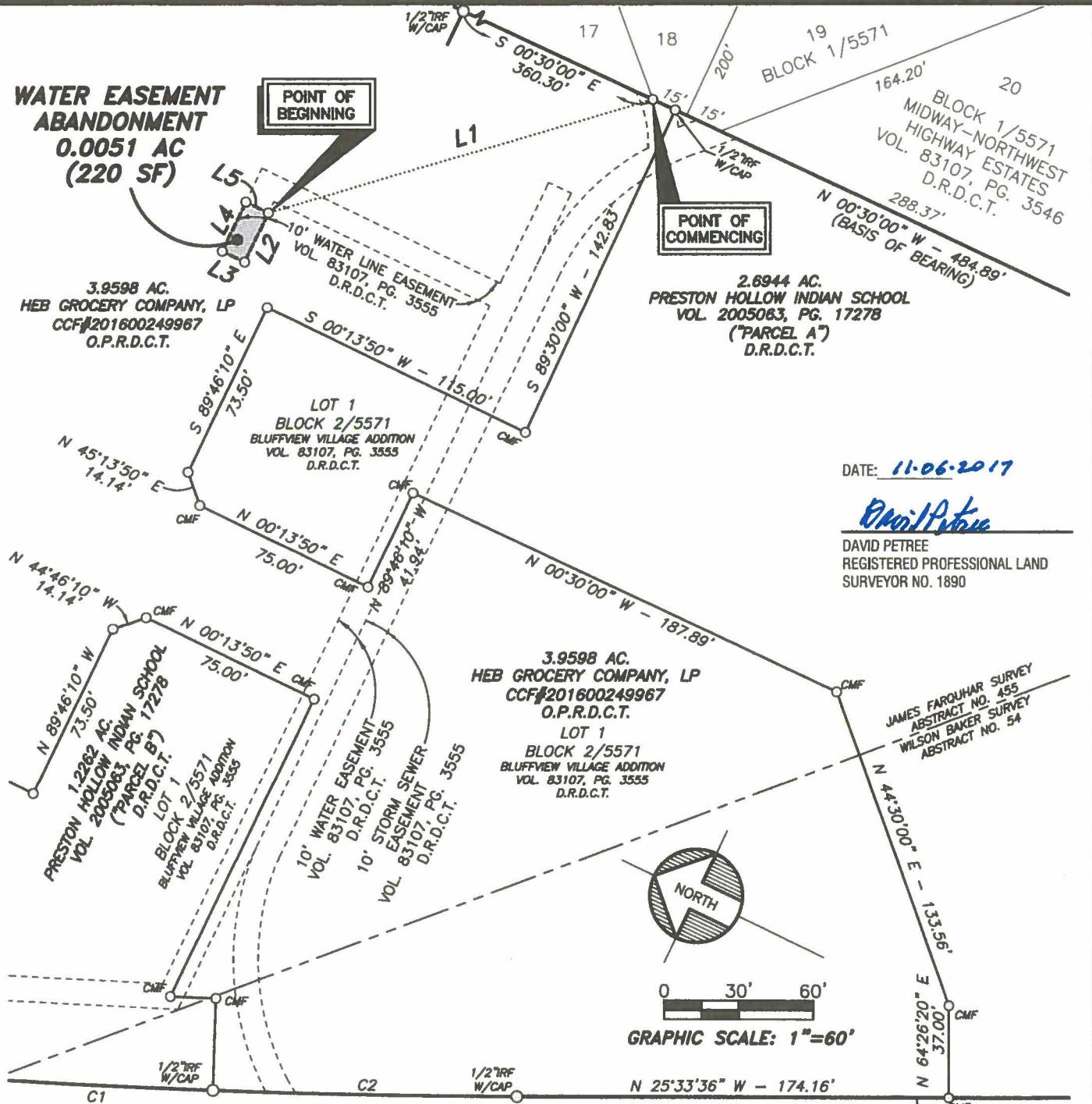
## WATER EASEMENT ABANDONMENT

PT. LOT 1, BLOCK 2/5571  
BLUFFVIEW VILLAGE ADDITION  
JAMES FARQUAHAR SURVEY, ABSTRACT NO. 455  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

DATE: NOVEMBER 6, 2017

\Midwaynorthwesthighwaynec\EsmtExbts

## **Exhibit A**



(For SPRG use only)

Reviewed by: G.S.  
Date: 11-13-17  
SPRG No. 4207

(VARIABLE WIDTH PUBLIC RIGHT-OF-WAY)

(BY USE AND OCCUPATION)  
(FKA MIDWAY CHURCH ROAD)  
(NO DEED OR RECORD FOUND)

BASIS OF BEARING IS EAST LINE OF LOT 1, BLOCK 2/5571,  
PER PLAT RECORDED IN VOLUME 83107, PAGE 3555 OF THE  
DEED RECORDS OF DALLAS COUNTY, TEXAS

PAGE 2 OF 3



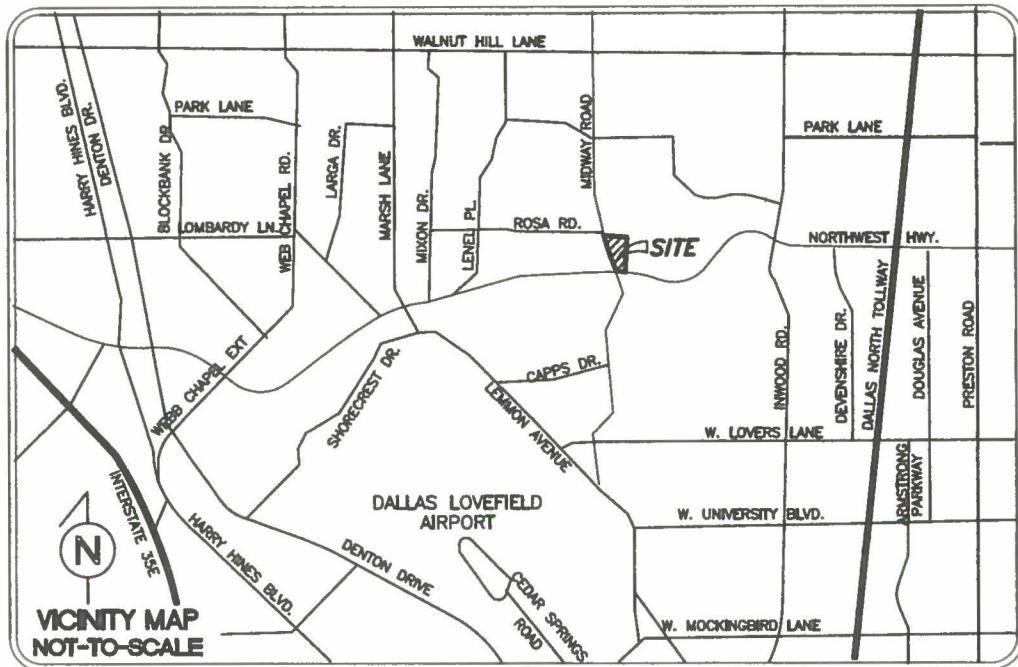
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PHONE: (214) 358-4500  
FAX: (214) 358-4600  
[DRPETREE@BLUESKYSURVEYING.COM](mailto:DRPETREE@BLUESKYSURVEYING.COM)  
TBPLS REGISTRATION No. 10105700

# WATER EASEMENT ABANDONMENT

PT. LOT 1, BLOCK 2/5571  
BLUFFVIEW VILLAGE ADDITION  
JAMES FARQUAHAR SURVEY, ABSTRACT NO. 455  
CITY OF DALLAS, DALLAS COUNTY, TEXAS

DATE: NOVEMBER 6, 2017  
SCALE: 1"=60'

# Exhibit A



## LEGEND

O.P.R.D.C.T. OFFICIAL PUBLIC RECORDS, DALLAS COUNTY, TEXAS  
 D.R.D.C.T. DEED RECORDS, DALLAS COUNTY, TEXAS  
 M.R.D.C.T. MAP RECORDS, DALLAS COUNTY, TEXAS  
 CCF# COUNTY CLERK'S FILE NUMBER  
 VOL. VOLUME  
 PG. PAGE  
 AC ACRES  
 SF SQUARE FEET  
 CMF "X" FOUND IN CONCRETE  
 IRF IRON ROD FOUND (AS NOTED ON DRAWING)

## ~ LINE TABLE ~

NO.	BEARING	DISTANCE
L1	N41°58'37"W	161.02'
L2	N89°46'10"W	22.00'
L3	N00°13'50"E	10.00'
L4	S89°46'10"E	22.00'
L5	S00°13'50"W	10.00'

## ~ CURVE TABLE ~

NO.	RADIUS	DELTA	ARC	CH. BEARING	CHORD
C1	3664.06'	6°15'15"	399.96'	S20°31'18"E	399.76'
C2	3664.06'	01°50'03"	117.29'	S 24°38'38" E	117.28'

(For SPRG use only)

Reviewed by: G.S.  
 Date: 11-13-17  
 SPRG No. 4207

PAGE 3 OF 3



BLUE SKY SURVEYING  
 & MAPPING, CORPORATION  
 11015 MIDWAY ROAD  
 DALLAS, TEXAS 75229  
 PHONE: (214) 358-4500  
 FAX: (214) 358-4600  
 DRPETREE@BLUESKYSURVEYING.COM  
 TBPLS REGISTRATION No. 10105700

## WATER EASEMENT ABANDONMENT

PT. LOT 1, BLOCK 2/5571  
 BLUFFVIEW VILLAGE ADDITION  
 JAMES FARQUAHAR SURVEY, ABSTRACT NO. 455  
 CITY OF DALLAS, DALLAS COUNTY, TEXAS  
 DATE: NOVEMBER 6, 2017

Midwaynorthwesthighwaynec\EsmtExbts

**AGENDA ITEM # 15**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 2, 6, 9, 10, 14

**DEPARTMENT:** Department of Transportation

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 17N 23Z 27E N 36C

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**SUBJECT**

Authorize **(1)** an Interlocal Agreement with the Texas Department of Transportation (TxDOT) through a grant from the U.S. Department of Transportation Federal Highway Administration for the Highway Safety Improvement Program (HSIP) (Grant No. CSJ 0918-47-128, etc., CFDA No. 20.205) to provide cost reimbursement for material and labor costs incurred by the City of Dallas for intersection and traffic signal improvements at five locations: Royal Lane and Abrams Road, Skillman Street and Walnut Hill Lane, Skillman Street and Lovers Lane, Walnut Hill Lane and Abrams Road, and Webb Chapel Road and Larga Drive; **(2)** establishment of appropriations in an amount not to exceed \$104,066 in the TxDOT-Traffic Signal Improvements-5 Off-system Intersections-Royal-HSIP Fund; and **(3)** receipt and deposit of funds from TxDOT in an amount not to exceed \$104,066 - Not to exceed \$104,066 - Financing: Texas Department of Transportation Grant Funds

**BACKGROUND**

The City of Dallas was awarded federal grant funding totaling \$6.17 million from the 2014 Highway Safety Improvement Program (HSIP) administered by the Texas Department of Transportation (TxDOT) to upgrade several high-accident intersections in the City of Dallas.

TxDOT will begin construction at five of the following intersections: Royal Lane and Abrams Road, Skillman Street and Walnut Hill Lane, Skillman Street and Lovers Lane, Walnut Hill Lane and Abrams Road, and Webb Chapel Road and Larga Drive. The intersection improvements at these five off-system intersections will include upgrades to pedestrian features, signage, pavement markings and reconstruction of traffic signals.

## **BACKGROUND** (continued)

To remain consistent with other equipment in the city-wide system, the City of Dallas will provide labor and material for installation of traffic signal controllers, controller cabinets, traffic signs and other traffic control equipment for the project. TxDOT has agreed to reimburse the City for 100% of the above cost which includes labor and material.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure and Sustainability Committee on February 12, 2018.

## **ESTIMATED SCHEDULE OF PROJECT**

Begin Construction	July 2018
Complete Construction	October 2019

## **FISCAL INFORMATION**

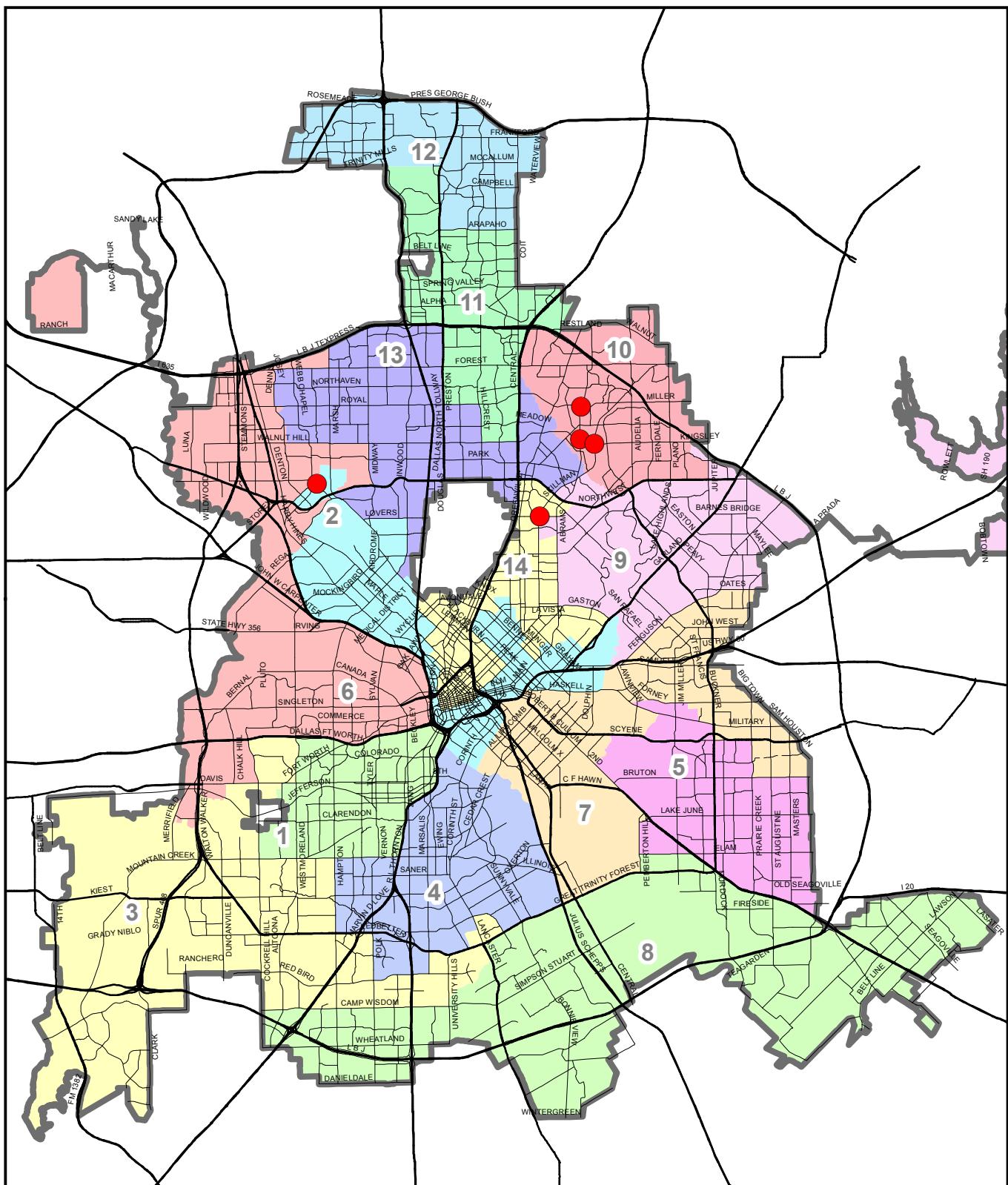
Texas Department of Transportation Grant Funds - \$104,065.75

<b><u>Council District</u></b>	<b><u>Amount</u></b>
2	\$ 15,609.86
6	\$ 5,203.29
9	\$ 5,203.29
10	\$ 62,439.45
14	<u>\$ 15,609.86</u>
Total	\$104,065.75

## **MAP**

Attached

## 2014 HSIP Submittal 2018 Let 5 Intersections



**Council Districts 2 ,6, 9, 10, 14  
Mapsco Pages 17N, 23Z, 27E, 27N, 36C**

February 14, 2018

**WHEREAS**, the Texas Department of Transportation (TxDOT) will provide reimbursement to the City of Dallas for material and labor costs incurred for improvements at five intersections, including upgrades to the traffic signals, specifically at Royal Lane and Abrams Road, Skillman Street and Walnut Hill Lane, Skillman Street and Lovers Lane, Walnut Hill Lane and Abrams Road, and Webb Chapel Road and Larga Drive; and

**WHEREAS**, TxDOT will reimburse the City of Dallas 100% of labor and material costs in an amount not to exceed \$104,065.75; and

**WHEREAS**, the City of Dallas desires to enter into an agreement with TxDOT to receive cost reimbursement for material and labor costs incurred for traffic signal improvements at Royal Lane and Abrams Road, Skillman Street and Walnut Hill Lane, Skillman Street and Lovers Lane, Walnut Hill Lane and Abrams Road, and Webb Chapel Road and Larga Drive for the Highway Safety Improvement Program (HSIP).

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Manager is hereby authorized to sign an Interlocal Agreement with the Texas Department of Transportation (TxDOT) through a grant from the Department of Transportation Federal Highway Administration (CFDA No. 20.205), Agreement Nos. CSJ 0918-47-128 (Royal Lane and Abrams Road), CSJ 0918-47-130 (Skillman Street and Walnut Hill Lane), CSJ 0918-47-131 (Skillman Street and Lovers Lane), CSJ 0918-47-132 (Walnut Hill Lane and Abrams Road) and CSJ 0918-47-133 (Webb Chapel Road and Larga Drive), after it has been approved as to form by the City Attorney. The agreement remains effective as long as the project is incomplete or unless otherwise terminated or modified.

**SECTION 2.** That the City Manager is hereby authorized to establish appropriations in an amount not to exceed \$104,065.75 in the TxDOT-Traffic Signal Improvements-5 Off-system Intersections-Royal-HSIP Fund, Fund F8GA, Department TRN, Unit 88GA, Activity THRG, Object 4820, Major Program TRNMJR, Program TPF8GA18.

**SECTION 3.** That the Chief Financial Officer is hereby authorized to receive and deposit all reimbursements from TxDOT in an amount not to exceed \$104,065.75 in the TxDOT-Traffic Signal Improvements-5 Off-system Intersections-Royal-HSIP Fund, Fund F8GA, Department TRN, Unit 88GA, Revenue Source 6506.

**SECTION 4.** That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$104,065.75 from the TxDOT-Traffic Signal Improvements-5 Off-system Intersections-Royal-HSIP Fund, Fund F8GA, Department TRN, Unit 88GA, Activity THRG, Object 4820, Major Program TRNMJR, Program TPF8GA18.

February 14, 2018

**SECTION 5.** That the City Manager is hereby authorized to reimburse the granting agency any expenditures identified as ineligible and notify the appropriate City Council Committee of expenditures identified as ineligible not later than 30 days after the reimbursement.

**SECTION 6.** That the City Manager shall keep the appropriate City Council Committee informed of all final granting agency monitoring reports not later than 30 days after the receipt of the report.

**SECTION 7.** That this contract is designated as Contract No. TRN-2018-00005213.

**SECTION 8.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**AGENDA ITEM # 16**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 14

**DEPARTMENT:** Department of Transportation

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 45F K

---

**SUBJECT**

Authorize a five-year professional services contract, with two one-year renewal options for the operation and maintenance support and oversight work for the Klyde Warren Park Tunnel, similar facilities and other related tasks - Jacobs Engineering Group, Inc., most advantageous proposer of two in Category 8 - Not to exceed \$3,771,672 - Financing: General Funds (subject to annual appropriations)

**BACKGROUND**

This action will authorize a five-year professional services contract, with two one-year renewal options with Jacobs Engineering Group, Inc., for the operation and maintenance support and oversight work for the Klyde Warren Park (KWP) Tunnel, similar facilities and other related tasks, in an amount not to exceed \$3,771,672.

The City's Interlocal Agreement with the Texas Department of Transportation (TxDOT) requires for the City to provide the operation and maintenance for the Klyde Warren Park Tunnel Project. Jacobs Engineering Group, Inc. has been working on this project since June 2012, and has an in-depth knowledge and background for the issues facing the Tunnel. They will assist with oversight of tunnel operation and maintenance for closed-circuit television (CCTV), fire alarm protection system, jet fans, emergency generator, heating, ventilation, and air conditioning (HVAC), lighting system, and other technical components of the Tunnel operations and ensure Federal Highway Administration's (FHWA's) National Tunnel Inspection Standards (NTIS) protocols are followed.

This contract is a master agreement, services will be utilized on an as-needed basis and available budget. Annual appropriations will not be exceeded unless additional funds are approved.

## **BACKGROUND** (continued)

This contract will provide services for the existing KWP tunnel. In addition, there are provisions in the contract for plan review, development of operation and maintenance schedules and other services for new or expanded facilities if needed.

Jacobs Engineering Group, Inc. scope of work includes regularly scheduled inspections and operational items as well as preparation of engineering plans, replacement schedules and other related items to ensure optimal operations of the tunnel system on an as-needed basis. Listed below is a sample of services to be performed under this contract:

- Structural and Civil inspections and associated reports for KWP tunnel ramps, deck-top and vaults
- Environmental Protection Agency mandated Aboveground Storage Tank inspections and reports
- Inspection of fire lines, including compressed air system
- Provide on-going oversight operations and maintenance of the CCTV access control and Fire Alarm Protection Systems
- Operational and technical support for jet fans, electrical gear and equipment, HVAC, generator, lighting system and controls
- Develop replacement schedules for electrical, mechanical and technology components of the tunnel system. Prepare engineering plans and specifications for these items as requested
- Analyze conditions of the three electrical vaults and develop upgrade plans if requested
- Training as needed for operation of control systems for the Dallas Police Department and Dallas Fire and Rescue
- Review contractor change order requests and submittals for technical compliance for electrical, mechanical and technology components
- Assist the City with plan review, development of operation and maintenance schedule and other related services for similar (new) facilities proposed to be constructed
- Provide professional services listed above for new facilities if requested
- Provide professional services supporting the City with implementation of FHWA NTIS. City will interface with the State of Texas for implementation requirements of NTIS. Vendor will review standard, attend meetings and develop pre-plan for implementation and develop a Request For Proposal for inspection services.

Approximately \$1.5 Million of the proposed \$3.8 Million contract is related to KWP operations and includes provisions for development of replacement schedules for various electrical, mechanical and electronic components and preparation of associated engineering plans and specifications if needed. Also included are analyses of conditions of the three electrical vaults and development of upgrade plans if needed. The remaining \$2.3 Million is for services for new or expanded facilities and other unforeseen needs.

## **BACKGROUND** (continued)

In May of 2017, the City of Dallas released a Request for Qualifications BYZ1712 for engineering services related to transportation. There were eight separate categories. This action falls under Category 8 for Special Intelligent Transportation Systems (ITS) and Lighting Facilities.

A five member committee from the following departments reviewed and evaluated the proposals:

- Department of Transportation (4)
- Dallas Police Department (1)

The committee selected the successful respondent on the basis of demonstrated competence and qualifications under the following criteria:

- Quality Assurance and Control 10%
- Business Inclusion and Development Plan 15%
- Experience and Capability 25%
- Responsiveness and Qualifications 50%

As part of the solicitation process and in an effort to increase competition, the Office of Procurement Services used its procurement system to send out 1,619 email bid notifications to vendors registered under respective commodities. To further increase competition, the Office of Procurement Services uses historical solicitation information, the internet, and vendor contact information obtained from user departments to contact additional vendors by phone. Additionally, in an effort to secure more bids, the Office of Business Diversity sent notifications to 25 chambers of commerce and advocacy groups to ensure maximum vendor outreach.

On November 10, 2015, City Council authorized the wage floor rate of \$10.37, by Resolution No. 15-2141; the selected vendor meets this requirement.

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On February 25, 2009, City Council authorized an Interlocal Agreement with the Texas Department of Transportation for the inspection, operation and maintenance of Woodall Rogers Deck Plaza by Resolution No. 09-0596.

Information about this item will be provided to the Mobility Solutions, Infrastructure and Sustainability Committee on February 12, 2018.

## **FISCAL INFORMATION**

General Funds - \$3,771,672 (subject to annual appropriations)

## **M/WBE INFORMATION**

1,619 - Vendors contacted  
1,617 - No response  
2 - Response (Bid)  
0 - Response (No bid)  
1 - Successful

The awardee has fulfilled the good faith effort requirements set forth in the Business Inclusion and Development (BID) Plan adopted on October 22, 2008, by Resolution No. 08-2826, as amended.

## **PROPOSAL INFORMATION**

The following two proposals were received from solicitation number BYZ1712 for Category 8 (Special ITS and Lighting Facilities) and opened on June 1, 2017. This professional services contract is being awarded in its entirety to the most advantageous proposer.

\*Denotes successful proposer

<b><u>Proposers</u></b>	<b><u>Address</u></b>	<b><u>Score</u></b>
*Jacobs Engineering Group, Inc.	1999 Bryan St. Suite 1200 Dallas, Texas 75201-3136	88.2
Maldonado Burkett Intelligent Transportation Systems, LLP	2205 Western Trails Blvd. Suite B Austin, Texas 78745	68.8

Statements of Qualifications were received from solicitation number BYZ1712 and opened on June 1, 2017, from the following two consultant teams: Jacobs Engineering Group, Inc. and Maldonado Burkett Intelligent Transportation Systems, LLP.

## **OWNER**

### **Jacobs Engineering Group, Inc.**

Brad Davis, P.E., Senior Director of Operations

## **MAP**

Attached

## BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

**PROJECT:** Authorize a five-year professional services contract, with two one-year renewal options for the operation and maintenance support and oversight work for the Klyde Warren Park Tunnel, similar facilities and other related tasks - Jacobs Engineering Group, Inc., most advantageous proposer of two in Category 8 - Not to exceed \$3,771,672 - Financing: General Funds (subject to annual appropriations)

Jacobs Engineering Group, Inc., is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-contractors.

**PROJECT CATEGORY:** Professional Services

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### LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$3,771,672.00	100.00%
Total non-local contracts	\$0.00	0.00%
<b>TOTAL CONTRACT</b>	<b>\$3,771,672.00</b>	<b>100.00%</b>

### LOCAL/NON-LOCAL M/WBE PARTICIPATION

#### Local Contractors / Sub-Contractors

<u>Local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
Sigma Environmental Solutions Inc	BMDB3625N0618	\$56,218.00	1.49%
MIR Consulting Engineers Inc	IMDB51552Y0618	\$97,068.00	2.57%
MEP Consulting Engineers Inc	WFWB30881Y029	\$217,854.00	5.78%
<b>Total Minority - Local</b>		<b>\$371,140.00</b>	<b>9.84%</b>

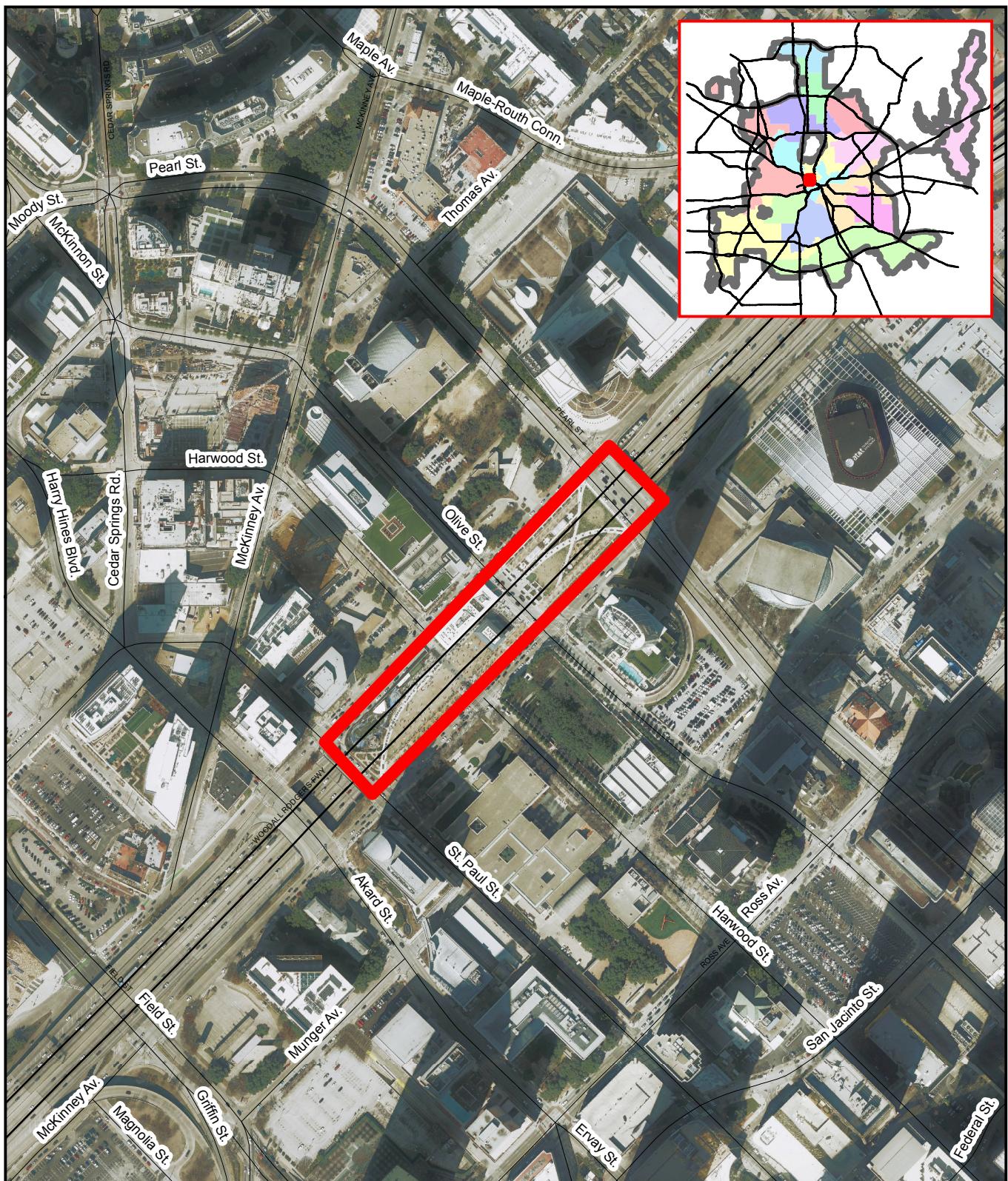
#### Non-Local Contractors / Sub-Contractors

None

### TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local &amp; Non-Local</u>	<u>Percent</u>
African American	\$56,218.00	1.49%	\$56,218.00	1.49%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$97,068.00	2.57%	\$97,068.00	2.57%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$217,854.00	5.78%	\$217,854.00	5.78%
<b>Total</b>	<b>\$371,140.00</b>	<b>9.84%</b>	<b>\$371,140.00</b>	<b>9.84%</b>

## Klyde Warren Park Tunnel



Council District 14  
Mapsco Page 45F 45K

February 14, 2018

**WHEREAS**, the City of Dallas desires to enter into a five-year professional services contract, with two one-year renewal options with Jacobs Engineering Group, Inc., most advantageous proposer of two in Category 8 , to provide operation and maintenance support and oversight work for the tunnel at Klyde Warren Park, similar facilities and other related tasks, in an amount not to exceed \$3,771,672.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the City Manager is hereby authorized to sign a five-year professional services contract, with two one-year renewal options with Jacobs Engineering Group, Inc., approved as to form by the City Attorney, for the operation and maintenance oversight for the tunnel at Klyde Warren Park, similar facilities and other related tasks, in an amount not to exceed \$3,771,672.

**SECTION 2.** That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$3,771,672 (subject to annual appropriations) to Jacobs Engineering Group, Inc. from General Fund, Fund 0001, Department TRN, Unit 3180, Object 3070, Activity PB24, Program TP318018, Encumbrance/Contract No. MASC TRN-2018-0004366, Commodity 91842, Vendor VS0000023961.

**SECTION 3.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**AGENDA ITEM # 31**

**STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018

**COUNCIL DISTRICT(S):** 7

**DEPARTMENT:** Water Utilities Department

**CMO:** Majed Al-Ghafry, 670-3302

**MAPSCO:** 48 J

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**SUBJECT**

Authorize a professional services contract with CDM Smith, Inc. to provide engineering services for a comprehensive assessment and preliminary design report for the rehabilitation of the Jim Miller Pump Station - Not to exceed \$1,975,000 - Financing: Water Utilities Capital Improvement Funds

**BACKGROUND**

The Jim Miller Pump Station located at 5200 Jim Miller Road in Dallas, Texas is one of the largest and most critical pumping facilities in the Dallas Water Utilities potable water distribution system. The 20 million gallon reservoir receives and stores water from the East Side Water Treatment Plant and supplies water to central, east, and north Dallas, as well as the Pleasant Grove area.

The pump station was constructed in 1950, the reservoir was added in 1978, and a major expansion of the pump station was constructed in 1985. Much of the equipment in the station dates back to the original construction and is inefficient and expensive to operate and maintain. Operation of the pump station can cause surge issues at the pump station and in the distribution system. Unmitigated surge can damage equipment and rupture pipelines.

This action will provide engineering services for a comprehensive assessment of the pump station and reservoir structures, pumps, motors, valves, pipes, electrical gear, instrumentation, heating, ventilation, and air condition equipment. The engineering firm will make recommendations to bring the station up to current building codes and pump station design standards, with a focus on mitigating surge, increasing efficiency, and extending the service life of the pump station. These recommendations will be compiled into a preliminary design report with final design and construction phase services to occur under a future supplemental agreement.

## **ESTIMATED SCHEDULE OF PROJECT**

Begin Preliminary Design	March 2018
Complete Preliminary Design	August 2019
Begin Final Design	September 2019
Complete Final Design	July 2020
Begin Construction	October 2020
Complete Construction	October 2022

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

Information about this item will be provided to the Mobility Solutions, Infrastructure and Sustainability Committee on February 12, 2018.

## **FISCAL INFORMATION**

Water Utilities Capital Improvement Funds - \$1,975,000.00

## **M/WBE INFORMATION**

See attached.

## **OWNER**

**CDM Smith, Inc.**

Steve Hickox, Chief Executive Officer  
Tim Wall, President

## **MAP**

Attached

## BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

**PROJECT:** Authorize a professional services contract with CDM Smith, Inc. to provide engineering services for a comprehensive assessment and preliminary design report for the rehabilitation of the Jim Miller Pump Station - Not to exceed \$1,975,000 - Financing: Water Utilities Capital Improvement Funds

CDM Smith Inc. is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-consultants.

**PROJECT CATEGORY:** Architecture & Engineering

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### LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$1,975,000.00	100.00%
Total non-local contracts	\$0.00	0.00%
<b>TOTAL CONTRACT</b>	<b>\$1,975,000.00</b>	<b>100.00%</b>

### LOCAL/NON-LOCAL M/WBE PARTICIPATION

#### Local Contractors / Sub-Contractors

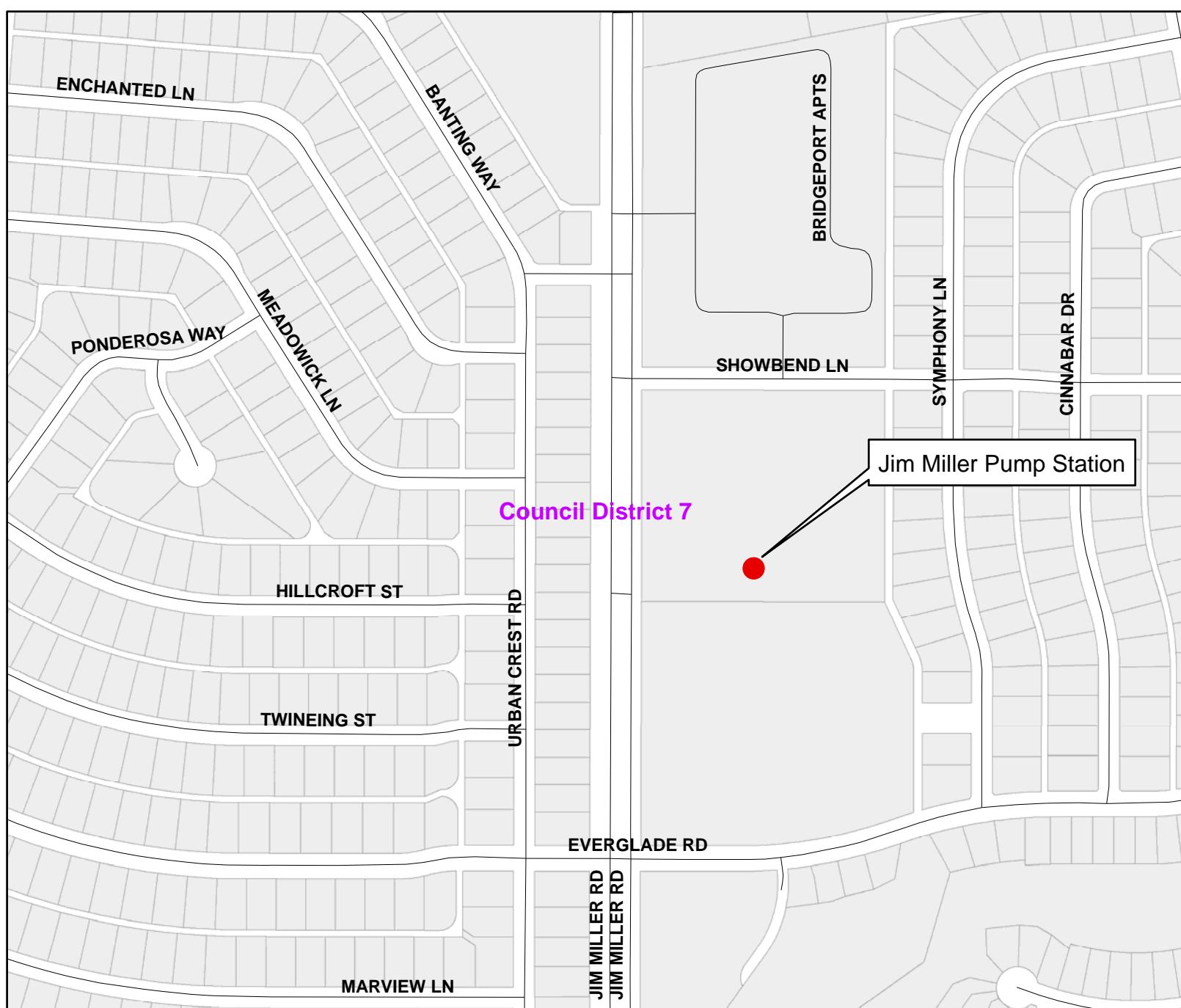
<u>Local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
GSR Andrade	HMMB60009Y0819	\$49,360.00	2.50%
JQ Infrastructure	IMDB66332Y0818	\$217,105.00	10.99%
Gupta & Associates, Inc.	PMMB72494Y0818	\$218,570.00	11.07%
<b>Total Minority - Local</b>		<b>\$485,035.00</b>	<b>24.56%</b>

#### Non-Local Contractors / Sub-Contractors

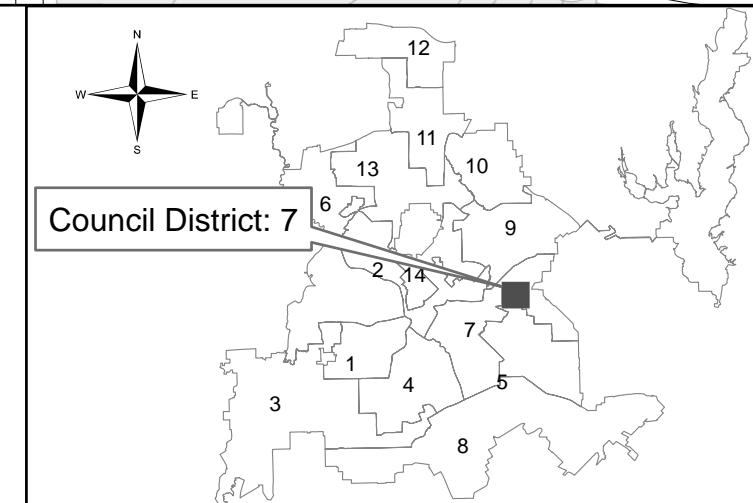
None

### TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local &amp; Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$49,360.00	2.50%	\$49,360.00	2.50%
Asian American	\$435,675.00	22.06%	\$435,675.00	22.06%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$0.00	0.00%
<b>Total</b>	<b>\$485,035.00</b>	<b>24.56%</b>	<b>\$485,035.00</b>	<b>24.56%</b>



Mapsco: 48 J



Dallas Water Utilities  
Contract No. 17-323E  
Jim Miller Pump Station Rehabilitation

February 14, 2018

**WHEREAS**, Dallas Water Utilities has identified a need to rehabilitate and improve the Jim Miller Pump Station; and

**WHEREAS**, engineering services are required for a comprehensive assessment and preliminary design report for these improvements; and

**WHEREAS**, CDM Smith, Inc., 12400 Coit Road, Suite 400, Dallas, Texas 75251, has submitted an acceptable proposal to provide these engineering services.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the proposal submitted by CDM Smith, Inc., Contract No. 17-323E, in the amount of \$1,975,000.00 be approved and the consultant be authorized to perform the required engineering services.

**SECTION 2.** That the City Manager is hereby authorized to sign an engineering services contract with CDM Smith, Inc., approved as to form by the City Attorney, to provide engineering services for a comprehensive assessment and preliminary design report for the rehabilitation of the Jim Miller Pump Station, in an amount not to exceed \$1,975,000.00.

**SECTION 3.** That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$1,975,000.00 to CDM Smith, Inc. from the Water Capital Improvement Fund, Fund 2115, Department DWU, Unit PW40, Object 4111, Program 717323, Encumbrance/Contract No. CX-DWU-2018-00004652, Vendor 089614.

**SECTION 4.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**AGENDA ITEM # 32****STRATEGIC  
PRIORITY:**

Mobility Solutions, Infrastructure, and Sustainability

**AGENDA DATE:** February 14, 2018**COUNCIL DISTRICT(S):** 8**DEPARTMENT:** Water Utilities Department  
Office of Economic Development**CMO:** Majed Al-Ghafry, 670-3302  
Raquel Favela, 670-3309**MAPSCO:** 65 T X 75 B**SUBJECT**

Authorize Supplemental Agreement No. 1 to the professional services contract with Kimley-Horn and Associates, Inc. to provide additional engineering services for the evaluation and design of wastewater infrastructure improvements for the University Hills area between Camp Wisdom Road and the Dallas-Lancaster corporate limit - Not to exceed \$569,738, from \$2,512,805 to \$3,082,543 - Financing: 2012 Bond Funds

**BACKGROUND**

The Dallas Grow South plan aims to attract new development and growth south of the Trinity River. The area along University Hills Boulevard between Camp Wisdom Road and the Dallas-Lancaster corporate limit is well positioned for development projects, including student housing, multifamily, mixed use, retail, and restaurants. On December 13, 2017, City Council authorized the establishment of the University TIF District to help promote development in the University Hills area as well as the University of Texas at Dallas area by Resolution No. 17-1941; Ordinance No. 30733.

The properties along University Hills Boulevard currently do not have convenient access to wastewater services and this is an inhibitor to growth and development in the region. In order to provide wastewater service to this area, a regional engineering evaluation and design is required. Dallas Water Utilities in cooperation with the Office of Economic Development, plans to evaluate wastewater service to the area and identify the best service option with respect to future development, construction cost and long term maintenance.

This action will provide for an engineering evaluation, recommendations for wastewater service, and design for wastewater infrastructure improvements in the University Hills area between Camp Wisdom Road and the Dallas-Lancaster corporate limit.

## **ESTIMATED SCHEDULE OF PROJECT**

Begin Evaluation	March 2018
Complete Evaluation	September 2018

## **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On September 14, 2016, City Council authorized a professional services contract with Kimley-Horn and Associates, Inc. to provide engineering design services for the replacement and rehabilitation of water and wastewater mains at 14 locations by Resolution No. 16-1471.

Information about this item will be provided to the Mobility Solutions, Infrastructure and Sustainability Committee on February 12, 2018.

## **FISCAL INFORMATION**

2012 Bond Funds - \$569,738

Design	\$2,512,805
Supplemental Agreement No. 1 (this action)	<u>\$ 569,738</u>
Total Project Cost	\$3,082,543

## **M/WBE INFORMATION**

See attached.

## **OWNER**

**Kimley-Horn and Associates, Inc.**

Marty S. Paris, P.E., Senior Associate

## **MAP**

Attached

## BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

**PROJECT:** Authorize Supplemental Agreement No. 1 to the professional services contract with Kimley-Horn and Associates, Inc. to provide additional engineering services for the evaluation and design of wastewater infrastructure improvements for the University Hills area between Camp Wisdom Road and the Dallas-Lancaster corporate limit - Not to exceed \$569,738, from \$2,512,805 to \$3,082,543 - Financing: 2012 Bond Funds

Kimley-Horn and Associates, Inc. is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use the following sub-contractors.

**PROJECT CATEGORY:** Professional Services

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### LOCAL/NON-LOCAL CONTRACT SUMMARY - THIS ACTION ONLY

	<u>Amount</u>	<u>Percent</u>
Local contracts	\$569,738.00	100.00%
Non-local contracts	\$0.00	0.00%
<b>TOTAL THIS ACTION</b>	<b>\$569,738.00</b>	<b>100.00%</b>

### LOCAL/NON-LOCAL M/WBE PARTICIPATION THIS ACTION

#### Local Contractors / Sub-Contractors

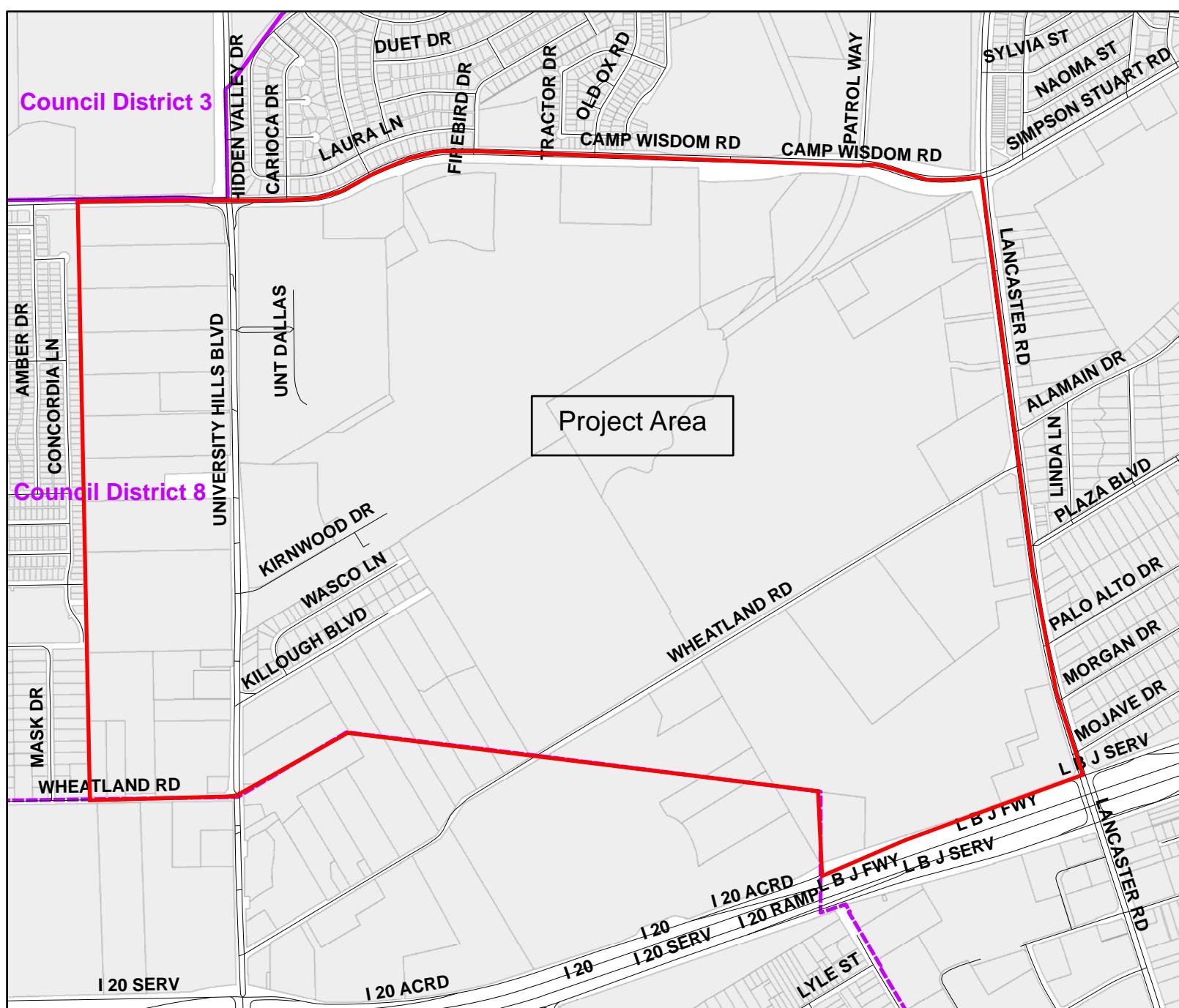
<u>Local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
BDS Technologies, Inc.	BMDB08427Y1118	\$54,500.00	9.57%
Alliance Geotechnical Group, Inc.	BMDB15110Y0118	\$25,727.50	4.52%
Gupta & Associates, Inc.	PMMB72494Y0818	\$38,500.00	6.76%
<b>Total Minority - Local</b>		<b>\$118,727.50</b>	<b>20.84%</b>

#### Non-Local Contractors / Sub-Contractors

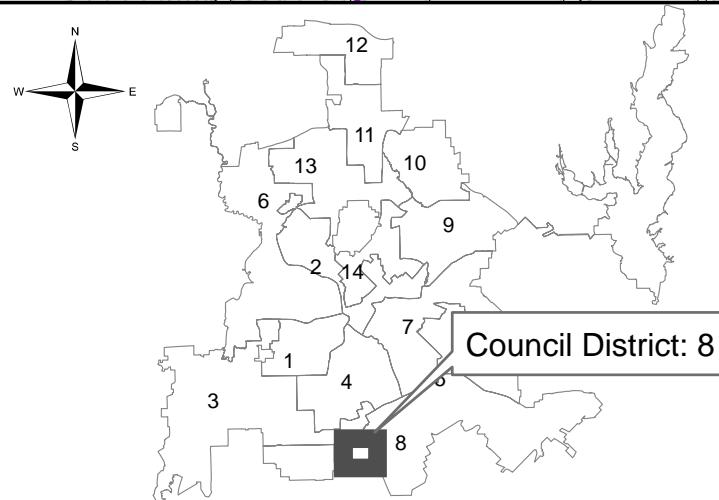
None

### TOTAL M/WBE PARTICIPATION

	<u>This Action</u>		<u>Participation to Date</u>	
	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>
African American	\$80,227.50	14.08%	\$192,727.50	6.25%
Hispanic American	\$0.00	0.00%	\$90,000.00	2.92%
Asian American	\$38,500.00	6.76%	\$38,500.00	1.25%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$553,000.00	17.94%
<b>Total</b>	<b>\$118,727.50</b>	<b>20.84%</b>	<b>\$874,227.50</b>	<b>28.36%</b>



Mapsco: 65 T, X, 75 B



**Dallas Water Utilities**  
**Contract No. 16-349/350E, Supplemental Agreement No. 1**  
**Evaluation and Design of Wastewater Infrastructure Improvements**

February 14, 2018

**WHEREAS**, on September 14, 2016, City Council authorized a professional services contract with Kimley-Horn and Associates, Inc. to provide engineering design services for the replacement and rehabilitation of water and wastewater mains at 14 locations, in an amount not to exceed \$2,512,805, by Resolution No. 16-1471; and

**WHEREAS**, additional engineering services are required for the study, evaluation, recommendation, and design of wastewater infrastructure improvements in the University Hills area between Camp Wisdom Road and the Dallas-Lancaster corporate limit; and

**WHEREAS**, Kimley-Horn and Associates, Inc., 13455 Noel Road, Two Galleria Tower, Suite 700, Dallas, Texas 75240, has submitted an acceptable proposal to provide these engineering services; and

**WHEREAS**, Dallas Water Utilities recommends that Contract No. 16-349/350E be increased by \$569,738, from \$2,512,805 to \$3,082,543.

**Now, Therefore,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That the proposed Supplemental Agreement No. 1 to the professional services contract be accepted and that Contract No. 16-349/350E with Kimley-Horn and Associates, Inc., be revised accordingly.

**SECTION 2.** That the City Manager is hereby authorized to sign Supplemental Agreement No. 1 to the professional services contract with Kimley-Horn and Associates, Inc., approved as to form by the City Attorney, to provide additional engineering services for the evaluation and design of wastewater infrastructure improvements for the University Hills area between Camp Wisdom Road and the Dallas-Lancaster corporate limit, in an amount not to exceed \$569,738, increasing the contract amount from \$2,512,805 to \$3,082,543.

**SECTION 3.** That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$569,738 to Kimley-Horn and Associates, Inc. from the Economic Development and Housing Development Program Fund, Fund 4U52, Department ECO, Unit W173, Object 4111, Program ECO12W173B, Vendor 135447.

**SECTION 4.** That this contract is designated as Contract No. DWU-2016-00001076.

**SECTION 5.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.