

DRAFT FOR REVIEW

NON-EXCLUSIVE PRIVILEGE AGREEMENT

This Non-Exclusive Privilege Agreement (hereinafter referred to as "Agreement") is entered into by and between the City of Fort Worth, Texas ("City") a home-rule municipality located within Tarrant, Denton, Johnson, Parker and Wise counties, acting through Valerie Washington, its duly authorized Assistant City Manager, and _____ ("Grantee"), acting through _____, its duly authorized representative.

WHEREAS, the Fort Worth City Council ("City Council") has enacted regulations affecting the business of collecting and transporting Municipal Solid Waste produced within Fort Worth City Limits in Sections 12.5-850 through 12.5-863 of the City Code of the City of Fort Worth ("City Code"); and

WHEREAS, Section 12.5-850 of the City Code requires any person who wishes to engage in the collecting and transporting of Recyclables, Organics, and Municipal Solid Waste produced within Fort Worth City Limits to enter into a non-exclusive privilege agreement with the City; and

WHEREAS, Section 12.5-856 of the City Code requires payment by Grantee of ten percent (10%) of Grantee's total Gross Hauling Revenue, including Indirect Revenue, from the collection and transporting of Recyclables, Organics, and Municipal Solid Waste produced within Fort Worth City Limits ; and

WHEREAS, Grantee has submitted an application to engage in the business of collecting and transporting of Recyclables, Organics, and Municipal Solid Waste produced within the Fort Worth City Limits.

NOW THEREFORE, for and in consideration of the mutual promises and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby confessed and acknowledged, the City and Grantee agree as follows:

I. DEFINITIONS

The terms listed below shall have the following meanings. The definitions in this Agreement shall control over the definitions located in the City Code. Any other term that is used in this Agreement, but not defined in this section, shall have the meaning as defined in the City Code:

- A. **City Limits:** The corporate limits of the City of Fort Worth.
- B. **Compost or Composting:** The controlled microbial degradation of organic waste, which includes food, yard and mixed municipal solid wastes.
- C. **Direct Hauling Revenue:** Revenue derived from commercial account and temporary bin service (e.g. roll-off box, box hauling, and box drop-off).

- D. **Gross Hauling Revenue:** Revenue that is inclusive of Direct Hauling Revenue and Indirect Revenue as defined herein. This revenue shall be determined in accordance with generally accepted accounting principles (“GAAP”) promulgated by the Financial Accounting Standards Board
- E. **Indirect Revenue:** Revenue generated from fees and surcharges charged to the customer for the administration, collection, and disposal/processing of recyclables, organics, and municipal solid waste.
- F. **Municipal Solid Waste:** Solid waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, and other solid waste other than industrial waste.
- G. **Organics or Organic Materials:** Biodegradable waste comprised of non-recyclable food wastes, fish, plant materials, and paper that is collected separately from other municipal solid wastes and separated at the source from other municipal solid wastes by municipal solid waste generators for the purpose of preparing it for use as Compost, and is delivered to a compost facility.
- H. **Recyclable or Recyclable Materials:** Single-stream and source-separated residential or commercial by-products with potential economic value that are set aside, handled, packaged, or offered for collection in a manner distinct from regular municipal solid waste and are subject to separate collection methods to facilitate their reuse or reprocessing.
- I. **Temporary Bin Service:** Project-based bin or roll-off service for residential or commercial purposes.

II.

1. **Privilege.** A non-exclusive privilege is hereby granted to use the public streets, alleys and thoroughfares within City Limits for the purpose of engaging in the business of collection of Recyclables, Organics, and Municipal Solid Waste.
2. **Term.** The term of this Agreement shall be for a period of five (5) years, effective on the date signed by the Assistant City Manager. This Agreement shall be renewed upon mutual written agreement of the parties at the end of every five (5) year term of the Agreement unless notice of termination is provided by one party to the other at least thirty (30) days prior to the date of renewal or the terms of the Agreement are violated by the Grantee.
3. **Scope and Nature of Operation.** It is expressly understood and agreed that the Grantee may collect and deliver for disposal all Municipal Solid Waste, for processing Organic Materials and for processing all Recyclable Materials, accumulated on premises within City Limits, where the individuals or companies contract with the Grantee for those services—excluding residential service other than apartment complexes and motels. Grantee, at its own expense, shall furnish personnel and equipment to collect Recyclables, Organics, and Municipal Solid Waste, and shall

establish and perform the contracted services in an efficient and businesslike manner. Grantee shall furthermore comply with all pertinent rules, regulations, laws, and ordinances as directed by the City and all other governmental entities having jurisdiction thereupon.

4. **Regulation of Vehicles.** All vehicles used by the Grantee for the collection and transportation of Recyclables, Organics, and Municipal Solid Waste shall be registered with the City in accordance with Section 12.5-857 of the City Code, shall have registration attached thereto, and shall be covered at all times while loaded and in transit to prevent the spillage of any materials onto the public streets or properties adjacent thereto. Any spillage shall be promptly recovered by the Grantee. All vehicles owned by the Grantee shall be clearly marked with the Grantee's name in letters not less than four (4) inches in height. All such vehicles shall be cleaned and maintained by Grantee so as to be in good repair and of good appearance and, when idle, free of solid waste residue as may cause odor or provide a breeding place for vectors.

5. **Regulation of Leased Containers.** It is specifically understood and agreed that the City shall permit the Grantee to rent or lease containers for collection purposes to the owner or occupant of any premises within City Limits for collection purposes subject to the following requirements:

- a. ALL containers shall be constructed according to good industry practice in the trade;
- b. ALL containers shall be equipped with suitable covers to prevent blowing or scattering of Recyclables, Organics, and Municipal Solid Waste while being transported for disposal of their contents;
- c. ALL containers shall be cleaned and maintained by Grantee so as to be in good repair, of a good appearance and free of such Recyclables, Organics, and Municipal Solid Waste residues as may cause odor and provide a breeding place for vectors;
- d. ALL containers used for the disposal of food waste or other putrescible material shall be serviced no less than two (2) times per week; and
- e. ALL containers shall be clearly marked with the grantee's name and telephone number in letters not less than four (4) inches in height.

The City and the Grantee expressly agree that regardless of any responsibility which may be placed on Fort Worth residents or other third parties for the above five requirements, the Grantee under this agreement agrees to be responsible for each of the five requirements and to fulfill each of them without asserting they are the responsibility of some third party.

6. **Damage to Public Property.** Grantee expressly agrees to assume liability for all costs of repair of public streets, bridges, rights-of-way, and other facilities that are damaged as a result of negligence by Grantee, its officers, agents, or its employees during its operations pursuant to this agreement.

7. **Disposal of Municipal Solid Waste.** It is specifically understood and agreed that Grantee shall comply with all rules, regulations, laws, and ordinances pertaining to the disposal of Municipal Solid Waste as directed by responsible governmental agencies having jurisdiction thereupon. Disposal of all Municipal Solid Waste collected by the Grantee from premises within City Limits must be made at a sanitary landfill or transfer station that is in compliance with

applicable law. Grantee's violation of this provision shall be cause for revocation of this Agreement.

8. **Recyclable Materials.** It is specifically understood and agreed that the Grantee shall comply with all rules, regulations, laws and ordinances pertaining to the collection, transportation and processing of Recyclable Materials as directed by responsible governmental agencies having jurisdiction thereupon. The processing of all Recyclable Materials collected by the Grantee from premises within City Limits must be made at a Recyclable Materials recovery center that is in compliance with applicable law. Grantee's violation of this provision shall be cause for revocation of this Agreement.

9. **Organic Materials.** It is specifically understood and agreed that the Grantee shall comply with all rules, regulations, laws and ordinances pertaining to the collection, transportation disposal and/or processing Organic Materials as directed by responsible governmental agencies having jurisdiction thereupon. The processing of all source separated Organic Materials collected by the Grantee from premises within City Limits must be made at a compost facility that is in compliance with applicable law. Grantee's violation of this provision shall be cause for revocation of this Agreement. Disposal of all Organics collected by the Grantee from premises within City Limits that cannot be processed must be made at a sanitary landfill or transfer station that is in compliance with applicable law. Grantee's violation of this provision shall be cause for revocation of this Agreement.

10. **Prohibited Collection Hours.** The collection of Recyclables, Organics, and Municipal Solid Waste between the hours of 11:00 p.m. and 6:00 a.m. shall be prohibited.

11. **Requesting Permission for Collection During Prohibited Hours.** Grantee may seek permission to perform contracted services from 11:00 p.m. to 6:00 a.m. from the Assistant Director - Solid Waste Services/Environmental Services Department ("Director") in writing by email or US Postal Service mail, return receipt requested, by stating the particular hours Grantee wishes to collect Recyclables, Organics and Municipal Solid Waste and the reasons necessary for this exception. Upon receipt of a written request, the Director shall have ten (10) days to make a determination and shall notify the Grantee in writing of the decision within fifteen (15) days of the receiving notice. The Director reserves the right to review that decision if a complaint is received. The Director shall notify the Grantee, and the Grantee may present evidence to the Director or designated representative regarding such complaint. The Director or his designated representative shall determine (1) whether such collection between the hours of 11:00 p.m. and 6:00 a.m. did, in fact, occur at that location and was the cause of such complaint, and if so, (2) whether such collection at those hours and at that location should be prohibited and the Grantee's exception revoked.

12. **Fee.** For and in consideration of the covenants and agreements herein contained, Grantee hereby agrees to pay to the City a fee of ten percent (10%) of the Gross Hauling Revenue generated from Grantee's operations within City Limits. City reserves the right to modify this fee.

- a. **Fee Payment:** The fee shall be paid on a quarterly basis no later than thirty (30) days after the end of each calendar quarter. The payment shall be made to the City

of Fort Worth, Environmental Services Department, Solid Waste Services Division, 4100 Columbus Trail, Fort Worth, TX 76133.

- b. **Delinquent Payments:** Fee payments received after the due date shall be subject to interest at the rate of twelve (12%) percent per annum until the fees are paid in full.
13. **Reports.** Each quarterly payment shall be accompanied by a financial accounting report using the form which is attached as Exhibit A.
14. **Auditing Books and Records.** The City shall have the authority to arrange for and conduct, at the City's expense, an audit of the Grantee's books and records. Grantee shall maintain its books and records in accordance with the City Code. The records kept on site by Grantee shall include, but are not limited to:
- an inventory of all vehicles
 - a complete listing of all customers within the city including name, address and telephone numbers
 - the approximated number of and location of all dumpsters and roll-off containers
 - the volume of solid waste and recyclable materials collected within the city limits of Fort Worth; and
 - all quarterly and annual reports prepared pursuant to the privilege agreement.

The Grantee shall be given at least five (5) days' notice of the audit, a description of and the purpose for the audit, and a description, to the best of the City's ability, of the books, records, and documents the City wishes to review. At the City's discretion, Grantee shall pay the costs of audit if the results of the audit establish that Grantee has underpaid the fees required hereunder in any given year by five percent or more. Eligible Grantees may apply for an audit exemption, as set forth in the City's Grant of Privilege Audit Exemption Policy.

15. **Revocation of Privilege.** The failure or refusal of the Grantee to comply with any of the provisions of this Agreement or any of the provisions of the City Code, or any other applicable rules, regulations, laws and ordinances shall be deemed a breach of this Agreement. The Director shall notify the Grantee of such breach and the Grantee shall have thirty (30) days to cure the breach. If the breach is not cured within thirty (30) days and no "good faith" effort is being made to cure the breach, the Director may recommend that the City Council suspend for up to six months or revoke a privilege agreement. Upon City Council authorization to revoke this Agreement, the Grantee shall thereupon immediately surrender all rights in and under the privilege, and the privilege shall be null and void.

16. **Indemnity Insurance.** Grantee assumes all risk of loss or injury to property or persons arising from any of its operations under this Agreement, and agrees to indemnify and hold harmless the City of Fort Worth from all claims, demands, suits, judgments, costs or expenses, including attorney's fees, arising from any such loss or injury. It is expressly understood that the provisions contained herein shall not in any way limit the liability of the Grantee. Grantee agrees to maintain insurance as follows:

A. Minimum Limits:

1. Commercial General Liability: \$500,000.00 per occurrence
\$2,000,000.00 aggregate
2. Automobile Liability Insurance: \$1,000,000.00 each accident.
Coverage is to include "any auto" used by Grantee. Coverage shall include loading and unloading.

B. Other Insurance Terms:

1. The City of Fort Worth shall be endorsed as an additional insured on each of Grantee's insurance policies.
2. Grantee's insurance shall be endorsed with a waiver of subrogation in favor of the City.
3. Grantee's insurance policies shall be endorsed to provide a minimum 30 days-notice of cancellation, non-renewal, or material change in coverage, such notice to be sent to the City at the address set forth below.
4. City of Fort Worth shall receive Certificates of Liability Insurance prior to Grantee beginning work.
5. Insurers shall be acceptable to the City of Fort Worth and Insurers shall be duly authorized by the Texas Department of Insurance.
6. Grantee's insurance policies shall not have a greater than \$50,000.00 deductible per occurrence unless otherwise approved by City.
7. Insurance agencies used by Grantee shall be duly licensed in the State of Texas.

17. **Retention of Rights by City.** The City, in granting this privilege, fully retains and reserves all the rights, privileges, and immunities that it now has under the law to fully patrol and police the streets, alleys, and public ways within the City, and the granting of this privilege shall in no way interfere with the improvements or maintenance, on any streets, alleys, or public ways, and the rights of the Grantee herein to use the streets shall at all times be subservient to the right of the governing body of the City of Fort Worth to fully exercise its rights of control over streets, alleys, and public ways.

18. **Amendments.** The City expressly reserves the right, after due notice to Grantee, to modify, amend, alter, change, or eliminate any of the provisions of this privilege and to impose such additional conditions upon the Grantee as may be just and reasonable as determined by the City Council, the conditions to be those deemed necessary for the purpose of insuring adequate service to the public.

19. **Assignment of Agreement.** This Agreement and any and all rights and obligations hereunder may be assigned by the Grantee only with the prior written consent of the City Council. All provisions of this Agreement shall apply to the Grantee, its successors or assigns.

20. **Severability.** If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions herein, which other portions shall continue in full force and effect.

21. **Mailing of Notices.** Every notice to be served upon the City or the Grantee shall be hand delivered or sent by certified mail, return receipt requested. Every such communication to the City shall be delivered or sent to the Assistant Environmental Services Director, Solid Waste Services at the following address: 4100 Columbus Trail, Fort Worth, Texas 76133. Every such notice to the Grantee shall be delivered or sent to [GRANTEE'S ADDRESS]. The mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when received. Either party may, upon written notice to the other party, change the address specified in this section.

22. **Applicable Law and Venue.** This Agreement shall be deemed to be executed in the City of Fort Worth, Texas, regardless of the domicile of the Company, and shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action or proceeding arising under or relating to this Agreement shall be in Tarrant County, Texas.

[signatures below]

IN WITNESS WHEREOF, the City and Grantee have executed this agreement by their authorized representatives.

CITY OF FORT WORTH:

<p>By: _____ Name: Valerie Washington Title: Assistant City Manager</p> <p>Date: _____, 2024</p> <p>RECOMMENDED BY:</p> <p>By: _____ Name: Jim Keezell Title: Assistant Environmental Services Director, Solid Waste Services</p> <p>ATTEST:</p> <p>By: _____ Name: Jannette Goodall Title: City Secretary</p>	<p>Contract Compliance Manager: By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: _____ Name: Christian Harper Title: Environmental Contract Services Administrator</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: _____ Name: Kevin Anders Title: Assistant City Attorney</p>
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GRANTEE:

<p>By: _____ Name: _____ Title: _____</p> <p>Date: _____, 2024</p>
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EXHIBIT A
City of Fort Worth Environmental Services Department

GRANT OF PRIVILEGE HAULER QUARTERLY FINANCIAL ACCOUNTING REPORT

REPORTING PERIOD		Beginning Date:
		Ending Date:
Grantee Company Name: (Name as it appears on Agreement)	Privilege Agreement Number: (City Secretary Contract Number Example CSCXXXX)	
Taxpayer Identification Number (TIN):		
Primary Contact Name:	Telephone Number:	
Physical Address:	Mailing Address:	

City Limits: The corporate limits of the City of Fort Worth.

Total Gross Revenue Generated Within City Limits Gross Hauling Revenue: Revenue that is inclusive of Direct Hauling Revenue and Indirect Revenue as defined below and in the agreement. This revenue shall be determined in accordance with generally accepted accounting principles ("GAAP") promulgated by the Financial Accounting Standards Board.) Direct Hauling Revenue: Revenue derived from commercial account and temporary bin service (e.g. roll-off box, box hauling, and box drop-off). Indirect Revenue: Revenue generated from fees and surcharges charged to the customer for the administration, collection, and disposal/processing of Recyclables, Organics, and Municipal Solid Waste. (For this Reporting Period)	\$	
Total Number of Accounts Serviced Within City Limits (As of the Last Day of Reporting Period)	Accounts	-
Total Tons Of Material Collected Within City Limits (For this Reporting Period)	Tons	-

MUNICIPAL SOLID WASTE (MSW) (Solid waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, and other solid waste other than industrial waste.)

Approximated Tons of MSW Collected from Multi-Family Units Within City Limits	Tons	
Approximated Tons of MSW Collected from Commercial Accounts Within City Limits	Tons	
Number of MSW Accounts Serviced Within City Limits	Accounts	

RECYCLABLE OR RECYCLABLE MATERIALS (Single-stream and source-separated residential or commercial by-products with potential economic value that are set aside, handled, packaged, or offered for collection in a manner distinct from regular Municipal Solid Waste and are subject to separate collection methods to facilitate their reuse or reprocessing.)

Approximated Tons of Recycling Collected from Multi-Family Units Within City Limits	Tons	
Approximated Tons of Recycling Collected from Commercial Accounts Within City Limits	Tons	
Number of Recycling Accounts Serviced Within City Limits	Accounts	

ORGANICS (Biodegradable waste comprised of non-recyclable food wastes, fish, plant materials, and paper that is collected separately from other municipal solid wastes and separated at the source from other municipal solid wastes by municipal solid waste generators for the purpose of preparing it for use as Compost, and is delivered to a compost facility.)

Approximated Tons of Organics Collected from Multi-Family Units Within City Limits	Tons	
Approximated Tons of Organics Collected from Commercial Accounts Within City Limits	Tons	
Number of Organics Accounts Serviced in Fort Worth Within City Limits	Accounts	

TOTAL AMOUNT DUE CITY FOR THIS REPORTING PERIOD (10% of Gross Revenues Automatically Calculates From Input Above)	\$	-
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I certify that the reported information is correct to the best of my knowledge

Form Filled Out By: _____

Date: _____

Signature _____

MAIL CHECK & COPY OF REPORT TO:
City of Fort Worth
Environmental Services - Solid Waste Division
4100 Columbus Trail
Fort Worth, Texas 76133
For All Questions Please E-Mail: GrantofPrivilege@fortworthtexas.gov

Form Updated 10/18/2024