

BUDGET, FINANCE, & AUDIT COMMITTEE

RECEIVED

DALLAS CITY COUNCIL COMMITTEE AGENDA

2017 MAR 16 PM 3:49

CITY SECRETARY
DALLAS, TEXAS

MONDAY, MARCH 20, 2017
CITY HALL
COUNCIL BRIEFING ROOM, 6ES
1500 MARILLA
DALLAS, TEXAS 75201
1:00 P.M. – 2:30 P.M.

Chair, Councilmember Jennifer S. Gates
Vice-Chair, Councilmember Philip T. Kingston
Deputy Mayor Pro Tem Erik Wilson
Councilmember Rickey D. Callahan
Councilmember Scott Griggs
Councilmember Lee M. Kleinman

Call to Order

1. Consideration of the minutes from the February 21, 2017 Budget, Finance, & Audit Committee meeting
2. Consideration of Upcoming Agenda Items

BRIEFINGS

3. Dallas Central Appraisal District
2017-2018 Proposed Budget
Ken Nolan, Chief Appraiser
Dallas Central Appraisal District
4. Utility Franchising
Nick Fehrenbach, Manager of Regulatory Affairs
Office of Financial Services

FYI

5. FY 2016 -17 Financial Forecast Report
Information as of January 31, 2017
6. December 31, 2016 Quarterly Investment Report

UPCOMING AGENDA ITEMS

March 22, 2017 City Council Meeting

- A. Agenda Item #4: Authorize a one-year service contract for airfield paint removal, striping, and painting services at Dallas Love Field - Hi-Lite Airfield Services, LLC, through the Texas Association of School Boards (BuyBoard) - Not to exceed \$998,532 - Financing: Aviation Current Funds (subject to appropriations)

A quorum of the City Council may attend this Council Committee meeting

- B. Agenda Item #5: Authorize a two-year service contract for the rental of vehicles and equipment - Herc Rentals, Inc. in the amount of \$4,192,108, Enterprise Rent-A Car dba EAN Holdings, LLC in the amount of \$1,554,264, Four Seasons Equipment, Inc. in the amount of \$1,258,350, Landmark Equipment, Inc. in the amount of \$1,187,473, Holt Texas, LTD in the amount of \$777,880, Kirby-Smith Machinery, Inc. in the amount of \$767,126, Sunbelt Rentals in the amount of \$687,865, United Rentals (North America), Inc. in the amount of \$349,543, and Metro Golf Cars in the amount of \$87,646, lowest responsible bidders of nine - Total not to exceed \$10,862,255 - Financing: Current Funds (subject to annual appropriations)
- C. Agenda Item #6: Authorize a three-year service contract for barricade services - Dallas Lite and Barricade, Inc., lowest responsible bidder of two - Not to exceed \$201,882 - Financing: Current Funds (\$12,700), Water Utilities Current Funds (\$118,012), and Stormwater Drainage Management Current Funds (\$71,170) (subject to annual appropriations)
- D. Agenda Item #8: Authorize a three-year service contract, with two one-year renewal options, for actuarial analysis services for Risk Management - Bickmore, most advantageous proposer of eight - Not to exceed \$81,600 - Financing: Current Funds (subject to annual appropriations)
- E. Agenda Item #9: Authorize the first of two one-year renewal options to the service contract with Harris Corporation formerly known as Exelis, Inc. for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field - Not to exceed \$181,832 - Financing: Aviation Current Funds (subject to appropriations)
- F. Agenda Item #11: Authorize (1) Supplemental Agreement No. 1 to increase the consulting contract with Deloitte Consulting, LLP for actuarial services related to the Dallas Police and Fire Pension System in the amount of \$759,000, from \$414,000 to \$1,173,000; and (2) an increase in appropriations in the amount of \$759,000 in the City Controller's Office FY 2016-17 budget, from \$4,682,481 to \$5,441,481 - Not to exceed \$759,000 - Financing: Contingency Reserve Funds
- G. Agenda Item #13: Authorize payment for an asbestos abatement/demolition notification program for a four-year term as required by the Texas Department of State Health Services - Not to exceed \$150,000 - Financing: Current Funds (subject to annual appropriations)
- H. Agenda Item #21: Authorize an amendment to the five-year master municipal lease agreement for the financing of personal property purchases - Banc of America Public Capital Corp. - Financing: No cost consideration to the City
- I. Agenda Item #27: 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: \$22,002

Adjourn


Jennifer S. Gates, Chair
Budget, Finance, & Audit Committee

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. Contemplated or pending litigation, or matters where legal advice is requested of the City Attorney. Section 551.071 of the Texas Open Meetings Act.
2. The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Section 551.072 of the Texas Open Meetings Act.
3. A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Section 551.073 of the Texas Open Meetings Act.
4. Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Section 551.074 of the Texas Open Meetings Act.
5. The deployment, or specific occasions for implementation of security personnel or devices. Section 551.076 of the Texas Open Meetings Act.
6. Deliberations regarding economic development negotiations. Section 551.087 of the Texas Open Meetings Act.

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."

Budget, Finance, & Audit Committee

Meeting Record

Meeting Date: February 21, 2017

Convened: 1:37 pm

Adjourned: 2:31 pm

Committee Members Present:

Jennifer S. Gates, Chair
Erik Wilson
Rickey D. Callahan

Scott Griggs
Lee Kleinman

Committee Members Absent:

Philip Kingston, Vice Chair

Other Council Members Present:

Staff Present:

Stephanie Cooper
Jack Ireland
Elizabeth Reich
Mike Frosch
Brett Johnson

John Jenkins
John Johnson
Ron King
Kelly High
William Finch

Sheila Delgado
Craig Kinton
Zarin Gracy
Liza Bustamante
Barbara McAninch

Robert Sims
Anne Lockyer
Edward Scott

Others Present:

N/A

AGENDA:

Call to Order

1. Consideration of the February 6, 2017 Minutes

Presenter(s):

Information Only: _

Action Taken/Committee Recommendation(s):

A motion was made to approve the February 6, 2017 minutes. Motion passed unanimously.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

2. Consideration of Upcoming Agenda Items

Presenter(s): N/A

Information Only: _

Action Taken/Committee Recommendation(s):

Motion made by: Lee Kleinman

Motion seconded by: Rickey Callahan

Budget, Finance, & Audit Committee

Meeting Record

3. January / February 2017 Living Wage Results

Presenter(s): Mike Frosch, Director, *Business Development & Procurement Services*

Information Only: X

Action Taken/Committee Recommendation(s):

Motion made by: N/A

Motion seconded by: N/A

4. Budget Process Update

Presenter(s): Jack Ireland, Director, *Office of Financial Services*

Information Only: X

Action Taken/Committee Recommendation(s):

Motion made by: N/A

Motion seconded by: N/A

UPCOMING AGENDA ITEMS:

February 22, 2017 City Council Meeting

- A. **Agenda Item #2: Authorize a three-year service contract for feral hog control and abatement from City property – Striker Outfitters, LLC, most advantageous proposer of three - Not to exceed \$347,100 - Financing: Current Funds (\$69,900), Water Utilities Current Funds (\$128,625), Stormwater Drainage Management Current Funds (\$71,925), Sanitation Current Funds (\$71,925), and Aviation Current Funds (\$4,725) (subject to annual appropriations)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- B. **Agenda Item #3: Authorize a three-year service contract for grounds maintenance services - Moir Watershed Services, LLC in the amount of \$1,850,254 and Good Earth Corporation in the amount of \$1,149,735, most advantageous proposers of three - Total not to exceed \$2,999,989 - Financing: Current Funds (\$811,425), Sanitation Current Funds (\$338,310), and Stormwater Drainage Management Current Funds (\$1,850,254) (subject to annual appropriations)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

Budget, Finance, & Audit Committee

Meeting Record

- C. **Agenda Item #4: Authorize (1) a three-year service contract to provide interior landscaping services - Urban Environments, LLC dba Urban Jungle in the amount of \$157,050; and (2) a three-year master agreement for the purchase of interior plants - LaFoy Services, Inc. in the amount of \$131,184, most advantageous proposers of three - Total not to exceed \$288,234 - Financing: Current Funds (\$182,934), Aviation Current Funds (\$90,720), and Convention and Event Services Current Funds (\$14,580) (subject to annual appropriations)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- D. **Agenda Item #5: A Authorize a five-year service contract, with two one-year renewal options, for the processing of applications and renewals of security alarm permits and the collection of fees associated with the security alarm permits and false alarms - Public Safety Corporation, most advantageous proposer of two - Estimated Annual Net Revenue: \$4,497,652**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- E. **Agenda Item #6: Authorize a ten-year service contract, with two five-year renewal options, to provide communication services, including data, internet, and telecommunication services at the Kay Bailey Hutchison Convention Center Dallas - Smart City Networks, most advantageous proposer of three - Estimated Total Net Revenue: \$10,219,018**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- F. **Agenda Item #7: Authorize (1) an acquisition contract for the purchase and implementation of a citywide data management system in the amount of \$2,041,435; and (2) a three-year service contract, with two two-year renewal options, for maintenance and support for a data management system in the amount of \$1,780,946 - IBM Corporation, most advantageous proposer of seven - Total not to exceed \$3,822,381 - Financing: Information Technology Equipment Funds (\$241,435), Municipal Lease Agreement Funds (\$1,800,000), and Current Funds (\$1,780,946) (subject to annual appropriations)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

Budget, Finance, & Audit Committee

Meeting Record

- G. **Agenda Item #8: Authorize (1) an acquisition contract for the purchase and implementation of a surveillance camera system at the Kay Bailey Hutchison Convention Center Dallas in the amount of \$458,425; and (2) a five-year service contract for ongoing maintenance of the surveillance camera system in the amount of \$231,988 - Schneider Electric Buildings Americas, Inc., most advantageous proposer of seven - Total not to exceed \$690,413 - Financing: Convention and Event Services Capital Construction Funds**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- H. **Agenda Item #9: Authorize (1) a five-year equipment lease agreement for mailing equipment, meters, related services, and supplies - Neopost USA, Inc. through the Texas Multiple Award Schedule in the amount of \$169,399; and (2) a five-year master agreement for metered U. S. postage - Neopost USA, Inc., sole source in the amount of \$5,649,338 - Total not to exceed \$5,818,737 - Financing: Current Funds (subject to annual appropriations)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- I. **Agenda Item #10: Authorize the purchase of ballistic door panels for Police - Angel Armor, LLC - Not to exceed \$209,672 - Financing: Confiscated Monies Funds**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- J. **Agenda Item #11: Authorize a two-year master agreement for general batteries and flashlights - TKC Enterprises, Inc. in the amount of \$203,064, GT Distributors, Inc. in the amount of \$133,593, Battle & Battle Distributors, Inc. in the amount of \$77,813, Telecom Electric Supply in the amount of \$47,690, and Casco Industries, Inc. in the amount of \$6,069, lowest responsible bidders of six - Total not to exceed \$468,229 - Financing: Current Funds (\$320,251), Water Utilities Current Funds (\$88,982), Aviation Current Funds (\$55,771), Convention and Event Services Current Funds (\$1,382), and Stormwater Drainage Management Current Funds (\$1,843)**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- K. **Agenda Item #12: Authorize a three-year master agreement for animal bedding for Police horses - S-4 Quality Shavings, LLC, lowest responsible bidder of two - Not to exceed \$237,672 - Financing: Current Funds**

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Budget, Finance, & Audit Committee

Meeting Record

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- L. Agenda Item #13: Authorize (1) Supplemental Agreement No. 1 to increase the service contract with Wastebuilt Southwest, LLC dba Stepp Parts in the amount of \$375,201, from \$1,500,804 to \$1,876,005, Heil of Texas in the amount of \$245,730, from \$982,924 to \$1,228,654, Texas Kenworth Co. dba MHC Kenworth in the amount of \$138,818, from \$555,273 to \$694,091, Southwest International Trucks, Inc. in the amount of \$97,057, from \$388,229 to \$485,286, and The Around the Clock Freightliner Group, LLC in the amount of \$75,344, from \$301,377 to \$376,721; and (2) Supplemental Agreement No. 2 to increase the service contract with BTE Body Co., Inc. in the amount of \$52,847, from \$211,390 to \$264,237, for parts and labor for the maintenance and repair of heavy-duty truck transmissions, differentials, and refuse bodies - Total not to exceed \$984,997, from \$3,939,997 to \$4,924,994 - Financing: Current Funds (\$980,757) and Water Utilities Current Funds (\$4,240) (subject to annual appropriations) basin, a pharmaceutical and personal care products water quality study, and a Zebra Mussel sampling study and water quality study on each of the reservoirs in Dallas' water supply system from November 1, 2016 through September 30, 2017 - Not to exceed \$688,150 - Financing: Water Utilities Current Funds (subject to annual appropriations)

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- M. Agenda Item #15: Authorize approval of the 457 Deferred Compensation Plan for City Employees of the City of Dallas, as amended and restated, effective February 22, 2017 - Financing: No cost consideration to the City

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

- N. Agenda Item #54: Authorize (1) an extension through September 30, 2017 for Community Development Block Grant (CDBG) funded projects which have not met the twelve-month obligation or twenty-four-month expenditure requirement; (2) preliminary adoption of Reprogramming Budget No. 1 to the FY 2016-17 Action Plan to use unspent prior year CDBG funds in the amount of \$1,413,595 for the Major Systems Repair Program; and (3) a public hearing to be held on March 22, 2017 to receive comments on the proposed use of funds for Reprogramming Budget No. 1 to the FY 2016-17 Action Plan - Financing: No cost consideration to the City

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

Budget, Finance, & Audit Committee

Meeting Record

- O. Agenda Item #55: Ratify amendments to the 2017 City Calendar that was approved by Resolution No. 16-1777 on October 26, 2016, to (1) cancel the City Council Briefing Meeting that was scheduled for February 1, 2017; (2) cancel the council-staff planning session that was scheduled for February 15 and 16, 2017; (3) add a City Council Briefing Meeting on February 15, 2017; and (4) add a council-staff planning session on March 29 and 30, 2017 - Financing: No cost consideration to the City

A motion was made to forward to the City Council on February 22, 2017. Motion passed on unanimous vote.

Motion made by: Rickey Callahan

Motion seconded by: Lee Kleinman

Adjourn

Jennifer S. Gates, Chair
Budget, Finance, & Audit Committee

AGENDA ITEM # 4

KEY FOCUS AREA: Public Safety

AGENDA DATE: March 22, 2017

COUNCIL DISTRICT(S): 2

DEPARTMENT: Business Development & Procurement Services
Aviation

CMO: Elizabeth Reich, 670-7804
Theresa O'Donnell, 670-3309

MAPSCO: 34 K

SUBJECT

Authorize a one-year service contract for airfield paint removal, striping, and painting services at Dallas Love Field - Hi-Lite Airfield Services, LLC, through the Texas Association of School Boards (BuyBoard) - Not to exceed \$998,532 - Financing: Aviation Current Funds (subject to appropriations)

BACKGROUND

This action does not encumber funds; the purpose of a service contract is to establish firm pricing for services, for a specific term, which are ordered on an as needed basis.

This service contract will provide airfield paint removal, striping, and painting services at Dallas Love Field. A recent Federal Aviation Administration (FAA) inspection found certain markings that require updating. Per FAA guidelines, repairs will be done at the next reasonable closure which is April 8 through April 16. This contract will allow for removal of old markings, resurfacing, and repainting of the approaches to the runways.

The Texas Association of School Boards (BuyBoard), conforms to the requirements of Texas Statutes that are applicable for competitive bids and proposals, in accordance with the Interlocal Cooperation Act, Chapter 791, Texas Government Code. In addition, BuyBoard receives bids from manufacturers and dealers throughout the United States.

The recommended vendor meets the wage floor rate of \$10.37 approved by City Council on November 10, 2015, by Resolution No. 15-2141.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On August 26, 2015, City Council authorized a one-year service contract for airfield marking, striping and painting services for Aviation by Resolution No. 15-1517.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$998,531.84 - Aviation Current Funds (subject to appropriations)

ETHNIC COMPOSITION

Hi-Lite Airfield Services, LLC

White Male	91	White Female	11
Black Male	5	Black Female	1
Hispanic Male	3	Hispanic Female	0
Other Male	0	Other Female	0

OWNER

Hi-Lite Airfield Services, LLC

John S. McNeely, President
Richard C. McNeely III, Vice President
Kelly J. Spinner, Secretary
Theodore Misiewicz, Treasurer

March 22, 2017

WHEREAS, on August 26, 2015, City Council authorized a one-year service contract for airfield marking, striping and painting services for Aviation by Resolution No. 15-1517;

NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute a service contract with Hi-Lite Airfield Services, LLC (VS88417) through the Texas Association of School Boards (BuyBoard) for airfield paint removal, striping, and painting services at Dallas Love Field for a term of one year in an amount not to exceed \$998,531.84, upon approval as to form by the City Attorney. If the service was bid or proposed on an as needed, unit price basis for performance of specified tasks, payment to Hi-Lite Airfield Services, LLC shall be based only on the amount of the services directed to be performed by the City and properly performed by Hi-Lite Airfield Services, LLC under the contract.

Section 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$998,531.84 (subject to appropriations) from Service Contract number MASCAVIFY17PAINTING.

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 # 5

KEY FOCUS AREA: E-Gov

AGENDA DATE: March 22, 2017

COUNCIL DISTRICT(S): All

DEPARTMENT: Business Development & Procurement Services
Equipment & Building Services

CMO: Elizabeth Reich, 670-7804
Jill A. Jordan, P.E., 670-5299

MAPSCO: N/A

SUBJECT

Authorize a two-year service contract for the rental of vehicles and equipment - Herc Rentals, Inc. in the amount of \$4,192,108, Enterprise Rent-A Car dba EAN Holdings, LLC in the amount of \$1,554,264, Four Seasons Equipment, Inc. in the amount of \$1,258,350, Landmark Equipment, Inc. in the amount of \$1,187,473, Holt Texas, LTD in the amount of \$777,880, Kirby-Smith Machinery, Inc. in the amount of \$767,126, Sunbelt Rentals in the amount of \$687,865, United Rentals (North America), Inc. in the amount of \$349,543, and Metro Golf Cars in the amount of \$87,646, lowest responsible bidders of nine - Total not to exceed \$10,862,255 - Financing: Current Funds (subject to annual appropriations)

BACKGROUND

This action does not encumber funds; the purpose of a service contract is to establish firm pricing for services, for a specific term, which are ordered on an as needed basis.

This service contract will enable City departments to rent various types of vehicles and equipment on an as needed basis to perform day-to-day construction, operational, and emergency services citywide. This service contract is advantageous to the City because it provides immediate access to a variety of equipment without the purchase, inventory, depreciation, and maintenance cost associated with ownership of the equipment.

BACKGROUND (Continued)

The types of equipment include, but are not limited to:

- Excavators
- Backhoe tractor loaders
- Graders and tractors
- Flat-bed trucks
- Pick-up trucks
- Cargo and passenger vans
- Compact and full size vehicles

This service contract also makes available smaller construction and maintenance equipment such as concrete mixers, jackhammers, boring machines, air compressors, walk behind rollers, and trenchers. The vendors are responsible for the maintenance, repair, or replacement of all wear items such as brakes and clutches, relieving the City of these routine repairs.

As part of the solicitation process and in an effort to increase competition, Business Development and Procurement Services (BDPS) used its procurement system to send out 1,861 email bid notifications to vendors registered under respective commodities. To further increase competition, BDPS 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, BDPS' ResourceLINK Team (RLT) sent notifications to 25 chambers of commerce, the DFW Minority Business Council, and the Women's Business Council – Southwest, to ensure maximum vendor outreach.

The recommended vendors meet the wage floor rate of \$10.37 approved by City Council on November 10, 2015, by Resolution No. 15-2141.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On June 13, 2012, City Council authorized a two-year service contract for vehicle and equipment rental by Resolution No. 12-1514.

On September 12, 2012, City Council authorized a two-year service contract for rental of bulldozers and water trucks by Resolution No. 12-2224.

On September 24, 2014, City Council authorized a two-year service contract for the rental of vehicles and equipment by Resolution No. 14-1627.

On September 28, 2016, City Council authorized Supplemental Agreement No. 1 to increase the service contract for the rental of vehicles and equipment by Resolution No. 16-1556.

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

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$10,862,254.20 - Current Funds (subject to annual appropriations)

M/WBE INFORMATION

- 192 -Vendors contacted
- 191 - No response
 - 1 - Response (Bid)
 - 0 - Response (No bid)
 - 1 - Successful vendor

The recommended awardees have fulfilled the good faith requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826, as amended.

ETHNIC COMPOSITION

Herc Rentals, Inc.

White Male	14	White Female	1
Black Male	3	Black Female	0
Hispanic Male	2	Hispanic Female	0
Other Male	1	Other Female	0

Enterprise Rent-A Car dba EAN Holdings, LLC

White Male	80	White Female	25
Black Male	79	Black Female	31
Hispanic Male	36	Hispanic Female	5
Other Male	5	Other Female	4

Four Seasons Equipment, Inc.

White Male	16	White Female	1
Black Male	1	Black Female	0
Hispanic Male	4	Hispanic Female	0
Other Male	0	Other Female	0

ETHNIC COMPOSITION (Continued)

Landmark Equipment, Inc.

White Male	42	White Female	8
Black Male	4	Black Female	1
Hispanic Male	7	Hispanic Female	0
Other Male	0	Other Female	0

Holt Texas, LTD

White Male	189	White Female	24
Black Male	31	Black Female	3
Hispanic Male	53	Hispanic Female	9
Other Male	15	Other Female	2

Kirby-Smith Machinery, Inc.

White Male	28	White Female	3
Black Male	2	Black Female	0
Hispanic Male	5	Hispanic Female	0
Other Male	0	Other Female	0

Sunbelt Rentals

White Male	138	White Female	8
Black Male	17	Black Female	0
Hispanic Male	42	Hispanic Female	1
Other Male	6	Other Female	0

United Rentals (North America), Inc.

White Male	141	White Female	18
Black Male	11	Black Female	0
Hispanic Male	30	Hispanic Female	2
Other Male	6	Other Female	1

Metro Golf Cars

White Male	14	White Female	5
Black Male	1	Black Female	0
Hispanic Male	26	Hispanic Female	1
Other Male	0	Other Female	0

BID INFORMATION

Business Development and Procurement Services received the following bids from solicitation number BN1605. We opened them on August 5, 2016. We recommend the City Council award this service contract to the lowest responsive and responsible bidders by line. Information related to this solicitation is available upon request.

*Denotes successful bidders

<u>Bidders</u>	<u>Address</u>	<u>Amount of Bid</u>
*Herc Rentals, Inc.	8200 John Carpenter Frwy. Dallas, TX 75247	Multiple Lines
*Enterprise Rent-A Car dba EAN Holdings, LLC	10966 Harry Hines Blvd. Dallas, TX 75220	Multiple Lines
*Four Seasons Equipment, Inc.	5524 Ledbetter Dr. Dallas, TX 75236	Multiple Lines
*Landmark Equipment, Inc.	1351 South Loop 12 Irving, TX 75060	Multiple Lines
*Holt Texas, LTD	2000 East Airport Frwy. Irving, TX 75062	Multiple Lines
*Kirby-Smith Machinery, Inc.	8505 South Central Expwy. Dallas, TX 75241	Multiple Lines
*Sunbelt Rentals	2341 Deerfield Dr. Fort Mill, SC 29715	Multiple Lines
*United Rentals (North America), Inc.	1350 South Loop 12 Irving, TX 75060	Multiple Lines
*Metro Golf Cars	4063 S. Freeway Fort Worth, TX 76110	Multiple Lines

OWNERS

Herc Rentals, Inc.

Lawrence Silber, President
Jason Oosterbeek, Vice President
Mary Ann Waryjas, Secretary
Mustally Hussein, Treasurer

OWNERS (Continued)

Enterprise Rent-A Car dba EAN Holdings, LLC

Brent Russell, President
Todd Burkman, Vice President
Thomas Berutti, Treasurer

Four Seasons Equipment, Inc.

Dave Keim, President
Dale DuBord, Vice President
Brian Emr, Secretary
Robert Carpenter, Treasurer

Landmark Equipment, Inc.

Mike Lyle, President

Holt Texas, LTD

Peter M. Holt, President

Kirby-Smith Machinery, Inc.

Ed Kirby, President
David Cooper, Vice President
Celise Blewitt, Secretary
J.D. Young, Treasurer

Sunbelt Rentals

Brendan Horgan, Chief Executive Officer
Francis Hassis, Executive Vice President
Kurt Kenkel, Secretary
John Schoenberger, Treasurer

United Rentals (North America), Inc.

Michael J. Kneeland, President
William B. Plummer, Vice President
Joli Gross, Secretary
Irene Moshouris, Treasurer

OWNERS (Continued)

Metro Golf Cars

Beverly Werner, President

Ben King, Vice President

Laura King, Secretary

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize a two-year service contract for the rental of vehicles and equipment - Herc Rentals, Inc. in the amount of \$4,192,108, Enterprise Rent-A Car dba EAN Holdings, LLC in the amount of \$1,554,264, Four Seasons Equipment, Inc. in the amount of \$1,258,350, Landmark Equipment, Inc. in the amount of \$1,187,473, Holt Texas, LTD in the amount of \$777,880, Kirby-Smith Machinery, Inc. in the amount of \$767,126, Sunbelt Rentals in the amount of \$687,865, United Rentals (North America), Inc. in the amount of \$349,543, and Metro Golf Cars in the amount of \$87,646, lowest responsible bidders of nine - Total not to exceed \$10,862,255 - Financing: Current Funds (subject to annual appropriations)

Herc Rentals, Inc., Enterprise Rent-A Car dba EAN Holdings, LLC, Four Seasons Equipment, Inc., Landmark Equipment, Inc., Holt Texas, LTD, Kirby-Smith Machinery, Inc., United Rentals (North America), Inc. are local, non-minority firms, have signed the "Business Inclusion & Development" documentation, and propose to use their own workforces. Sunbelt Rentals is a non-local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce. Metro Golf Cars is a non-local, minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce.

PROJECT CATEGORY: Other Services

LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$10,086,743.20	92.86%
Total non-local contracts	\$775,511.00	7.14%
TOTAL CONTRACT	\$10,862,254.20	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION

Local Contractors / Sub-Contractors

None

Non-Local Contractors / Sub-Contractors

<u>Non-local</u>	<u>Certification</u>	<u>Amount</u>	<u>Percent</u>
Metro Golf Cars	WFWB60659N0918	\$87,646.00	11.30%
Total Minority - Non-local		\$87,646.00	11.30%

TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local & Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$87,646.00	0.81%
Total	<u>\$0.00</u>	<u>0.00%</u>	<u>\$87,646.00</u>	<u>0.81%</u>

March 22, 2017

WHEREAS, on June 13, 2012, City Council authorized a two-year service contract for vehicle and equipment rental by Resolution No. 12-1514; and,

WHEREAS, on September 12, 2012, City Council authorized a two-year service contract for rental of bulldozers and water trucks by Resolution No. 12-2224; and,

WHEREAS, on September 24, 2014, City Council authorized a two-year service contract for the rental of vehicles and equipment by Resolution No. 14-1627; and,

WHEREAS, on September 28, 2016, City Council authorized Supplemental Agreement No. 1 to increase the service contract for the rental of vehicles and equipment by Resolution No. 16-1556;

NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute a service contract with Herc Rentals, Inc. (146874) in the amount of \$4,192,108.00, Enterprise Rent-A Car dba EAN Holdings, LLC (VC13560) in the amount of \$1,554,263.20, Four Seasons Equipment, Inc. (502821) in the amount of \$1,258,350.00, Landmark Equipment, Inc. (502100) in the amount of \$1,187,473.00, Holt Texas, LTD (506724) in the amount of \$777,880.00, Kirby-Smith Machinery, Inc. (502341) in the amount of \$767,126.00, Sunbelt Rentals (507070) in the amount of \$687,865.00, United Rentals (North America), Inc. (VS0000003745) in the amount of \$349,543.00, and Metro Golf Cars (144807) in the amount of \$87,646.00, for the rental of vehicles and equipment for a term of two years in a total amount not to exceed \$10,862,254.20, upon approval as to form by the City Attorney. If the service was bid or proposed on an as needed, unit price basis for performance of specified tasks, payment to Herc Rentals, Inc., Enterprise Rent-A Car dba EAN Holdings, LLC, Four Seasons Equipment, Inc., Landmark Equipment, Inc., Holt Texas, LTD, Kirby-Smith Machinery, Inc., Sunbelt Rentals, United Rentals (North America), Inc., and Metro Golf Cars shall be based only on the amount of the services directed to be performed by the City and properly performed by Herc Rentals, Inc., Enterprise Rent-A Car dba EAN Holdings, LLC, Four Seasons Equipment, Inc., Landmark Equipment, Inc., Holt Texas, LTD, Kirby-Smith Machinery, Inc., Sunbelt Rentals, United Rentals (North America), Inc., and Metro Golf Cars under the contract.

Section 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$10,862,254.20 (subject to annual appropriations) from Service Contract number BN1605.

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 # 6

KEY FOCUS AREA: Public Safety

AGENDA DATE: March 22, 2017

COUNCIL DISTRICT(S): All

DEPARTMENT: Business Development & Procurement Services
Mobility and Street Services
Trinity Watershed Management
Water Utilities

CMO: Elizabeth Reich, 670-7804
Jill A. Jordan, P.E., 670-5299
Mark McDaniel, 670-3256

MAPSCO: N/A

SUBJECT

Authorize a three-year service contract for barricade services - Dallas Lite and Barricade, Inc., lowest responsible bidder of two - Not to exceed \$201,882 - Financing: Current Funds (\$12,700), Water Utilities Current Funds (\$118,012), and Stormwater Drainage Management Current Funds (\$71,170) (subject to annual appropriations)

BACKGROUND

This action does not encumber funds; the purpose of a service contract is to establish firm pricing for services, for a specific term, which are ordered on an as needed basis.

This service contract will provide barricade services including rental, delivery, setup, and removal during the repair and maintenance activities on City streets. Barricading major thoroughfares in conformance with the Texas Manual on Uniform Traffic Controls is essential to protect the safety of the general public and City workers/contractors. This service contract will allow for scheduled and emergency barricading rental services.

In this solicitation, Business Development and Procurement Services required bidders to submit a response using unit pricing. This bid resulted in a 5 percent increase over comparable unit prices for the bid awarded in 2015.

As part of the solicitation process and in an effort to increase competition, Business Development and Procurement Services (BDPS) used its procurement system to send out 814 email bid notifications to vendors registered under respective commodities.

BACKGROUND (Continued)

To further increase competition, BDPS 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, BDPS' ResourceLINK Team (RLT) sent notifications to 25 chambers of commerce, the DFW Minority Business Council, and the Women's Business Council – Southwest, to ensure maximum vendor outreach.

The recommended vendor meets the wage floor rate of \$10.37 approved by City Council on November 10, 2015, by Resolution No. 15-2141.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On April 24, 2013, City Council authorized a two-year service contract for barricade services by Resolution No. 13-0695.

On March 25, 2015, City Council authorized a two-year service contract for barricade services by Resolution No. 15-0475.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$ 12,699.74 - Current Funds (subject to annual appropriations)

\$118,012.10 - Water Utilities Current Funds (subject to annual appropriations)

\$ 71,169.51 - Stormwater Drainage Management Current Funds (subject to annual appropriations)

M/WBE INFORMATION

168 - Vendors contacted

168 - No response

0 - Response (Bid)

0 - Response (No bid)

0 - Successful

The recommended awardee has fulfilled the good faith requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826, as amended.

ETHNIC COMPOSITION

Dallas Lite and Barricade, Inc.

White Male	36	White Female	8
Black Male	20	Black Female	0
Hispanic Male	13	Hispanic Female	6
Other Male	0	Other Female	0

BID INFORMATION

Business Development and Procurement Services received the following bids from solicitation number BQ1705. We opened them on December 2, 2016. We recommend the City Council award this service contract in its entirety to the lowest responsive and responsible bidder.

*Denotes successful bidder

<u>Bidders</u>	<u>Address</u>	<u>Amount of Bid</u>
*Dallas Lite and Barricade, Inc.	1607 Ft. Worth Ave. Dallas, TX 75208	\$201,881.35
Eagle Barricade, LLC	2029 McKenzie Dr. Suite 100 Carrollton, TX 75006	\$741,733.69

OWNER

Dallas Lite and Barricade, Inc.

Shane D. Howell, President
Jay Galler, Vice President
Lori Garcia, Secretary

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize a three-year service contract for barricade services - Dallas Lite and Barricade, Inc., lowest responsible bidder of two - Not to exceed \$201,882 - Financing: Current Funds (\$12,700), Water Utilities Current Funds (\$118,012), and Stormwater Drainage Management Current Funds (\$71,170) (subject to annual appropriations)

Dallas Lite and Barricade, Inc. is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce.

PROJECT CATEGORY: Other Services

LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$201,881.35	100.00%
Total non-local contracts	\$0.00	0.00%
TOTAL CONTRACT	\$201,881.35	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION

Local Contractors / Sub-Contractors

None

Non-Local Contractors / Sub-Contractors

None

TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local & Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$0.00	0.00%
Total	\$0.00	0.00%	\$0.00	0.00%

March 22, 2017

WHEREAS, on April 24, 2013, City Council authorized a two-year service contract for barricade services by Resolution No. 13-0695; and,

WHEREAS, on March 25, 2015, City Council authorized a two-year service contract for barricade services by Resolution No. 15-0475;

NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute a service contract with Dallas Lite and Barricade, Inc. (053684) for barricade services for a term of three years in an amount not to exceed \$201,881.35, upon approval as to form by the City Attorney. If the service was bid or proposed on an as needed, unit price basis for performance of specified tasks, payment to Dallas Lite and Barricade, Inc. shall be based only on the amount of the services directed to be performed by the City and properly performed by Dallas Lite and Barricade, Inc. under the contract.

Section 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$201,881.35 (subject to annual appropriations) from Service contract number BQ1705.

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.

KEY FOCUS AREA: E-Gov
AGENDA DATE: March 22, 2017
COUNCIL DISTRICT(S): All
DEPARTMENT: Business Development & Procurement Services
Office of Risk Management
CMO: Elizabeth Reich, 670-7804
Jeanne Chipperfield, 670-7804
MAPSCO: N/A

SUBJECT

Authorize a three-year service contract, with two one-year renewal options, for actuarial analysis services for Risk Management - Bickmore, most advantageous proposer of eight - Not to exceed \$81,600 - Financing: Current Funds (subject to annual appropriations)

BACKGROUND

This service contract will provide actuarial analysis services for Risk Management on an annual basis. The actuarial services will include independent reviews of the City's self-funded worker's compensation, general liability, and auto liability exposures. The analysis will assist the City by forecasting future events and planning for the future by providing extensive actuarial services to include annual cost factors and trend analysis, as well as quarterly reviews.

A five member evaluation committee from the following departments reviewed and evaluated the proposals:

- Controller's Office (1)
- Park and Recreation (1)
- Office of Risk Management (1)
- Human Resources (1)
- Business Development and Procurement Services (1)*

*Business Development and Procurement Services only evaluated the proposed cost.

BACKGROUND (Continued)

The committee selected the successful respondent on the basis of the demonstrated competence and qualifications under the following criteria:

- Overall approach and methodology 40 Points
- Cost 30 Points
- Capability and expertise 30 Points

As part of the solicitation process and in an effort to increase competition, Business Development and Procurement Services (BDPS) used its procurement system to send out 912 email bid notifications to vendors registered under respective commodities. To further increase competition, BDPS 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, BDPS' ResourceLINK Team (RLT) sent notices to 25 chambers of commerce, the DFW Minority Business Council, and the Women's Business Council - Southwest, to ensure maximum vendor outreach.

The recommended vendor meets the wage floor rate of \$10.37 approved by City Council on November 10, 2015, by Resolution No. 15-2141.

PRIOR ACTION/REVIEW (COUNCIL BOARDS, COMMISSIONS)

On January 8, 2014, City Council authorized a three-year service contract, with two one-year renewal options, for consulting, technical assistance, and actuarial services for Risk Management by Resolution No. 14-0104.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$81,600.00 - Current Funds (subject to annual appropriations)

M/WBE INFORMATION

153 - Vendors contacted
153 - No response
0 - Response (Bid)
0 - Response (No bid)
0 - Successful

The recommended awardee has fulfilled the good faith requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826 as amended.

ETHNIC COMPOSITION

Bickmore

White Male	24	White Female	44
Black Male	0	Black Female	3
Hispanic Male	3	Hispanic Female	9
Other Male	8	Other Female	11

PROPOSAL INFORMATION

Business Development and Procurement Services received the following proposals from solicitation number BKZ1701. We opened them on December 2, 2016. The most advantageous proposer also ranked the highest in overall approach, methodology, capability, and expertise. We recommend the City Council award this service contract in its entirety to the most advantageous proposer.

*Denotes successful proposer

<u>Proposers</u>	<u>Address</u>	<u>Score</u>	<u>Amount</u>
*Bickmore	1750 Creekside Oaks Dr. Suite 200 Sacramento, CA 95833	88.35%	\$ 81,600.00
SG Risk, LLC	1050 Wall Street West Suite 610 Lyndhurst, NJ 07071	82.75%	\$ 59,925.00
Merlinos & Associates, Inc.	3274 Medlock Bridge Rd. Peachtree Corners, GA 30092	77.38%	\$102,000.00
Oliver Wyman Actuarial Consulting, Inc.	500 Dallas St. Suite 1500 Dallas, TX 77002	73.77%	\$120,000.00
AMI Risk Consultants, Inc.	1336 SW 146 th Ct. Miami, FL 33184	72.37%	\$105,000.00
Aon Risk Consultant Services Southwest, Inc.	2711 N. Haskell Ave. Suite 800 Dallas, TX 75204	71.72%	\$118,500.00

PROPOSAL INFORMATION (Continued)

<u>Proposers</u>	<u>Address</u>	<u>Score</u>	<u>Amount</u>
Deloitte Consulting, LLP	2200 Ross Ave. Suite 1600 Dallas, TX 75201	58.55%	\$285,000.00
Arthur J. Gallagher & Co.	5420 LBJ Frwy. Suite 400 Dallas, TX 75240	57.49%	\$360,000.00

OWNER

Bickmore

Jeffrey C. Grubb, President
Michael Harrington, Vice President
Robert L. Kramer, Secretary

March 22, 2017

WHEREAS, on January 8, 2014, City Council authorized a three-year service contract, with two one-year renewal options, for consulting, technical assistance, and actuarial services for Risk Management by Resolution No. 14-0104;

NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to execute a service contract with Bickmore (VS0000080364) for actuarial analysis services for Risk Management for a term of three years, with two one-year renewal options, in an amount not to exceed \$81,600.00, upon approval as to form by the City Attorney. If the service was bid or proposed on an as needed, unit price basis for performance of specified tasks, payment to Bickmore shall be based only on the amount of the services directed to be performed by the City and properly performed by Bickmore under the contract.

Section 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$81,600.00 (subject to annual appropriations) from Service Contract number MASC BICKFY173860.

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.

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize a three-year service contract, with two one-year renewal options, for actuarial analysis services for Risk Management - Bickmore, most advantageous proposer of eight - Not to exceed \$81,600 - Financing: Current Funds (subject to annual appropriations)

Bickmore is a non-local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce.

PROJECT CATEGORY: Other Services

LOCAL/NON-LOCAL CONTRACT SUMMARY

	<u>Amount</u>	<u>Percent</u>
Total local contracts	\$0.00	0.00%
Total non-local contracts	\$81,600.00	100.00%
TOTAL CONTRACT	\$81,600.00	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION

Local Contractors / Sub-Contractors

None

Non-Local Contractors / Sub-Contractors

None

TOTAL M/WBE CONTRACT PARTICIPATION

	<u>Local</u>	<u>Percent</u>	<u>Local & Non-Local</u>	<u>Percent</u>
African American	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$0.00	0.00%
Total	<u>\$0.00</u>	<u>0.00%</u>	<u>\$0.00</u>	<u>0.00%</u>

KEY FOCUS AREA: E-Gov

AGENDA DATE: March 22, 2017

COUNCIL DISTRICT(S): 2

DEPARTMENT: Business Development & Procurement Services
Aviation

CMO: Elizabeth Reich, 670-7804
Theresa O'Donnell, 670-3309

MAPSCO: 34E

SUBJECT

Authorize the first of two one-year renewal options to the service contract with Harris Corporation formerly known as Exelis, Inc. for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field - Not to exceed \$181,832 - Financing: Aviation Current Funds (subject to appropriations)

BACKGROUND

This action does not encumber funds; the purpose of a service contract is to establish firm pricing for services, for a specific term, which are ordered on an as needed basis.

This renewal option will allow the City to continue the maintenance of hardware and associated software licenses for airport noise and flight track monitoring at Dallas Love Field. The data generated by this system assists Aviation staff in understanding aircraft generated noise exposure surrounding the airport (noise contours) and allows for printed aircraft flight tracks and other customized operational reports. This information is used to support the operations of the airport and the Aviation Department by providing data to effectively respond to citizen inquiries about aircraft generated noise.

This monitoring system, which is internet-based, receives data from remote noise monitoring sensors and from a multi-sensor data feed monitors, and verifies compliance with the Dallas Love Field Voluntary Noise Control Program. The remote noise monitoring sensors are installed at various locations within neighborhoods around the airport.

Maintenance under this service contract includes technical support and upgrades to current releases of software and patches.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 25, 2013, City Council authorized a three-year service contract, with two one-year renewal options, to continue maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field by Resolution No. 13-1667.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$181,832.00 - Aviation Current Funds (subject to appropriations)

ETHNIC COMPOSITION

Harris Corporation

White Male	170	White Female	83
Black Male	14	Black Female	26
Hispanic Male	9	Hispanic Female	7
Other Male	34	Other Female	12

OWNER

Harris Corporation

William Brown, President

March 22, 2017

WHEREAS, on September 25, 2013, City Council authorized a three-year service contract, with two one-year renewal options, to continue maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field in the amount of \$509,327.00, by Resolution No. 13-1667; and,

WHEREAS, on December 18, 2015, Administrative Action No. 15-7380 authorized Supplemental Agreement No. 1 to increase the service contract for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field in the amount of \$20,805.75, increasing the service contract amount from \$509,327.00 to \$530,137.75; and,

WHEREAS, on October 28, 2016, Administrative Action No. 16-7118 authorized Supplemental Agreement No. 2 to increase the service contract for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field in the amount of \$46,999.25, increasing the service contract amount from \$530,137.75 to \$577,137.00;

NOW, THEREFORE,

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

Section 1. That following approval as to form by the City Attorney, the City Manager is hereby authorized to execute the first of two one-year renewal options to the service contract with Harris Corporation formerly known as Exelis, Inc. (203021) for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field in an amount not to exceed \$181,832.00.

Section 2. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$181,832.00 (subject to appropriations) from Service Contract number BU1319.

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.

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize the first of two one-year renewal options to the service contract with Harris Corporation formerly known as Exelis, Inc. for maintenance of hardware and associated software licenses for airport noise and flight tracking monitoring at Dallas Love Field - Not to exceed \$181,832 - Financing: Aviation Current Funds (subject to appropriations)

Harris Corporation is a non-local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce.

PROJECT CATEGORY: Other Services

LOCAL/NON-LOCAL CONTRACT SUMMARY - THIS ACTION ONLY

	<u>Amount</u>	<u>Percent</u>
Local contracts	\$0.00	0.00%
Non-local contracts	\$181,832.00	100.00%
TOTAL THIS ACTION	\$181,832.00	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION THIS ACTION

Local Contractors / Sub-Contractors

None

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	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$0.00	0.00%
Total	\$0.00	0.00%	\$0.00	0.00%

KEY FOCUS AREA: E-Gov

AGENDA DATE: March 22, 2017

COUNCIL DISTRICT(S): All

DEPARTMENT: Business Development & Procurement Services
City Controller

CMO: Elizabeth Reich, 670-7804

MAPSCO: N/A

SUBJECT

Authorize **(1)** Supplemental Agreement No. 1 to increase the consulting contract with Deloitte Consulting, LLP for actuarial services related to the Dallas Police and Fire Pension System in the amount of \$759,000, from \$414,000 to \$1,173,000; and **(2)** an increase in appropriations in the amount of \$759,000 in the City Controller's Office FY 2016-17 budget, from \$4,682,481 to \$5,441,481 - Not to exceed \$759,000 - Financing: Contingency Reserve Funds

BACKGROUND

This Supplemental Agreement No. 1 to the consulting contract allows for actuarial review and recommendations for changes to the City's public safety employee retirement benefits program.

On September 21, 2016, the City of Dallas entered into a contract with Deloitte Consulting, LLP (Deloitte) to provide actuarial services related to the Dallas Police and Fire Pension System (DPFP). The City has a need to continue to retain Deloitte's services as it moves forward in analyzing changes to the plan. Services under this contract may include:

- Analyzing options
- Advising the City on potential future alternatives
- Attending additional stakeholder meetings
- Other actuarial services related to the work and analysis already performed by Deloitte

Since much of the additional services rely on Deloitte's documented understanding of the actuarial results of DPFP's actuaries, Segal Consulting, it would not be feasible for another firm to attempt to replicate the analysis already conducted. For this reason, Deloitte is uniquely qualified to continue to provide actuarial services and advice to the City.

BACKGROUND (Continued)

In accordance with Administrative Directive 4-5, Paragraph 9.3.5, Special Needs Justification was approved to contract with Deloitte Consulting, LLP.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Information about this item was provided to the Budget, Finance, and Audit Committee on March 21, 2016.

On March 23, 2016, City Council authorized a consulting contract for actuarial services related to the Dallas Police and Fire Pension System by Resolution No. 16-0492.

Information about this item was provided to the Budget, Finance, and Audit Committee on September 19, 2016.

On September 21, 2016, City Council authorized a consulting contract for actuarial services related to the Dallas Police and Fire Pension System by Resolution No. 16-1531.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$759,000.00 - Contingency Reserve Funds

ETHNIC COMPOSITION

Deloitte Consulting, LLP

White Male	186	White Female	110
Black Male	14	Black Female	15
Hispanic Male	22	Hispanic Female	12
Other Male	359	Other Female	73

OWNER

Deloitte Consulting, LLP

Janet Footty, Chief Executive Officer

BUSINESS INCLUSION AND DEVELOPMENT PLAN SUMMARY

PROJECT: Authorize **(1)** Supplemental Agreement No. 1 to increase the consulting contract with Deloitte Consulting, LLP for actuarial services related to the Dallas Police and Fire Pension System in the amount of \$759,000, from \$414,000 to \$1,173,000; and **(2)** an increase in appropriations in the amount of \$759,000 in the City Controller's Office FY 2016-17 budget, from \$4,682,481 to \$5,441,481 - Not to exceed \$759,000 - Financing: Contingency Reserve Funds

Deloitte Consulting, LLP, is a local, non-minority firm, has signed the "Business Inclusion & Development" documentation, and proposes to use their own workforce.

PROJECT CATEGORY: Other Services

LOCAL/NON-LOCAL CONTRACT SUMMARY - THIS ACTION ONLY

	<u>Amount</u>	<u>Percent</u>
Local contracts	\$759,000.00	100.00%
Non-local contracts	\$0.00	0.00%
TOTAL THIS ACTION	\$759,000.00	100.00%

LOCAL/NON-LOCAL M/WBE PARTICIPATION THIS ACTION

Local Contractors / Sub-Contractors

None

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	\$0.00	0.00%	\$0.00	0.00%
Hispanic American	\$0.00	0.00%	\$0.00	0.00%
Asian American	\$0.00	0.00%	\$0.00	0.00%
Native American	\$0.00	0.00%	\$0.00	0.00%
WBE	\$0.00	0.00%	\$0.00	0.00%
Total	\$0.00	0.00%	\$0.00	0.00%

March 22, 2017

WHEREAS, on March 23, 2016, City Council authorized a consulting contract for actuarial services related to the Dallas Police and Fire Pension System by Resolution No. 16-0492; and,

WHEREAS, on September 21, 2016, City Council authorized a consulting contract for actuarial services related to the Dallas Police and Fire Pension System by Resolution No. 16-1531;

NOW, THEREFORE,

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

Section 1. That following approval as to form by the City Attorney, the City Manager is hereby authorized to execute Supplemental Agreement No. 1 to increase the consulting contract with Deloitte Consulting, LLP (516612) for actuarial services related to the Dallas Police and Fire Pension System, in an amount not to exceed \$759,000.00, increasing the contract from \$414,000.00 to \$1,173,000.00.

Section 2. That the Chief Financial Officer is hereby authorized to transfer funds in an amount not to exceed \$759,000.00 from Fund 0001, Dept. NBG, Unit 1000, Revenue Source RTRF, to Fund 0001, Dept. CCO, Unit 1272, Revenue Source 9229; and a clearing entry in the same amount, to Fund 0001, Dept. CCO, BSA 0991 (Debit) and to Fund 0001, Dept. BMS, BSA 0950 (Credit).

Section 3. That the City Manager is hereby authorized to increase the City Controller's Office appropriations by \$759,000.00, from \$4,682,481.00 to \$5,441,481.00 in Fund 0001, Dept. CCO, Unit 1272, Object 3070; increase total General Fund expenditure appropriations by \$759,000.00, from \$1,229,838,885.00 to \$1,230,597,885.00; and increase total General Fund revenue appropriations by \$759,000.00, from \$1,229,838,885.00 to \$1,230,597,885.00.

Section 4. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$759,000.00 from Consulting Contract number MASC-CCO-00000000418.

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.

KEY FOCUS AREA: Clean, Healthy Environment
AGENDA DATE: March 22, 2017
COUNCIL DISTRICT(S): All
DEPARTMENT: Code Compliance
CMO: Joey Zapata, 670-3009
MAPSCO: N/A

SUBJECT

Authorize payment for an asbestos abatement/demolition notification program for a four-year term as required by the Texas Department of State Health Services - Not to exceed \$150,000 - Financing: Current Funds (subject to annual appropriations)

BACKGROUND

This agenda item will provide payment for a four-year term for the City of Dallas to participate in an asbestos abatement/demolition notification program. The Texas Department of State Health Services Demolition/Renovation Notification Program combines the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) and the Texas Asbestos Health Protection Rules. Both of these regulations require written notification be submitted before beginning demolition projects which may include the disturbance of any asbestos-containing building material. Participation by the City of Dallas is required and this item authorizes payment to the Texas Department of State Health Services for asbestos abatement/demolition notifications submitted. Notification and payment to the Texas Department of State Health Services is required for the following demolition structure types: residential structures surveyed, city-owned and commercial structures.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

Current Funds - \$150,000.00 (subject to annual appropriations)

March 22, 2017

WHEREAS, the Texas Department of State Health Services Demolition/Renovation Notification Program combines the requirements of the National Emission Standards for Hazardous Air Pollution (NESHAP) and the Texas Asbestos Health Protection Rules; and

WHEREAS, the City is required to provide written notification to the Texas Department of State Health Services for any structure that is being surveyed for asbestos prior to demolition.

NOW, THEREFORE,

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

Section 1. That the City Manager is authorized to provide payment for a four year term to the Texas Department of State Health Services (214083) for asbestos abatement/demolition notification services in an amount not to exceed \$150,000.00.

Section 2. That the Chief Financial Officer is authorized to disburse funds as follows (subject to annual appropriations):

<u>FUND</u>	<u>DEPT</u>	<u>UNIT</u>	<u>OBJ</u>	<u>MASC</u>	<u>AMOUNT</u>	<u>VENDOR</u>
0001	CCS	3041	3095	MASCCCSASBESTOS	\$150,000.00	214083

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.

KEY FOCUS AREA: E-Gov
AGENDA DATE: March 22, 2017
COUNCIL DISTRICT(S): N/A
DEPARTMENT: Office of Financial Services
CMO: Elizabeth Reich, 670-7804
MAPSCO: N/A

SUBJECT

Authorize an amendment to the five-year master municipal lease agreement for the financing of personal property purchases - Banc of America Public Capital Corp. - Financing: No cost consideration to the City

BACKGROUND

On August 26, 2015, pursuant to Resolution No. 15-1523, the City Council approved a five (5) year master municipal lease agreement for certain City equipment purchases. The use of a tax-exempt master lease line of credit permits more cost efficient use of financing as funds are borrowed to closely match the amount and timing of the payment for equipment. Interest rates are comparable to tax-exempt short-term note issuance. The initial and annual costs of the program are less than other types of debt issuance, such as tax-exempt commercial paper. There are no fees for financial advisory, rating agency, paying agent, or liquidity facility services since the master lease is considered a private placement. The only expense associated with the program is for legal services using the City's outside contracted bond counsel, such as reviewing the master lease agreement and issuing an opinion that the lease is a tax-exempt obligation.

The original master municipal lease agreement provided that swap index interest rates would change based on the index published by the Federal Reserve. The Federal Reserve now no longer provides such rate index. The amendment to the master municipal lease agreement will identify the Intercontinental Exchange, Inc., instead of the Federal Reserve as the source of the swap index used in the calculation of the lease term interest rate. In the future, if the Intercontinental Exchange, Inc. no longer publishes the swap interest rate basis, then, in such event, Banc of America Public Capital Corporation and the City, acting through the City Manager, will determine an alternative source of the rate change by letter agreement.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On December 14, 2011, City Council authorized a three-year master municipal lease agreement for the financing of personal property purchases by Resolution No. 11-3344.

On August 26, 2015, City Council authorized a five-year master municipal lease agreement for the financing of personal property purchases by Resolution No. 15-1523.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

No cost consideration to the City.

M/WBE INFORMATION

The recommended awardee has fulfilled the good faith requirements set forth in the Business Inclusion and Development (BID) Plan adopted by Council Resolution No. 08-2826 as amended.

ETHNIC COMPOSITION

Banc of America Public Capital Corp.

White Male	725	White Female	769
Black Male	203	Black Female	667
Hispanic Male	227	Hispanic Female	458
Other Male	101	Other Female	133

OWNER

Banc of America Public Capital Corp.

Christopher Giuliano, President
Brad Koster, Secretary

March 22, 2017

RESOLUTION AUTHORIZING AND APPROVING AN AMENDMENT TO THE MASTER MUNICIPAL LEASE AGREEMENT AND AUTHORIZING AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, on August 26, 2015, City Council authorized a five-year master municipal lease agreement for the purchase of personal property by Resolution No. 15-1523; and

WHEREAS, the master municipal lease agreement provides that the Federal Reserve will publish the swap rate interest rate index; and

WHEREAS, the Federal Reserve no longer publishes the swap interest rate index information and another source needs to be agreed to by the parties; and

WHEREAS, since changes to the terms of the master municipal lease agreement may not be made without a written amendment agreed to by the parties, an amendment to the five-year master municipal lease agreement for the financing of personal property purchases is necessary to effectuate a change in the source of the swap interest rate index.

NOW, THEREFORE,

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

Section 1. That the City Council authorizes the City Manager to execute an amendment to the five (5) year master municipal lease agreement, subject to the approval of the City Attorney as to form, for the financing of personal property purchases that authorizes a change in the language identifying the source of the swap index from the Federal Reserve in Publication H.15 to the Intercontinental Exchange, Inc. to be used in the calculation of the lease term interest rate.

Section 2. 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.

KEY FOCUS AREA: E-Gov
AGENDA DATE: March 22, 2017
COUNCIL DISTRICT(S): N/A
DEPARTMENT: Sanitation Services
CMO: Joey Zapata, 670-3009
MAPSCO: N/A

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: \$22,002

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 on January 25, 2017, require the City to approve transfer of ownership or sale of assets in accordance with the City Charter, has tightened reporting and payment provisions for franchisees, requires strict compliance with annual certificate of insurance renewal submissions, is for a franchise term of 5 years, and allows the Council to amend the franchise if needed, more easily and has a clearer acceptance process.

There are currently 215 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 the Dallas City Code to include a franchise fee method for regulating solid waste haulers by 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 and hauling franchise agreements.

Information about this item will be provided to the Budget, Finance, and Audit Committee on March 20, 2017.

FISCAL INFORMATION

\$22,002.00 - Estimated Annual Revenue

Franchises for Solid Waste Collection and Hauling

<u>Franchise Haulers</u>	<u>Estimated Annual Franchise Revenue</u>
American Roll-Off & Recycling LLC dba American Waste Disposal	\$9,600.00
Custom Recycling Solutions, LLC	\$5,520.00
JLH Removal LLC dba Bin There Dump That Dallas	\$5,760.00
T & R EXCAVATION, INC.	\$ 200.00
The Demo Company, LLC	\$ 922.00
Total	\$22,002.00

ORDINANCE NO. _____

An ordinance granting a franchise to American Roll-Off & Recycling LLC dba American Waste Disposal, a Texas limited liability company, with its principal address at 814 Rachelle Drive, Red Oak, Texas 75154-5220, 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 American Roll-Off & Recycling LLC dba American Waste Disposal, 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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. Disposal 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.

(g) 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 (iv) 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:

Marco Lozano
American Roll-off & Recycling LLC
814 Rachelle Drive
Red Oak, Texas 75154-5220

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 March 22, 2017

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

American Roll-Off & Recycling LLC dba American Waste Disposal, 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 March 22, 2017.

Dated: ____ day of _____, 2017.

FRANCHISEE:

American Roll-Off & Recycling LLC dba American Waste Disposal
a Texas limited liability company

By: _____
Marco A. Lozano, Owner

State of Texas
County of _____

This instrument was acknowledged before me on _____, 2017 by Marco A. Lozano, Owner, of American Roll-Off & Recycling LLC dba American Waste Disposal, 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 Custom Recycling Solutions, LLC, a Texas limited liability company, with its principal address at 893 S. Munson Road, Royse City, Texas 75189-6355, 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 Custom Recycling Solutions, 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(g) 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 (iv) 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:

Reynaldo Sanchez, President
Custom Recycling Solutions, LLC
893 S. Munson Road
Royse City, Texas 75189-6355

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 March 22, 2017

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

Custom Recycling Solutions, 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 March 22, 2017.

Dated: ____ day of _____, 2017.

FRANCHISEE:

Custom Recycling Solutions, LLC
a Texas limited liability company

By: _____
Reynaldo Sanchez, President and
Managing Member

State of Texas
County of _____

This instrument was acknowledged before me on _____, 2017 by Reynaldo Sanchez, President and Managing Member, of Custom Recycling Solutions, LLC, 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 JLH Removal LLC dba Bin There Dump That Dallas, a Texas limited liability company, with its principal address at 4417 Marathon Blvd., Austin, Texas 78756-3428, 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 JLH Removal LLC dba Bin There Dump That Dallas, 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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. Disposal 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.

(g) 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 (iv) 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:

John C. Hunt, Member
JLH Removal LLC dba Bin There Dump That Dallas
4417 Marathon Blvd.
Austin, Texas 78756-3428

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 March 22, 2017

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

JLH Removal LLC dba Bin There Dump That Dallas, 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 March 22, 2017.

Dated: ____ day of _____, 2017.

FRANCHISEE:

JLH Removal LLC dba Bin There Dump That Dallas
a Texas limited liability company

By: _____
John C. Hunt, Member

State of Texas
County of _____

This instrument was acknowledged before me on _____, 2017, by John C. Hunt, Member, of JLH Removal LLC dba Bin There Dump That Dallas, 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 T & R EXCAVATION, INC., a Texas corporation, with its principal address at 3529 Peoria Street, Dallas, Texas 75212-2155, 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 T & R EXCAVATION, INC., 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(g) 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 (iv) 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:

Tomas Reyes, President
T & R EXCAVATION, INC.
3529 Peoria Street
Dallas, Texas 75212-2155

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 March 22, 2017

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

T & R EXCAVATION, INC., 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 March 22, 2017.

Dated: ____ day of _____, 2017.

FRANCHISEE:

T & R EXCAVATION, INC.
a Texas corporation

By: _____
Tomas Reyes, President

State of Texas
County of _____

This instrument was acknowledged before me on _____, 2017, by Tomas Reyes, President, of T & R EXCAVATION, INC., a Texas corporation, 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 The Demo Company, LLC, a Texas limited liability company, with its principal address at 2342 Fabens Road #200, Dallas, Texas 75229-7804, 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 The Demo Company, 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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. Disposal 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.

(g) 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 (iv) 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:

David Boroughs, President
The Demo Company, LLC
2342 Fabens Road #200
Dallas, Texas 75229-7804

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 March 22, 2017

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

The Demo Company, 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 March 22, 2017.

Dated: ____ day of _____, 2017.

FRANCHISEE:

The Demo Company, LLC
a Texas limited liability company

By: _____
David Boroughs, President
and Manager

State of Texas
County of _____

This instrument was acknowledged before me on _____, 2017 by David Boroughs, President and Manager, of The Demo Company, LLC, a Texas limited liability company, on behalf of said company.

(Seal)

Notary Public's Signature

Exhibit C
Affidavit of Ownership or Control

Memorandum



CITY OF DALLAS

DATE March 17, 2017

TO Members of the Budget, Finance, & Audit Committee: Jennifer S. Gates (Chair), Philip T. Kingston (Vice Chair), Erik Wilson, Rickey D. Callahan, Scott Griggs, Lee M. Kleinman

SUBJECT Dallas Central Appraisal District 2017-2018 Proposed Budget

On Monday, March 20, 2017, the Dallas Central Appraisal District will brief the Budget, Finance, & Audit Committee on the Dallas Central Appraisal District 2017-2018 Proposed Budget. I have attached the briefing for your review.

Please let me know if you need additional information.

A handwritten signature in blue ink that reads "M. Elizabeth Reich".

M. Elizabeth Reich
Chief Financial Officer

Attachment

c: Honorable Mayor and Members of City Council
T.C. Broadnax, City Manager
Larry E. Casto, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager
Theresa O'Donnell, Interim Chief of Economic Development & Neighborhood Services

Mark McDaniel, Assistant City Manager
Eric D. Campbell, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Joey Zapata, Assistant City Manager
Alan E. Sims, Interim Chief of Community Services
Directors and Assistant Directors



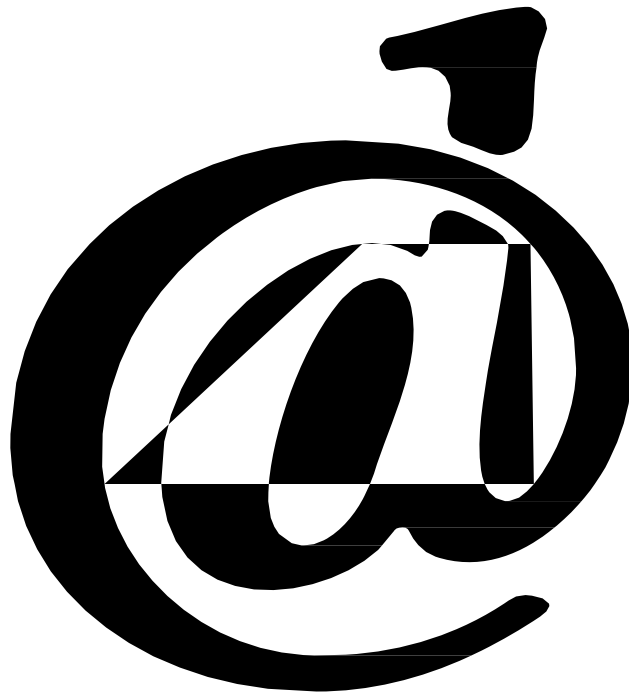
**DALLAS CENTRAL
APPRAISAL DISTRICT**

2017 - 2018

PROPOSED BUDGET

**Budget, Finance, & Audit Committee
March 20, 2017**

BUDGET OVERVIEW



2017 - 2018

PROPOSED BUDGET

@

Dallas Central Appraisal District

2017/2018 Proposed Budget

Budget Comparison

Executive Summary

	2016/2017	2017/2018
	<u>Approved</u>	<u>Proposed</u>
BUDGET EXPENDITURES:		
Salaries & Wages	\$13,736,024	\$14,178,856
Auto Expense	887,615	928,005
Supplies & Materials	790,145	726,457
Operational Services	37,260	41,040
Maintenance of Structure	334,482	340,321
Maintenance of Equipment	314,560	320,497
Contractual Services	593,817	673,345
Sundry Expenses	358,265	337,512
Insurance & Benefits	5,675,454	6,238,135
Professional Services	1,622,425	1,664,155
Capital Expenditures	121,885	97,700
Technology Development	0	0
Contingency	0	0
Total Expenditures	\$24,471,932	\$25,546,023
OPERATING FUND SOURCES:		
Entity Allocations (Local Support)	\$24,231,932	\$25,271,023
Rendition Fees	230,000	265,000
Investment Proceeds	0	0
Other Income	10,000	10,000
Total Revenues	\$24,471,932	\$25,546,023



2017/2018
PROPOSED BUDGET OVERVIEW

The 2017/2018 Proposed Budget is highlighted in the attached document as follows:

1. The 2017/2018 Proposed Budget of \$25,546,023 is an increase of 4.39% from the 2016/2017 Approved Budget of \$24,471,932.
2. The 2017/2018 Proposed Budget again calls for a total of two hundred twenty-eight (228) full-time positions, remaining unchanged from the 2014/2015 Approved Budget. Twenty-seven (27) positions have been eliminated over the previous nine (9) years. The budget notes personnel by departments/divisions as follows:
 - **Office of Chief Appraiser Department.** The department has four (4) positions and includes the divisions of Chief Appraiser's Office, the Community Relations Officer, and Quality Control. The Human Resource Division responsibilities were moved from this Department to the Administrative Services Department in the 2015/2016 Approved Budget.
 - **Administrative Services Department.** The divisions included in this department are Administration, Finance/Purchasing, Human Resources, Customer Service, Appeals and Support, Building Services and the Appraisal Review Board (ARB). The department has thirty four (34) employees, and also assists in coordinating the one-hundred (100) member ARB.
 - **Legal Services Department.** There are a total of three (3) employees in this department.
 - **Information Technology (IT) Department.** The divisions included are Information Technology and the Geographic Information System (GIS). There is a total of fifteen (15) employees in this department. One position was eliminated in this budget year and added to the Appraisal Services Department.
 - **Appraisal Services Department.** This department includes the divisions of Central Appraisal, Residential, Commercial, Business Personal Property, and Property Records/Exemptions totaling one hundred seventy two (172) employees.
3. For the 2017/2018 Proposed Budget a 4.0% merit increase is proposed for the District employees. This figure is tied directly to the average salary/merit increases and adjustments given by the taxing entities in 2016/2017, which was 3.80%. This information is obtained from an entity salary survey of all participating entities in the Appraisal District. DCAD bases any merit increases on what the taxing entities have afforded to their employees. Funds have also been added to address the Paid Time Off program.
4. Overtime funds are included for appraisal support staff assisting with after hours informal and legally required formal hearings with property owners during the ARB process. Funds are also included for Building Services, Appeals and Support, Customer Service, and the Appraisal Departments during the ARB process.
5. Contract Labor includes funds for temporary services for the Business Personal Property verification and leased equipment projects, temporary clerical help during the ARB process, and for security provided by off-duty police officers for the entire fiscal year.

6. Other increases and decreases in the Proposed Budget are noted in the categories as follows:

Auto Expenses for the monthly auto allowance for appraisal staff remains at \$700 per month and calls for an increase from \$200 to \$300 per month for management level employees.

Supplies and Materials decreased from last year's budget primarily from savings in software costs. Postage costs were increased for the mailing of appraisal and ARB notices. Slight cost increases were also noted in computer and office supplies.

Operational Services is the District's telephone communication system. A slight increase was noted from the previous year. A new phone system was installed early in 2015 and has reduced operating costs by approximately 40% since the 2015/2016 Approved Budget.

Maintenance of Structure shows a slight increase overall. The most notable increases are in Janitorial Service and Trash Disposal, as the District benefited from well below average market rates for the last several budget cycles in these categories. Most other costs remained constant.

Maintenance of Equipment increased in the line items of PC Maintenance and Software Maintenance. Software maintenance costs are budgeted to maintain the software for network and desktop applications, while PC Maintenance includes funds for maintenance and replacement of servers, network equipment, desktop devices, and the iPad computers used as field devices by the appraisal staff.

Contractual Services increased slightly due to the estimated increase in the mailing of Appraisal Notices, Renditions, Homestead Applications, and Homestead Postcards. The production and mailing of the majority of these items is completed by a 3rd party vendor. Costs for internet service has also increased as the public increasingly utilizes the vast amounts of information we make available on the DCAD web site.

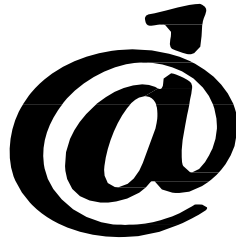
Sundry Expenses noted a decrease in the categories of Dues and Subscriptions and Travel costs.

Insurance and Benefits noted the largest increase in Group Medical Insurance and Retirement, respectively. Group Medical costs are anticipated at a rate of 14% and the Retirement expense is at a rate of 20% to keep the employee program current. A slight increase was noted for Group Benefits which captures only the premium payments for all ancillary insurance programs and in the Medicare Tax category.

Professional Services rose overall from last year as a result of increased costs in ARB Compensation due to an anticipated swell in hearing days and total panels needed to complete the increasing demands of the ARB process. An increase in SOAH hearings (State Office of Administrative Hearings) was noted for a potential increase in these activities.

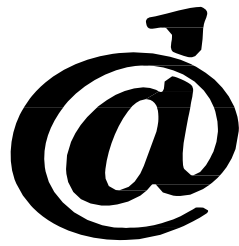
Capital Expenditures decreased significantly as many of the IT hardware needs have been met in previous budgets. However, funds are still needed this year for a Dell server, disk arrays, and switches.

Technology Development and Capital Improvement includes no requested or budgeted funds for this fiscal year. Capital Improvement projects are funded from surplus funds approved by the Board of Directors upon the approval of the Capital Improvement Plan annually.



Dallas Central Appraisal District 10 Year Budget Analysis

	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Budget Amount	\$21,380,063	\$21,799,127	\$21,733,893	\$21,516,555	\$21,516,555
Budget Increase/Decrease	\$420,038	\$419,064	-\$65,234	-\$217,338	\$0
% Budget Increase/Decrease	2.00%	1.96%	-0.30%	-1.00%	0.00%
Merit Increases	3.50%	3.00%	0.00%	0.00%	0.00%
Entity Salary Survey	3.58%	3.19%	1.50%	1.09%	1.08%
# of Personnel	250	245	240	232	229



Dallas Central Appraisal District 10 Year Budget Analysis

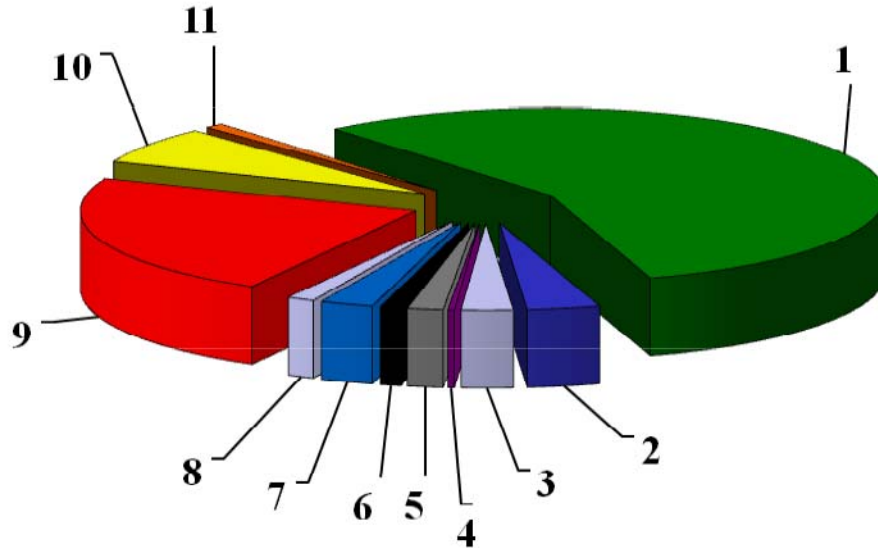
2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
\$21,872,977	\$23,009,832	\$23,677,340	\$24,471,932	\$25,546,023
\$356,422	\$1,136,855	\$667,508	\$794,592	\$1,074,091
1.66%	5.20%	2.90%	3.36%	4.39%
3.00%	3.00%	3.00%	2.50%	4.00%
3.13%	2.92%	3.14%	2.68%	3.80%
229	228	228	228	228

Dallas Central Appraisal District

Proposed Areas Of Change

	2016/2017	2017/2018	Increase or	Percent
	<u>Approved</u>	<u>Proposed</u>	<u>(Decrease)</u>	<u>Variance</u>
BUDGET EXPENDITURES:				
Salaries & Wages	\$13,736,024	\$14,178,856	\$442,832	3.22%
Auto Expense	\$887,615	\$928,005	\$40,390	4.55%
Supplies & Materials	\$790,145	\$726,457	(\$63,688)	-8.06%
Operational Services	\$37,260	\$41,040	\$3,780	10.14%
Maintenance of Structure	\$334,482	\$340,321	\$5,839	1.75%
Maintenance of Equipment	\$314,560	\$320,497	\$5,937	1.89%
Contractual Services	\$593,817	\$673,345	\$79,528	13.39%
Sundry Expenses	\$358,265	\$337,512	(\$20,753)	-5.79%
Insurance & Benefits	\$5,675,454	\$6,238,135	\$562,681	9.91%
Professional Services	\$1,622,425	\$1,664,155	\$41,730	2.57%
Capital Expenditures	\$121,885	\$97,700	(\$24,185)	-19.84%
Technology Development	\$0	\$0	\$0	0.00%
Contingency	\$0	\$0	\$0	0.00%
Total Expenditures	<u>\$24,471,932</u>	<u>\$25,546,023</u>	<u>\$1,074,091</u>	<u>4.39%</u>

2017/2018

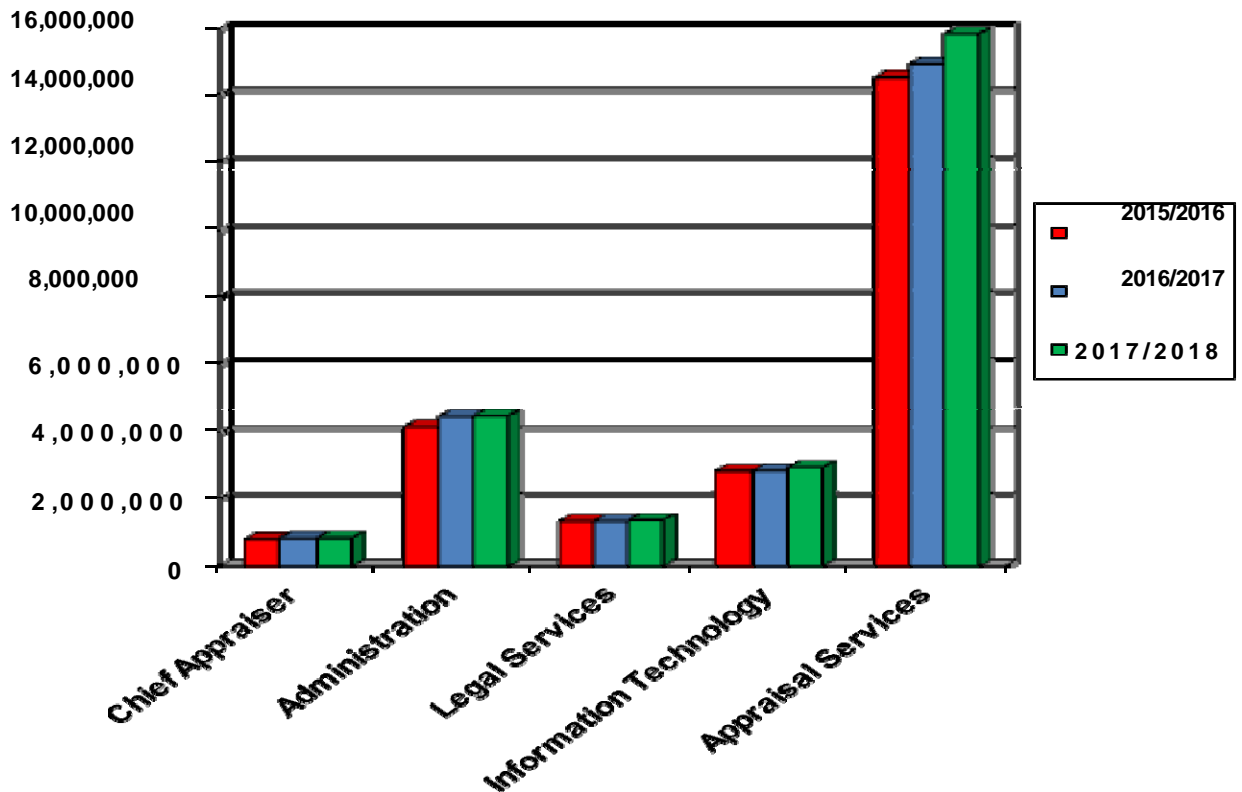


<u>Category</u>	<u>Budget Total</u>	<u>Percent</u>
1 Salaries & Wages	\$14,178,856	55.5%
2 Auto Expenses	928,005	3.6%
3 Supplies & Materials	726,457	2.8%
4 Operational Services	41,040	0.2%
5 Maintenance of Structure	340,321	1.3%
6 Maintenance of Equipment	320,497	1.3%
7 Contractual Services	673,345	2.6%
8 Sundry Expenses	337,512	1.3%
9 Insurance & Benefits	6,238,135	24.4%
10 Professional Services	1,664,155	6.5%
11 Capital Expenditures	97,700	0.5%
Total	\$25,546,023	100%

Dallas Central Appraisal District

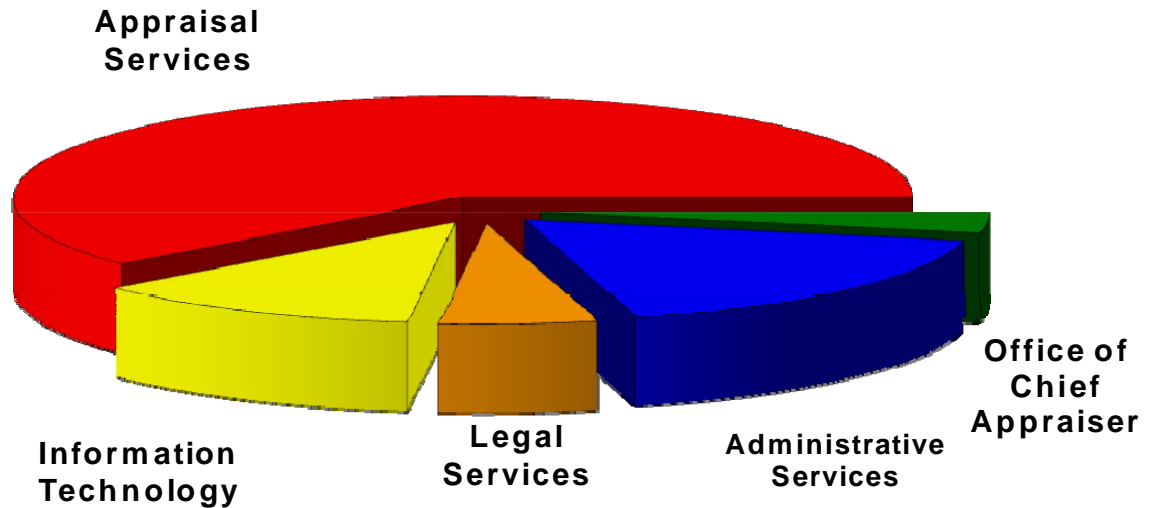
Budget Comparison

<u>Category</u>	<u>2015/2016</u> <u>Approved</u>	<u>2015/2016</u> <u>Actual</u>	<u>2016/2017</u> <u>Approved</u>	<u>2017/2018</u> <u>Proposed</u>
Consolidated				
Office of Chief Appraiser	\$800,447	\$783,086	\$828,325	\$842,306
Consolidated				
Administrative Services	4,179,509	4,323,923	4,491,128	4,515,551
Consolidated				
Legal Services	1,343,065	1,222,710	1,345,165	1,380,772
Consolidated				
Information Technology	2,829,979	2,792,888	2,838,095	2,942,382
Consolidated				
Appraisal Services	14,524,340	14,257,997	14,969,219	15,865,012
Contingency	0	0	0	0
Total	<u>\$23.677.340</u>	<u>\$23.380.604</u>	<u>\$24.471.932</u>	<u>\$25.546.023</u>



2017/2018

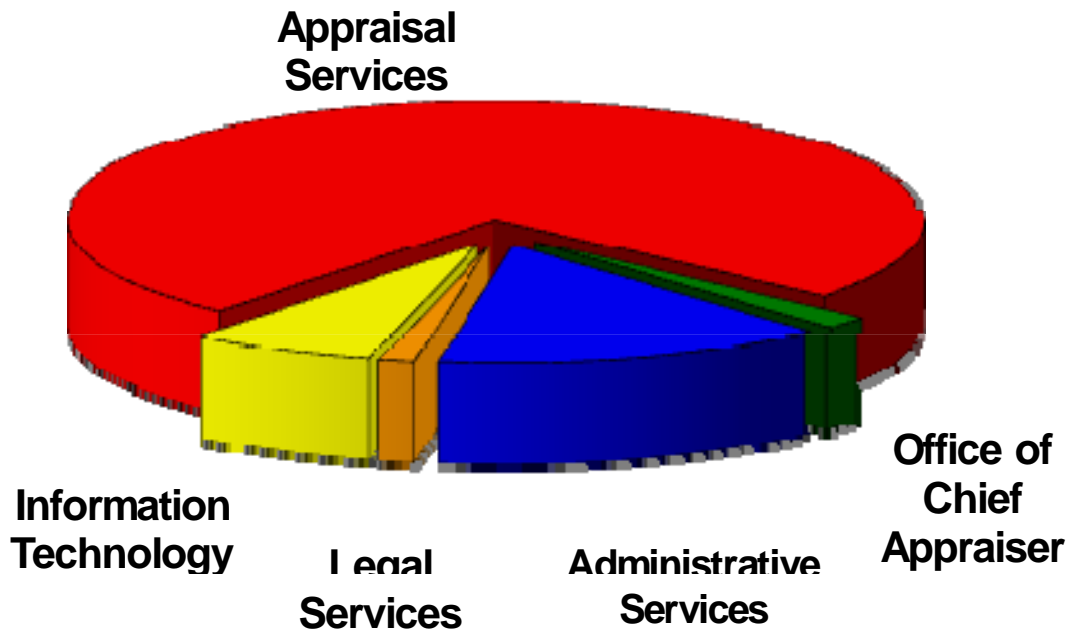
Budget By Department



<u>Department</u>	<u>Budget Total</u>	<u>Percent</u>
Office of Chief Appraiser	\$842,306	3.3%
Administrative Services	4,515,551	17.7%
Legal Services	1,380,772	5.4%
Information Technology	2,942,382	11.5%
Appraisal Services	<u>15,865,012</u>	<u>62.1%</u>
Total	\$25,546,023	100%

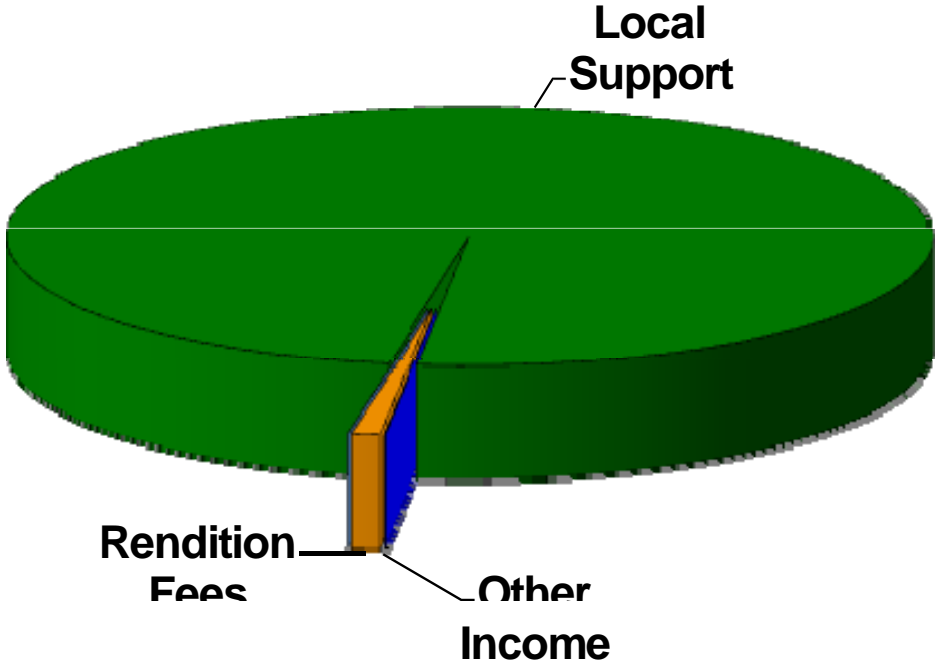
2017/2018

Personnel Breakdown



<u>Department</u>	<u>Number of Personnel</u>	<u>Percent</u>
Office of Chief Appraiser	4	1.8%
Administrative Services	34	14.9%
Legal Services	3	1.3%
Information Technology	15	6.6%
Appraisal Services	<u>172</u>	<u>75.4%</u>
Total	228	100%

2017/2018 Operating Funds Sources



<u>Source</u>	<u>Amount</u>	<u>Percent</u>
Local Support	\$25,271,023	98.92%
Investment Proceeds	0	0.00%
Rendition Fees	265,000	1.04%
Other Income	<u>10,000</u>	<u>0.04%</u>
Total	\$25,546,023	100.00%

Revenue Summary Budget Allocation Comparison

	2016/2017 Approved <u>Allocation</u>	%	2017/2018 Proposed <u>Allocation</u>	%
Local Support				
Municipalities	\$6,243,235	25.76%	\$6,415,733	25.39%
School Districts	\$9,911,386	40.90%	\$10,431,616	41.28%
County/County Wide	\$7,742,063	31.95%	\$8,128,986	32.17%
Special Districts				
Non-County Wide	\$335,248	1.38%	\$294,688	1.17%
Special Districts				
<hr/>				
TOTAL	\$24,231,932	100%	\$25,271,023	100%

2017/2018

PROPOSED BUDGET ALLOCATIONS

	<u>2016/2017 Approved Allocation</u>	<u>2017/2018 Proposed Allocation</u>	<u>Increase or (Decrease)</u>	<u>% Change</u>
County/County-wide				
Special Districts:				
Dallas County	3,033,721	3,236,671	202,950	6.69%
D.C.H.D.	3,584,525	3,734,676	150,151	4.19%
D.C.C.C.D.	1,123,817	1,157,639	33,822	3.01%
Subtotal	7,742,063	8,128,986	386,923	5.00%
Non-County-Wide				
Special Districts:				
Dallas URD	243,257	206,824	(36,433)	-14.98%
Valwood Imp. Authority	22,458	20,384	(2,074)	-9.24%
Irving FCD 1	6,583	6,488	(95)	-1.44%
Irving FCD 3	9,817	9,970	153	1.56%
Dallas FCD1	42,591	39,584	(3,007)	-7.06%
Denton County LID #1	1,918	1,877	(41)	-2.14%
Denton County RUD #1	0	0	0	0.00%
Lancaster MUD #1	1,930	2,671	741	38.39%
Grand Prairie Metro URD	543	579	36	6.63%
Northwest FCD	6,151	6,311	160	2.60%
Subtotal	335,248	294,688	(40,560)	-12.10%

2017/2018

PROPOSED BUDGET ALLOCATIONS

	<u>2016/2017</u> <u>Approved</u> <u>Allocation</u>	<u>2017/2018</u> <u>Proposed</u> <u>Allocation</u>	<u>Increase or</u> <u>(Decrease)</u>	<u>% Change</u>
Cities:	107,420	104,774	(2,646)	-2.46%
Addison				
Balch Springs	26,389	27,015	626	2.37%
Carrollton	152,685	150,262	(2,423)	-1.59%
Cedar Hill	94,480	95,600	1,120	1.19%
Cockrell Hill	4,628	4,574	(54)	-1.17%
Combine	170	152	(18)	-10.59%
Coppell	162,039	164,337	2,298	1.42%
Dallas	3,468,292	3,545,754	77,462	2.23%
DeSoto	111,225	115,337	4,112	3.70%
Duncanville	63,415	64,972	1,557	2.46%
Farmers Branch	125,691	127,037	1,346	1.07%
Ferris	363	303	(60)	-16.53%
Garland	361,056	378,560	17,504	4.85%
Glenn Heights	11,656	14,379	2,723	23.36%
Grand Prairie	164,074	170,150	6,076	3.70%
Grapevine	2,302	2,072	(230)	-9.99%
Highland Park	53,698	55,116	1,418	2.64%
Hutchins	11,583	14,506	2,923	25.24
Irving	577,447	591,974	14,527	2.52%
Lancaster	71,145	78,214	7,069	9.94%
Lewisville	1,527	1,516	(11)	-0.72%
Mesquite	180,794	200,955	20,161	11.15%
Ovilla	751	733	(18)	-2.40%
Richardson	221,625	230,952	9,327	4.21%
Rowlett	111,709	115,564	3,855	3.45%
Sachse	34,579	36,870	2,291	6.63%
Seagoville	16,138	17,007	869	5.38%
Sunnyvale	17,326	17,260	(66)	-0.38%
University Park	81,201	80,033	(1,168)	-1.44%
Wilmer	7,076	8,567	1,491	21.07%
Wylie	751	1,188	437	58.19%
Total	6,243,235	6,415,733	172,498	2.76%

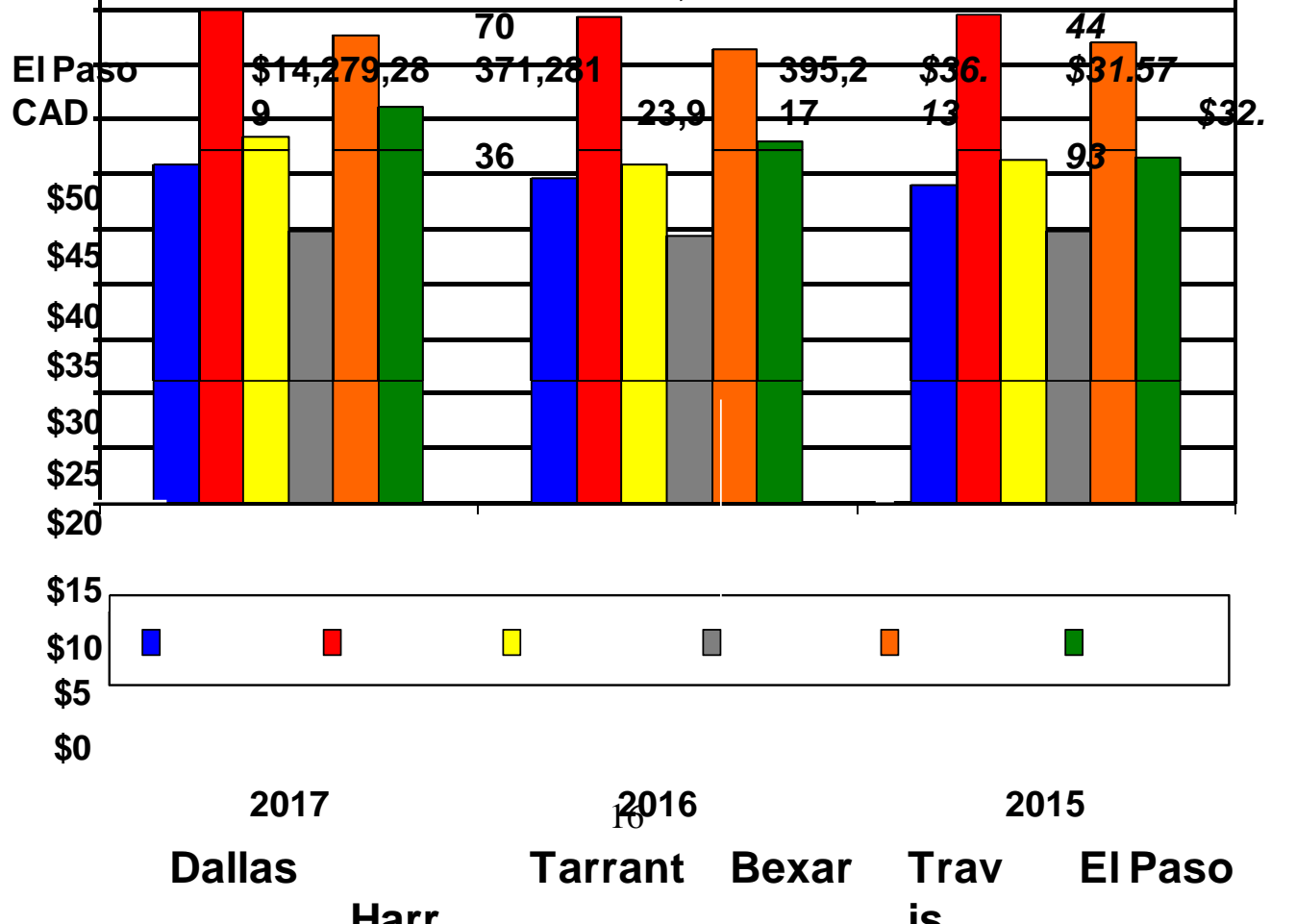
2017/2018

PROPOSED BUDGET ALLOCATIONS

School Districts:	2016/2017 Approved Allocation	2017/2018 Proposed Allocation	Increase or (Decrease)	<u>% Change</u>
Carrollton/F.B.	673,222	735,075	61,853	9.19%
Cedar Hill	162,582	163,519	937	0.58%
Coppell	506,881	553,012	46,131	9.10%
Dallas	4,474,079	4,627,419	153,340	3.43%
Dallas County Schools	71,957	68,712	(3,245)	-4.51%
DeSoto	126,972	132,840	5,868	4.62%
Duncanville	208,217	213,953	5,736	2.75%
Ferris	918	802	(116)	-12.64%
Garland	745,631	835,680	90,049	12.08%
Grand Prairie	324,858	336,488	11,630	3.58%
Grapevine/Colleyville	14,183	13,080	(1,103)	-7.78%
Highland Park	577,056	609,031	31,975	5.54%
Irving	583,498	599,284	15,786	2.71%
Lancaster	103,334	113,571	10,237	9.91%
Mesquite	344,842	368,733	23,891	6.93%
Richardson	941,106	1,008,172	67,066	7.13%
Sunnyvale	52,050	52,245	195	0.37%
Wilmer/Hutchins	0	0	0	0.00%
Total	9,911,386	10,431,616	520,230	5.25%

APPRAISAL DISTRICT COMPARISONS

	2017	Real	Personal	Total	Cost Per Parcel		
	<u>Budget</u>	<u>Property</u>	<u>Proper</u>	<u>Parcel</u>	<u>201</u>	<u>2016</u>	<u>201</u>
	<u>Amount</u>	<u>ty</u>	<u>s</u>	<u>s</u>	<u>7</u>	<u>5</u>	<u>201</u>
Dallas CAD	\$25,546,023	726,934	103,8	830,824	\$30.75	\$28.89	\$28.
Harris CAD	\$81,496,171	1,433,606	375,1	1,808,769	\$45.06	\$44.55	\$41.
Tarrant CAD	\$23,145,270	642,795	49,1	691,968	\$33.45	\$31.32	\$31.
Bexar CAD	\$16,644,865	625,358	44,9	670,354	\$24.83	\$24.76	\$24.
Travis CAD	\$18,103,517	380,812	43,2	424,082	\$42.69	\$42.09	\$35.



APPRAISAL DISTRICT EMPLOYEE COMPARISONS

Appraisal District	2017 Budget	Total Parcels	Number of Employees	Parcels per Employee	Number of Appraisers	Parcels per Appraiser
Dallas Central Appraisal District	\$25,546,023	830,824	228	3,644	96	8,654
Harris Central Appraisal District	\$81,496,171	1,808,769	650	2,783	311	5,816
Tarrant Appraisal District	\$23,145,270	691,968	199	3,477	89	7,775
Bexar Appraisal District	\$16,644,865	670,354	154	4,353	65	10,313
Travis Central Appraisal District	\$18,103,517	424,082	132	3,213	65	6,524
El Paso Central Appraisal District	\$14,279,289	395,217	140	2,823	40	9,880

2016-2017 BUDGET/LEVY COMPARISON

	2016	2017	Cost As % Of Levy
	Tax Levy	Budget Amount	
Dallas CAD	\$5,817,007,321	\$25,546,023	0.44
Harris CAD*	\$10,266,590,424	\$81,496,171	0.79
Tarrant CAD	\$4,027,556,053	\$23,145,270	0.57
Bexar CAD	\$3,512,226,087	\$16,644,865	0.47
Travis CAD	\$3,660,707,523	\$18,103,517	0.49
El Paso CAD	\$1,077,193,489	\$14,279,289	1.33

* 2015 Tax Levy

ACCURACY OF APPRAISALS

	Median Level of Appraisals	Coefficient of Dispersion
Dallas Central Appraisal District	0.98	5.96
Harris Central Appraisal District	0.99	8.04
Tarrant Appraisal District	0.93	10.86
Bexar Appraisal District	0.96	9.30
Travis Central Appraisal District	0.97	8.46
El Paso Central Appraisal District	0.98	12.22

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2016 -2017 Dallas Central Appraisal District Entity Salary Survey

Entity	Contact Person	Title	Increase	Comments
Town of Addison	Cindy Jeong	HR Analyst	3.98%	
City of Balch Springs	Bianca Sauls & Susie Cluse	Chief Financial Officer & City Manager	4.00%	
City of Carrollton	Gyzeil Johnson		3.25%	
City of Cedar Hill	Angelica Morales	HR Generalist	3.00%	
City of Cockrell Hill	Bret Haney	City Administrator	0.00%	
City of Combine	Robin Price	City Secretary	6.76%	
City of Coppell	Dustin Yater	Sr. HR Analyst	4.00%	
City of Dallas	Laquisha Bill	Sr. HR Analyst	3.00%	
City of Desoto	Jenette Naranja	HR Staff Assistant	1.00%	
City of Duncanville	Jennifer Otey	HR Manager	3.10%	
City of Farmers Branch	Sherrelle Evans-Jones	Chief Financial Officer	5.00%	
City of Ferris	Melissa Gonzalez	Budget/HR Director	0.00%	
City of Garland	Bea Sapene		3.00%	
City of Glenn Heights	Kacye Harvey	Administrator-Organizational Development	1.30%	
City of Grand Prairie	Steve Cates	HR Manager	3.00%	
City of Grapevine	Gary Livingston	Management Services Director	3.00%	
Town of Highland Park	Steven Alexander	Director of Administrative & CFO	7.00%	
City of Hutchins	Tan Beatty	Director of Finance	3.00%	
City of Irving	Corey Hendon	Sr. HR Specialist I	1.50%	
City of Lancaster	Amanda Monsivais	H.R. Assistant	5.00%	
City of Lewisville	Matt Grebliunas	H.R. Manager	5.00%	
City of Mesquite	Kerry Graham	Compensation & Payroll Coordinator	2.00%	
City of Ovilla	Linda Harding	City Accountant	9.00%	
City of Richardson	Chelsea Cole	Compensation Analyst	2.00%	
City of Rowlett	Terri Doby	Budget Officer	1.50%	
City of Sachse	Stacy Buckley	H.R. Manager	2.50%	
City of Seagoville	Cindy Brown	Director of Human Resources	3.00%	
Town of Sunnyvale	Leslie Malone	Town Secretary	3.00%	
City of University Park	Luanne Hanford	Director of HR	0.00%	
City of Wilmer	Denny Wheat	City Administrator-Interim	12.10%	
City of Wylie	Lynn Fagerstrom	H.R. Manager	7.00%	
Average Cities			3.58%	

2016 -2017 Dallas Central Appraisal District Entity Salary Survey

Entity	Contact Person	Title	Increase	Comments
Carrollton/Farmers Brach ISD	Rebecca McDowell	Director - Payroll	3.50%	
Cedar Hill ISD	Dianne Duron	Chief Financial Officer	3.00%	
Coppell ISD	Vicky Cason	Administrative Assistant	3.00%	
Dallas ISD	E. Patrick Ekong	Compensation Manager	1.64%	
DeSoto ISD	Sue Land	Employment & Data Management Coord.	5.50%	
Duncanville ISD	Marcy Moran	Chief Financial Officer	1.00%	
Ferris ISD	Brenda Rodriguez	Business Manager	2.50%	
Garland ISD	Gilberto Prado	Budget Director	2.25%	
Grand Prairie ISD	Nancy Bridges	Sr. Executive Director of H.R.	3.00%	
Grapevine/Colleyville ISD	DaiAnn Mooney	Chief Financial Officer	2.00%	
Highland Park ISD	Debbie Cabrera	Interim Asst. Superintendent of Business	2.00%	
Irving ISD	Mia Stroy	Compensation and Benefits Manager	1.60%	
Lancaster ISD	Erma Perry	Chief Financial Officer	0.00%	
Mesquite ISD	Kathryn Bohling	Asst. Superintendent-Business Services	3.00%	
Richardson ISD	Mary Welch	Director of Compensation	3.00%	
Sunnyvale ISD	Margaret Davis	Business Manager	2.00%	
Average School Districts			2.44%	
Dallas County	Jim Sparkman	HR Analyst IV	8.00%	
DCCCD	John Robertson	Associate Vice Chancellor of Business	3.00%	
Average Countywide			5.50%	
Total Aggregated Average for All Entities			3.84%	

2017/2018 Dallas Central Appraisal District Proposed Budget Allocation Analysis

ENTITY and ENTITY CODE		2015 Grand Total Taxable Value 9/2015	2016 Grand Total Taxable Value 9/2016	Taxable Value Change	Taxable Value Percent Change	2015 Tax Rates	2016 Tax Rates	Tax Rate Change	Tax Rate Percent Change	2015 Levy	2016 Levy	Levy Change	Levy Percent Change	2016/2017 Budget Allocation	2017/2018 Proposed Budget Allocation	Budget Allocation Change	Budget Allocation Percent Change
CITIES																	
Addison	CA	\$4,037,207,737	\$4,303,028,610	\$265,820,873	6.58%	0.579150	0.560472	(0.018678)	(3.23%)	\$23,381,489	\$24,117,271	\$735,782	3.15%	\$107,420	\$104,774	(2,646)	(2.46%)
Balch Springs	CB	715,334,405	774,396,129	59,061,724	8.26%	0.803000	0.803000	0.000000	0.00%	5,744,135	6,218,401	474,266	8.26%	26,389	27,015	626	2.37%
Carrollton - Dallas Co.	CC	5,422,914,656	5,729,786,602	306,871,946	5.66%	0.612875	0.603700	(0.009175)	(1.50%)	33,235,688	34,590,722	1,355,034	4.08%	152,685	150,262	(2,423)	(1.59%)
Cedar Hill - Dallas Co.	CH	2,942,839,033	3,149,455,467	206,616,434	7.02%	0.698760	0.698760	0.000000	0.00%	20,563,382	22,007,135	1,443,753	7.02%	94,480	95,600	1,120	1.19%
Cockrell Hill	CL	89,174,592	94,038,769	4,864,177	5.45%	1.132442	1.119407	(0.013035)	(1.15%)	1,009,851	1,052,677	42,826	4.24%	4,628	4,574	(54)	(1.17%)
Combine	OM	11,061,798	11,117,837	56,039	0.51%	0.310000	0.330000	0.020000	6.45%	34,292	36,689	2,397	6.99%	170	152	(18)	(10.59%)
Coppell - Dallas Co	CO	6,039,471,635	6,528,050,771	488,579,136	8.09%	0.584000	0.579500	(0.004500)	(0.77%)	35,270,514	37,830,054	2,559,540	7.26%	162,039	164,337	2,298	1.42%
Dallas	DA	94,723,390,058	104,307,190,201	9,583,800,143	10.12%	0.797000	0.782500	(0.014500)	(1.82%)	754,945,419	816,203,763	61,258,345	8.11%	3,468,292	3,545,754	77,462	2.23%
DeSoto	CS	3,228,120,649	3,540,368,459	312,247,810	9.67%	0.749900	0.749900	0.000000	0.00%	24,207,677	26,549,223	2,341,546	9.67%	111,225	115,337	4,112	3.70%
Duncanville	CV	1,819,842,726	1,972,023,747	152,181,021	8.36%	0.758447	0.758447	0.000000	0.00%	13,802,543	14,956,755	1,154,212	8.36%	63,415	64,972	1,557	2.46%
Farmers Branch	CF	4,542,347,280	4,855,783,963	313,436,683	6.90%	0.602267	0.602267	0.000000	0.00%	27,357,059	29,244,784	1,887,726	6.90%	125,691	127,037	1,346	1.07%
Ferris	FE	11,551,211	9,916,016	(1,635,195)	(14.16%)	0.687134	0.687134	0.000000	0.00%	79,372	68,136	(11,236)	(14.16%)	363	303	(60)	(16.53%)
Garland - Dallas Co	CG	11,153,723,128	12,367,778,205	1,214,055,077	10.88%	0.704600	0.704600	0.000000	0.00%	78,589,133	87,143,365	8,554,232	10.88%	361,056	378,560	17,504	4.85%
Glenn Heights - Dallas Co	CE	319,533,646	353,751,685	34,218,039	10.71%	0.793400	0.935530	0.142130	17.91%	2,535,180	3,309,453	774,273	30.54%	11,656	14,379	2,723	23.36%
Grand Prairie - Dallas Co	CP	5,330,296,477	5,845,550,495	515,254,018	9.67%	0.669998	0.669998	0.000000	0.00%	35,712,880	39,165,071	3,452,192	9.67%	164,074	170,150	6,076	3.70%
Grapevine	GV	152,609,134	164,595,285	11,986,151	7.85%	0.328437	0.289271	(0.039166)	(11.92%)	501,225	476,126	(25,098)	(5.01%)	2,302	2,072	(230)	(9.99%)
Highland Park	TH	5,312,812,276	5,766,024,470	453,212,194	8.53%	0.220000	0.220000	0.000000	0.00%	11,688,187	12,685,254	997,067	8.53%	53,698	55,116	1,418	2.64%
Hutchins	CU	369,372,087	489,204,571	119,832,484	32.44%	0.682459	0.682459	0.000000	0.00%	2,520,813	3,338,621	817,808	32.44%	11,583	14,506	2,923	25.24%
Irving	CI	21,156,769,578	22,937,014,000	1,780,244,422	8.41%	0.594100	0.594100	0.000000	0.00%	125,692,368	136,268,800	10,576,432	8.41%	577,447	591,974	14,527	2.52%
Lancaster	CN	1,785,102,681	2,075,125,683	290,023,002	16.25%	0.867500	0.867500	0.000000	0.00%	15,485,766	18,001,715	2,515,950	16.25%	71,145	78,214	7,069	9.94%
Lewisville	LE	75,833,608	80,333,828	4,500,220	5.93%	0.436086	0.436086	0.000000	0.00%	330,700	350,325	19,625	5.93%	1,527	1,516	(11)	(0.72%)
Mesquite - Dallas Co	CM	6,149,224,177	6,733,493,379	584,269,202	9.50%	0.640000	0.687000	0.047000	7.34%	39,355,035	46,259,100	6,904,065	17.54%	180,794	200,955	20,161	11.15%
Ovilla	OV	23,067,010	24,119,827	1,052,817	4.56%	0.700000	0.700000	0.000000	0.00%	161,469	168,839	7,370	4.56%	751	733	(18)	(2.40%)
Richardson	CR	7,595,163,333	8,504,082,476	908,919,143	11.97%	0.635160	0.625160	(0.010000)	(1.57%)	48,241,439	53,164,122	4,922,683	10.20%	221,625	230,952	9,327	4.21%
Rowlett - Dallas Co	CW	3,088,826,748	3,379,658,926	290,832,178	9.42%	0.787173	0.787173	0.000000	0.00%	24,314,410	26,603,763	2,289,352	9.42%	111,709	115,564	3,855	3.45%
Sachse	CK	993,844,617	1,120,560,676	126,716,059	12.75%	0.757279	0.757279	0.000000	0.00%	7,526,177	8,485,771	959,594	12.75%	34,579	36,870	2,291	6.63%
Seagoville - Dallas Co	CJ	492,168,112	526,678,887	34,510,775	7.01%	0.713800	0.743800	0.030000	4.20%	3,513,096	3,917,438	404,342	11.51%	16,138	17,007	869	5.38%
Sunnyvale	TS	924,764,286	973,479,636	48,715,350	5.27%	0.407962	0.407962	0.000000	0.00%	3,772,687	3,971,427	198,740	5.27%	17,326	17,260	(66)	(0.38%)
University Park	CQ	6,826,518,878	7,406,921,428	580,402,550	8.50%	0.258930	0.248761	(0.010169)	(3.93%)	17,675,905	18,425,532	749,626	4.24%	81,201	80,033	(1,168)	(1.44%)
Wilmer	CT	323,446,752	392,220,517	68,773,765	21.26%	0.476600	0.503000	0.026400	5.54%	1,541,547	1,972,869	431,322	27.98%	7,076	8,567	1,491	21.07%
Wylie	WY	19,067,289	32,421,426	13,354,137	70.04%	0.868900	0.848900	(0.020000)	(2.30%)	165,676	275,225	109,550	66.12%	751	1,188	437	58.19%
COUNTYWIDE ENTITIES																	
Dallas County	DC	188,601,831,380	207,449,828,888	18,847,997,508	9.99%	0.243100	0.243100	0.000000	0.00%	458,491,052	504,310,534	45,819,482	9.99%	3,033,721	3,236,671	202,950	6.69%
Dallas Co Community College	DO	197,833,631,154	216,767,767,121	18,934,135,967	9.57%	0.123650	0.122933	(0.000717)	(0.58%)	244,621,285	266,479,119	21,857,834	8.94%	1,123,817	1,157,639	33,822	3.01%
Parkland Hospital	PH	189,417,781,250	208,269,657,764	18,851,876,514	9.95%	0.286000	0.279400	(0.006600)	(2.31%)	541,734,854	581,905,424	40,170,569	7.42%	3,584,525	3,734,676	150,151	4.19%
SCHOOL DISTRICTS																	
Carrollton/Farmers Branch ISD	AS	13,767,072,691	14,783,835,446	1,016,762,755	7.39%	1.281700	1.391700	0.110000	8.58%	176,452,571	205,746,638	29,294,067	16.60%	673,222	735,075	61,853	9.19%
Cedar Hill ISD	ES	2,794,300,481	3,019,042,685	224,742,204	8.04%	1.525000	1.516000	(0.009000)	(0.59%)	42,613,082	45,768,687	3,155,605	7.41%	162,582	163,519	937	0.58%
Coppell ISD	OS	9,232,398,864	10,369,616,083	1,137,217,219	12.32%	1.439000	1.492700	0.053700	3.73%	132,854,220	154,787,259	21,933,040	16.51%	506,881	553,012	46,131	9.10%
Dallas ISD	DS	91,465,251,969	101,023,617,187	9,558,365,218	10.45%	1.282085	1.282085	0.000000	0.00%	1,172,662,276	1,295,208,642	122,546,367	10.45%	4,474,079	4,627,419	153,340	3.43%
DeSoto ISD	SS	2,279,428,530	2,546,694,497	267,265,967	11.73%	1.460000	1.460000	0.000000	0.00%	33,279,657	37,181,740	3,902,083	11.73%	126,972	132,840	5,868	4.62%
Duncanville ISD	US	3,568,084,041	3,935,982,438	367,898,397	10.31%	1.529500	1.521480	(0.008020)	(0.52%)	54,573,845	59,885,186	5,311,340	9.73%	208,217	213,953	5,736	2.75%
Ferris ISD	FS	17,750,192	16,558,646	(1,191,546)	(6.71%)	1.355000	1.355000	0.000000	0.00%	240,515	224,370	(16,145)	(6.71%)	918	802	(116)	(12.64%)
Garland ISD	GS	14,441,056,569	16,020,949,193	1,579,892,624	10.94%	1.353300	1.460000	0.106700	7.88%	195,430,819	233,905,858	38,475,040	19.69%	745,631	835,680	90,049	12.08%
Grand Prairie ISD	PS	5,338,290,982	5,904,860,640	566,569,658	10.61%	1.595000	1.595000	0.000000	0.00%	85,145,741	94,182,527	9,036,786	10.61%	324,858	336,488	11,630	3.58%
Grapevine-Colleyville ISD	VS	281,598,634	262,133,022	(19,465,612)	(6.91%)	1.320100	1.396700	0.076600	5.80%	3,717,384	3,661,212	(56,172)	(1.51%)	14,183	13,080	(1,103)	(7.78%)
Highland Park ISD	HS	13,602,590,485	14,788,497,285	1,185,906,800	8.72%	1.111900	1.152700	0.040800	3.67%	151,247,204	170,467,008	19,219,805	12.71%	577,056	609,031	31,975	5.54%
Irving ISD	IS	10,583,783,710	11,608,222,345	1,024,438,635	9.68%	1.445000	1.445000	0.000000	0.00%	152,935,675	167,738,813	14,803,138	9.68%	583,498	599,284	15,786	2.71%
Lancaster ISD	LS	1,758,695,334	2,064,181,065	305,485,731	17.37%	1.540000	1.540000	0.000000	0.00%	27,083,908	31,788,388	4,704,480	17.37%	103,334	113,571	10,237	9.91%
Mesquite ISD	MS	6,410,189,717	7,069,024,202	658,834,485	10.28%	1.410000	1.460000	0.050000	3.55%	90,383,675	103,207,753	12,824,078	14.19%	344,842	368,733	23,891	6.93%
Richardson ISD	RS	18,407,158,575	20,300,423,138	1,893,264,563	10.29%	1.340050	1.390050	0.050000	3.73%	246,665,128	282,186,032	35,520,903	14.40%	941,106	1,008,172	67,066	7.13%
Sunnyvale ISD	YS	967,550,435	1,025,475,993	57,925,558	5.99%	1.410000											

2017/2018 Dallas Central Appraisal District Proposed Budget Allocation Analysis

ENTITY and ENTITY CODE		2015 Grand Total	2016 Grand Total	Taxable Value Change	Taxable Value	2015 Tax Rates	2016 Tax Rates	Tax Rate Change	Tax Rate Percent Change	2015 Levy	2016 Levy	Levy Change	Levy	2016/2017 Budget Allocation	2017/2018 Proposed Budget Allocation	Budget Allocation Change	Budget Allocation Percent Change
		Taxable Value 9/2015	Taxable Value 9/2016		Percent Change								Percent Change				
SPECIAL DISTRICTS																	
Dallas County FCD #1	DD	349,844,284	404,971,153	55,126,869	15.76%	2.650000	2.250000	(0.400000)	(15.09%)	9,270,874	9,111,851	(159,023)	(1.72%)	42,591	39,584	(3,007)	(7.06%)
Dallas County URD	DM	3,330,171,214	3,676,388,303	346,217,089	10.40%	1.590000	1.295000	(0.295000)	(18.55%)	52,949,722	47,609,229	(5,340,494)	(10.09%)	243,257	206,824	(36,433)	(14.98%)
Denton Co. LID #1	NL	225,689,753	234,834,604	9,144,851	4.05%	0.185000	0.184000	(0.001000)	(0.54%)	417,526	432,096	14,570	3.49%	1,918	1,877	(41)	(2.14%)
Denton Co. RUD #1	NR	192,833,583	201,598,839	8,765,256	4.55%	0.000000	0.000000	0.000000	0.00%	0	0	0	0.00%	0	0	0	0.00%
Grand Prairie Metro URD	GU	19,699,039	22,219,593	2,520,554	12.80%	0.600000	0.600000	0.000000	0.00%	118,194	133,318	15,123	12.80%	543	579	36	6.63%
Irving FCD, Section I	IF	275,567,042	329,668,824	54,101,782	19.63%	0.520000	0.453000	(0.067000)	(12.88%)	1,432,949	1,493,400	60,451	4.22%	6,583	6,488	(95)	(1.44%)
Irving FCD, Section III	ID	1,669,403,852	1,835,986,565	166,582,713	9.98%	0.128000	0.125000	(0.003000)	(2.34%)	2,136,837	2,294,983	158,146	7.40%	9,817	9,970	153	1.56%
Lancaster MUD #1	LM	39,639,424	58,000,645	18,361,221	46.32%	1.060000	1.060000	0.000000	0.00%	420,178	614,807	194,629	46.32%	1,930	2,671	741	38.39%
Northwest Dallas Co FCD	NF	446,297,756	484,261,721	37,963,965	8.51%	0.300000	0.300000	0.000000	0.00%	1,338,893	1,452,785	113,892	8.51%	6,151	6,311	160	2.60%
Valwood Improvement Auth.	FF	1,810,507,512	1,876,916,432	66,408,920	3.67%	0.270000	0.250000	(0.020000)	(7.41%)	4,888,370	4,692,291	(196,079)	(4.01%)	22,458	20,384	(2,074)	(9.24%)

DALLAS CENTRAL APPRAISAL DISTRICT 2017 PRELIMINARY ESTIMATED REAPPRAISAL PLAN - As of January 2017

ENTITY	RESIDENTIAL			COMMERCIAL			BPP			TOTAL OF ALL DIVISIONS		
	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED
CITIES												
Addison	1,194	2,358	50.64%	686	687	99.85%	3,037	3,037	100.00%	4,917	6,082	80.85%
Balch Springs	2,856	6,875	41.54%	623	964	64.63%	780	780	100.00%	4,259	8,619	49.41%
Carrollton	9,076	12,462	72.83%	1,406	1,778	79.08%	3,728	3,728	100.00%	14,210	17,968	79.09%
Cedar Hill	9,239	16,207	57.01%	698	1,216	57.40%	1,228	1,228	100.00%	11,165	18,651	59.86%
Cockrell Hill	926	926	100.00%	105	105	100.00%	168	168	100.00%	1,199	1,199	100.00%
Combine	209	334	62.57%	75	75	100.00%	13	13	100.00%	297	422	70.38%
Coppell	6,440	12,275	52.46%	672	1,077	62.40%	1,507	1,507	100.00%	8,619	14,859	58.01%
Dallas	155,742	292,124	53.31%	20,883	39,169	53.32%	48,653	48,653	100.00%	225,278	379,946	59.29%
Desoto	7,320	16,935	43.22%	591	1,285	45.99%	1,349	1,349	100.00%	9,260	19,569	47.32%
Duncanville	6,319	11,960	52.83%	737	1,048	70.32%	1,403	1,403	100.00%	8,459	14,411	58.70%
Farmers Branch	6,591	8,116	81.21%	610	1,244	49.04%	3,319	3,319	100.00%	10,520	12,679	82.97%
Ferris	0	0	0.00%	15	15	100.00%	7	7	100.00%	22	22	100.00%
Garland	40,066	64,789	61.84%	2,670	4,709	56.70%	5,839	5,839	100.00%	48,575	75,337	64.48%
Glenn Heights	2,249	3,489	64.46%	20	199	10.05%	87	87	100.00%	2,356	3,775	62.41%
Grand Prairie	24,716	35,977	68.70%	965	4,870	19.82%	2,977	2,977	100.00%	28,658	43,824	65.39%
Grapevine	0	0	0.00%	33	33	100.00%	75	75	100.00%	108	108	100.00%
Highland Park	812	3,447	23.56%	76	76	100.00%	374	374	100.00%	1,262	3,897	32.38%
Hutchins	525	1,379	38.07%	75	421	17.81%	329	329	100.00%	929	2,129	43.64%
Irving	23,126	45,364	50.98%	2,271	5,518	41.16%	8,313	8,313	100.00%	33,710	59,195	56.95%
Lancaster	6,066	12,713	47.71%	562	1,604	35.04%	869	869	100.00%	7,497	15,186	49.37%
Lewisville	186	300	62.00%	10	10	100.00%	17	17	100.00%	213	327	65.14%
Mesquite	31,132	38,221	81.45%	782	2,658	29.42%	3,187	3,187	100.00%	35,101	44,066	79.66%
Ovilla	0	162	0.00%	23	23	100.00%	9	9	100.00%	32	194	16.49%
Richardson	17,874	21,659	82.52%	1,070	1,596	67.04%	4,959	4,959	100.00%	23,903	28,214	84.72%
Rowlett	10,057	17,771	56.59%	372	1,037	35.87%	1,007	1,007	100.00%	11,436	19,815	57.71%
Sachse	3,209	5,592	57.39%	48	325	14.77%	298	298	100.00%	3,555	6,215	57.20%
Seagoville	1,443	5,160	27.97%	786	786	100.00%	447	447	100.00%	2,676	6,393	41.86%
Sunnyvale	1,365	2,467	55.33%	241	629	38.31%	452	452	100.00%	2,058	3,548	58.00%
University Park	1,362	6,940	19.63%	217	320	67.81%	762	762	100.00%	2,341	8,022	29.18%
Wilmer	548	1,544	35.49%	249	250	99.60%	183	183	100.00%	980	1,977	49.57%
Wylie	152	384	39.58%	18	18	100.00%	12	12	100.00%	182	414	43.96%
Total Cities	370,800	647,930	57.23%	37,589	73,745	50.97%	95,388	95,388	100.00%	503,777	817,063	61.66%
SCHOOLS												
Carrollton/Farmers Branch	17,516	23,833	73.49%	2,195	3,484	63.00%	6,293	6,293	100.00%	26,004	33,610	77.37%
Cedar Hill	10,205	16,865	60.51%	700	1,293	54.14%	1,218	1,218	100.00%	12,123	19,376	62.57%
Coppell	8,712	15,760	55.28%	943	1,541	61.19%	2,332	2,332	100.00%	11,987	19,633	61.06%
Dallas	132,682	269,435	49.24%	22,213	39,937	55.62%	48,425	48,425	100.00%	203,320	357,797	56.83%
Desoto	9,055	19,213	47.13%	369	1,129	32.68%	996	996	100.00%	10,420	21,338	48.83%
Duncanville	11,000	20,575	53.46%	862	2,089	41.26%	1,980	1,980	100.00%	13,842	24,644	56.17%
Ferris	0	116	0.00%	99	99	100.00%	17	17	100.00%	116	232	50.00%
Garland	48,678	83,995	57.95%	3,087	6,172	50.02%	6,762	6,762	100.00%	58,527	96,929	60.38%
Grand Prairie	23,979	34,523	69.46%	881	4,795	18.37%	3,018	3,018	100.00%	27,878	42,336	65.85%
Grapevine-Colleyville	0	0	0.00%	18	18	100.00%	155	155	100.00%	173	173	100.00%
Highland Park	2,330	10,789	21.60%	334	483	69.15%	1,839	1,839	100.00%	4,503	13,111	34.35%
Irving	17,196	36,665	46.90%	2,454	4,927	49.81%	5,900	5,900	100.00%	25,550	47,492	53.80%
Lancaster	6,546	13,059	50.13%	710	1,773	40.05%	881	881	100.00%	8,137	15,713	51.79%
Mesquite	34,783	47,379	73.41%	1,123	3,318	33.85%	3,592	3,592	100.00%	39,498	54,289	72.76%
Richardson	46,147	57,011	80.94%	2,303	3,388	67.98%	10,097	10,097	100.00%	58,547	70,496	83.05%
Sunnyvale	1,365	2,467	55.33%	253	642	39.41%	451	451	100.00%	2,069	3,560	58.12%
Total Schools	370,194	651,685	56.81%	38,544	75,088	51.33%	93,956	93,956	100.00%	502,694	820,729	61.25%

DALLAS CENTRAL APPRAISAL DISTRICT 2016 PRELIMINARY ESTIMATED REAPPRAISAL PLAN - As of January 28, 2016 .

ENTITY	RESIDENTIAL			COMMERCIAL			BPP			TOTAL OF ALL DIVISIONS		
	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED
CITIES												
Addison	1,716	2,358	72.77%	229	688	33.28%	3,049	3,049	100.00%	4,994	6,095	81.94%
Balch Springs	3,435	6,830	50.29%	317	952	33.30%	789	789	100.00%	4,541	8,571	52.98%
Carrollton	11,106	12,458	89.15%	576	1,782	32.32%	3,689	3,689	100.00%	15,371	17,929	85.73%
Cedar Hill	9,981	16,218	61.54%	319	1,201	26.56%	1,269	1,269	100.00%	11,569	18,688	61.91%
Cockrell Hill	511	929	55.01%	103	103	100.00%	182	182	100.00%	796	1,214	65.57%
Combine	0	331	0.00%	75	75	100.00%	17	17	100.00%	92	423	21.75%
Coppell	8,671	12,254	70.76%	319	1,070	29.81%	1,523	1,523	100.00%	10,513	14,847	70.81%
Dallas	186,607	291,741	63.96%	14,057	39,155	35.90%	48,701	48,701	100.00%	249,365	379,597	65.69%
Desoto	11,292	16,902	66.81%	691	1,285	53.77%	1,338	1,338	100.00%	13,321	19,525	68.23%
Duncanville	8,596	11,958	71.88%	246	1,050	23.43%	1,445	1,445	100.00%	10,287	14,453	71.18%
Farmers Branch	7,218	8,081	89.32%	614	1,240	49.52%	3,150	3,150	100.00%	10,982	12,471	88.06%
Ferris	0	0	0.00%	15	15	100.00%	7	7	100.00%	22	22	100.00%
Garland	53,742	64,519	83.30%	2,278	4,719	48.27%	5,766	5,766	100.00%	61,786	75,004	82.38%
Glenn Heights	1,344	3,465	38.79%	200	200	100.00%	89	89	100.00%	1,633	3,754	43.50%
Grand Prairie	25,876	35,920	72.04%	1,147	4,304	26.65%	2,992	2,992	100.00%	30,015	43,216	69.45%
Grapevine	0	0	0.00%	28	28	100.00%	74	74	100.00%	102	102	100.00%
Highland Park	2,636	3,407	77.37%	76	76	100.00%	375	375	100.00%	3,087	3,858	80.02%
Hutchins	119	1,378	8.64%	393	400	98.25%	297	297	100.00%	809	2,075	38.99%
Irving	26,858	44,867	59.86%	2,252	5,534	40.69%	8,343	8,343	100.00%	37,453	58,744	63.76%
Lancaster	8,596	12,718	67.59%	545	1,598	34.11%	845	845	100.00%	9,986	15,161	65.87%
Lewisville	186	300	62.00%	10	10	100.00%	17	17	100.00%	213	327	65.14%
Mesquite	31,767	38,175	83.21%	988	2,630	37.57%	3,231	3,231	100.00%	35,986	44,036	81.72%
Ovilla	0	162	0.00%	23	23	100.00%	10	10	100.00%	33	195	16.92%
Richardson	19,729	21,764	90.65%	354	1,599	22.14%	4,856	4,856	100.00%	24,939	28,219	88.38%
Rowlett	14,316	17,619	81.25%	384	1,028	37.35%	982	982	100.00%	15,682	19,629	79.89%
Sachse	4,397	5,447	80.72%	108	326	33.13%	283	283	100.00%	4,788	6,056	79.06%
Seagoville	2,037	5,034	40.46%	258	775	33.29%	458	458	100.00%	2,753	6,267	43.93%
Sunnyvale	1,543	2,419	63.79%	194	625	31.04%	435	435	100.00%	2,172	3,479	62.43%
University Park	6,400	6,934	92.30%	236	317	74.45%	793	793	100.00%	7,429	8,044	92.35%
Wilmer	543	1,534	35.40%	82	246	33.33%	165	165	100.00%	790	1,945	40.62%
Wylie	93	317	29.34%	14	14	100.00%	12	12	100.00%	119	343	34.69%
Total Cities	449,315	646,039	69.55%	27,131	73,068	37.13%	95,182	95,182	100.00%	571,628	814,289	70.20%
SCHOOLS												
Carrollton/Farmers Branch	20,912	23,621	88.53%	1,786	3,494	51.12%	6,198	6,198	100.00%	28,896	33,313	86.74%
Cedar Hill	10,521	16,879	62.33%	332	1,275	26.04%	1,256	1,256	100.00%	12,109	19,410	62.39%
Coppell	11,315	15,508	72.96%	617	1,487	41.49%	2,320	2,320	100.00%	14,252	19,315	73.79%
Dallas	163,877	268,970	60.93%	13,734	39,893	34.43%	48,241	48,241	100.00%	225,852	357,104	63.25%
Desoto	11,838	19,157	61.79%	544	1,127	48.27%	990	990	100.00%	13,372	21,274	62.86%
Duncanville	13,781	20,539	67.10%	865	2,103	41.13%	2,029	2,029	100.00%	16,675	24,671	67.59%
Ferris	0	115	0.00%	98	98	100.00%	15	15	100.00%	113	228	49.56%
Garland	67,898	83,334	81.48%	2,682	6,174	43.44%	6,655	6,655	100.00%	77,235	96,163	80.32%
Grand Prairie	25,729	34,526	74.52%	1,138	4,227	26.92%	3,039	3,039	100.00%	29,906	41,792	71.56%
Grapevine-Colleyville	0	0	0.00%	18	18	100.00%	157	157	100.00%	175	175	100.00%
Highland Park	9,038	10,744	84.12%	335	478	70.08%	1,919	1,919	100.00%	11,292	13,141	85.93%
Irving	18,723	36,510	51.28%	1,024	4,946	20.70%	5,921	5,921	100.00%	25,668	47,377	54.18%
Lancaster	9,231	13,066	70.65%	591	1,768	33.43%	833	833	100.00%	10,655	15,667	68.01%
Mesquite	35,707	47,087	75.83%	986	3,280	30.06%	3,629	3,629	100.00%	40,322	53,996	74.68%
Richardson	49,444	57,314	86.27%	981	3,395	28.90%	10,112	10,112	100.00%	60,537	70,821	85.48%
Sunnyvale	1,543	2,419	63.79%	195	638	30.56%	434	434	100.00%	2,172	3,491	62.22%
Total Schools	449,557	649,789	69.19%	25,926	74,401	34.85%	93,748	93,748	100.00%	569,231	817,938	69.59%

DALLAS CENTRAL APPRAISAL DISTRICT 2015 PRELIMINARY ESTIMATED REAPPRAISAL PLAN - As of February 12, 2015

ENTITY	RESIDENTIAL			COMMERCIAL			BPP			TOTAL OF ALL DIVISIONS		
	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED	ACCOUNTS REAPPRAISED	TOTAL NUMBER OF ACCOUNTS	PERCENT REAPPRAISED
CITIES												
Addison	1,619	2,358	68.66%	365	686	53.21%	3,000	3,000	100.00%	4,984	6,044	82.46%
Balch Springs	2,740	6,761	40.53%	333	968	34.40%	772	772	100.00%	3,845	8,501	45.23%
Carrollton	8,848	12,309	71.88%	943	1,777	53.07%	3,578	3,578	100.00%	13,369	17,664	75.69%
Cedar Hill	9,207	16,214	56.78%	359	1,201	29.89%	1,247	1,247	100.00%	10,813	18,662	57.94%
Cockrell Hill	159	929	17.12%	103	103	100.00%	167	167	100.00%	429	1,199	35.78%
Combine	202	327	61.77%	70	75	93.33%	16	16	100.00%	288	418	68.90%
Coppell	8,725	12,119	71.99%	482	1,062	45.39%	1,513	1,513	100.00%	10,720	14,694	72.95%
Dallas	150,024	291,228	51.51%	20,083	39,160	51.28%	47,804	47,804	100.00%	217,911	378,192	57.62%
Desoto	8,612	16,659	51.70%	309	1,287	24.01%	1,261	1,261	100.00%	10,182	19,207	53.01%
Duncanville	6,243	11,960	52.20%	264	1,044	25.29%	1,402	1,402	100.00%	7,909	14,406	54.90%
Farmers Branch	4,880	8,079	60.40%	572	1,235	46.32%	3,120	3,120	100.00%	8,572	12,434	68.94%
Ferris	0	0	0.00%	4	15	26.67%	8	8	100.00%	12	23	52.17%
Garland	47,723	64,399	74.11%	1,627	4,691	34.68%	5,687	5,687	100.00%	55,037	74,777	73.60%
Glenn Heights	1,938	3,325	58.29%	198	198	100.00%	90	90	100.00%	2,226	3,613	61.61%
Grand Prairie	14,179	35,835	39.57%	1,248	4,270	29.23%	2,899	2,899	100.00%	18,326	43,004	42.61%
Grapevine	0	0	0.00%	28	28	100.00%	74	74	100.00%	102	102	100.00%
Highland Park	2,446	3,403	71.88%	37	80	46.25%	372	372	100.00%	2,855	3,855	74.06%
Hutchins	276	1,378	20.03%	66	397	16.62%	282	282	100.00%	624	2,057	30.34%
Irving	27,542	43,597	63.17%	2,679	5,529	48.45%	8,070	8,070	100.00%	38,291	57,196	66.95%
Lancaster	8,873	12,720	69.76%	863	1,579	54.65%	821	821	100.00%	10,557	15,120	69.82%
Lewisville	186	300	62.00%	4	10	40.00%	16	16	100.00%	206	326	63.19%
Mesquite	18,570	38,179	48.64%	1,204	2,628	45.81%	3,139	3,139	100.00%	22,913	43,946	52.14%
Ovilla	0	162	0.00%	23	23	100.00%	6	6	100.00%	29	191	15.18%
Richardson	16,419	21,561	76.15%	764	1,601	47.72%	4,519	4,519	100.00%	21,702	27,681	78.40%
Rowlett	13,297	17,540	75.81%	853	1,019	83.71%	963	963	100.00%	15,113	19,522	77.42%
Sachse	4,166	5,300	78.60%	317	317	100.00%	268	268	100.00%	4,751	5,885	80.73%
Seagoville	1,161	4,890	23.74%	71	775	9.16%	450	450	100.00%	1,682	6,115	27.51%
Sunnyvale	382	2,286	16.71%	206	625	32.96%	438	438	100.00%	1,026	3,349	30.64%
University Park	5,482	6,914	79.29%	219	316	69.30%	792	792	100.00%	6,493	8,022	80.94%
Wilmer	263	1,541	17.07%	156	240	65.00%	150	150	100.00%	569	1,931	29.47%
Wylie	93	301	30.90%	14	14	100.00%	12	12	100.00%	119	327	36.39%
Total Cities	364,255	642,574	56.69%	34,464	72,953	47.24%	92,936	92,936	100.00%	491,655	808,463	60.81%
SCHOOLS												
Carrollton/Farmers Branch	16,622	23,332	71.24%	1,316	3,483	37.78%	5,954	5,954	100.00%	23,892	32,769	72.91%
Cedar Hill	10,030	16,878	59.43%	376	1,274	29.51%	1,232	1,232	100.00%	11,638	19,384	60.04%
Coppell	9,740	14,675	66.37%	663	1,462	45.35%	2,249	2,249	100.00%	12,652	18,386	68.81%
Dallas	130,195	268,589	48.47%	20,593	39,851	51.67%	47,600	47,600	100.00%	198,388	356,040	55.72%
Desoto	10,090	18,775	53.74%	523	1,125	46.49%	930	930	100.00%	11,543	20,830	55.42%
Duncanville	10,801	20,531	52.61%	596	2,141	27.84%	1,954	1,954	100.00%	13,351	24,626	54.22%
Ferris	0	115	0.00%	52	97	53.61%	16	16	100.00%	68	228	29.82%
Garland	61,465	83,016	74.04%	2,949	6,122	48.17%	6,535	6,535	100.00%	70,949	95,673	74.16%
Grand Prairie	13,428	34,444	38.99%	1,275	4,195	30.39%	2,947	2,947	100.00%	17,650	41,586	42.44%
Grapevine-Colleyville	0	0	0.00%	0	18	0.00%	165	165	100.00%	165	183	90.16%
Highland Park	8,220	10,730	76.61%	344	480	71.67%	1,916	1,916	100.00%	10,480	13,126	79.84%
Irving	21,582	36,071	59.83%	2,323	4,960	46.83%	5,771	5,771	100.00%	29,676	46,802	63.41%
Lancaster	8,938	13,072	68.38%	825	1,751	47.12%	812	812	100.00%	10,575	15,635	67.64%
Mesquite	21,521	46,827	45.96%	1,517	3,281	46.24%	3,504	3,504	100.00%	26,542	53,612	49.51%
Richardson	41,740	59,988	69.58%	1,503	3,386	44.39%	9,497	9,497	100.00%	52,740	72,871	72.37%
Sunnyvale	382	2,286	16.71%	206	638	32.29%	438	438	100.00%	1,026	3,362	30.52%
Total Schools	364,754	649,329	56.17%	35,061	74,264	47.21%	91,520	91,520	100.00%	491,335	815,113	60.28%

Memorandum



CITY OF DALLAS

DATE March 17, 2017

TO Members of the Budget, Finance, & Audit Committee: Jennifer S. Gates (Chair), Philip T. Kingston (Vice Chair), Erik Wilson, Rickey D. Callahan, Scott Griggs, Lee M. Kleinman

SUBJECT Utility Franchising

On Monday, March 20, 2017, the Office of Financial Services will brief the Budget, Finance, & Audit Committee on Utility Franchising. I have attached the briefing for your review.

Please let me know if you need additional information.

A handwritten signature in blue ink that reads "M. Elizabeth Reich".

M. Elizabeth Reich
Chief Financial Officer

Attachment

c: Honorable Mayor and Members of City Council
T.C. Broadnax, City Manager
Larry E. Casto, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager
Theresa O'Donnell, Interim Chief of Economic Development & Neighborhood Services

Mark McDaniel, Assistant City Manager
Eric D. Campbell, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Joey Zapata, Assistant City Manager
Alan E. Sims, Interim Chief of Community Services
Directors and Assistant Directors

Utility Franchising

Budget, Finance, and Audit Committee
March 20, 2017

Nick Fehrenbach
Manager of Regulatory Affairs
Office of Financial Services
City of Dallas



Presentation Overview

- Purpose
- History of franchises
- City Charter requirements
- Natural gas distribution
- Electric distribution
- Telecom
- Cable TV



Purpose

- Provide overview of current municipal franchises
 - Briefing is informational only
 - No action is required



History of Franchising

- Utility franchise agreements grant non-exclusive authority to utility to use public property in exchange for monetary and other considerations
- Utilities require use of publicly owned Rights-of-Ways (ROW) to install facilities and provide service
 - ROW includes streets, alleys, highways, easements, and other public ways



History of Franchising – continued

- Under State constitution, City must receive fair compensation for allowing use of public property
 - ROW is unique property and fair value is hard to determine
 - Historically, percentage of gross receipts was considered fair and reasonable compensation for use of ROW

History of Franchising – continued

- Franchise is both contract and regulatory document
 - Franchise is contract for lease of public property
 - Franchise also spells out certain regulatory responsibilities of City
 - Franchise prescribes regulatory obligations of utility
- Utility must accept franchise ordinance

History of Franchising – continued

- Historically, City has franchised all utilities and cable TV providers
 - Natural gas
 - Electric
 - Telephone
 - Cable TV



City Charter Chapter XIV

- City may grant franchise or right to use public property for purpose of furnishing to public any general public service or benefit
 - No exclusive franchise may be granted
 - No term longer than 40 years
 - Minimum franchise fee of 4% of gross receipts
 - Non-discriminatory ubiquitous service



Natural Gas Distribution

- Original franchise granted to The Dallas Gas Company in 1905
- Current franchise, ordinance #27793 granted to Atmos Energy Corporation on Jan 13, 2010
 - Initial term of 15 years – may be automatically renewed for additional 15 year term
 - Franchise fee of 5% of gross revenue, FY 2015-16 actual revenue \$10.6m

Natural Gas Distribution – continued

- Atmos must relocate facilities to accommodate City public improvements
- City has original jurisdiction over distribution rates
- Railroad Commission of Texas has appellate jurisdiction over distribution rates and original jurisdiction over pipeline rates



Natural Gas Distribution – continued

- Atmos filed Dallas Annual Rate Review (DARR) case on Jan 13
 - Staff and consultant currently reviewing case
 - Will bring findings to BFA on May 15
 - Council action scheduled for May 24 (Council action required by May 28)
- Atmos Pipeline filed rate case Jan 6 with Railroad Commission of Texas
 - Hearing on merits begins April 19
 - Statutory deadline July 10

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Electric Distribution

- Original franchise granted to Dallas Electric Lighting Company in 1882
- Current franchise, ordinance #27485 granted to Oncor Electric Delivery Company LLC on Feb 11, 2009
 - Initial term of 15 years - automatic 6 month extensions until terminated not to exceed total of 40 years
 - Franchise fee of \$0.002753/kWh, FY 2015-16 actual revenue \$50.9m

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Electric Distribution – continued

- Oncor must relocate facilities to accommodate City public improvements
- City has original jurisdiction over local distribution rates
- Public Utility Commission of Texas (PUCT) has appellate jurisdiction
- In practice, all City rate orders are appealed to the PUCT by Oncor to maintain system wide rates



Electric Distribution – continued

- Oncor filed LED street light tariff with City on Dec 16
 - Jan 11 resolution #17-0130 suspended effective date to allow staff time to review filing and make recommendations
 - Mobility and Street Services will brief the Transportation Committee on findings and recommendations on April 10
 - Voting item will be placed on April 12 Council agenda
 - Deadline for final action is April 22

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Electric Distribution – continued

- Oncor rate case expected to be filed March 17 with all cities in Oncor service area and PUCT
 - Rates will become effective 35 days after filing unless City takes action
 - City may suspend effective date for an additional 90 days to allow time to review
 - Voting item to suspend rates will be placed on April 12 Council agenda

Electric Distribution – continued

- Appeal of prior Oncor case (2009) has been remanded to PUC from Texas Supreme Court
 - City prevailed on franchise fee issue and lost the consolidated tax savings issue
 - May impact cost recovery in current case
 - Staff will continue to participate in this case as needed
- Additionally, staff is monitoring PUCT proceedings related to acquisition of Oncor by NextEra

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Telecom

- House Bill 1777 adopted in 1999 eliminated municipal franchising of telephone companies
- HB 1777 based initial rates on historic franchise fee payments
- Current compensation to cities for use of ROW is a per access line basis
 - PUCT adjusts annually by 50% of CPI
 - FY 2015-16 actual revenue \$27.5m

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Telecom – continued

- No requirement for ubiquitous service
- Rates are not regulated
- Telecom providers are required under State law to relocate for street widening or straightening projects



Telecom – continued

- Staff monitors federal legislation related to telecom and wireless providers use of ROW
 - Wireline industry has been trying to eliminate local franchising and municipal fees for use of ROW
 - Wireless providers are attempting to eliminate municipal regulation of placement of small cells in ROW and payment for use of ROW

Telecom – continued

- Staff monitors State legislation related to wireless providers use of ROW including SB1004 (HB2838) and SB1515
 - Would authorize wireless providers use of ROW
 - Would greatly restrict city's ability to regulate placement of wireless facilities
 - Limit compensation for use of ROW



Cable TV

- State of Texas became franchise authority for Cable TV based on Senate Bill 5 adopted in 2005
- Compensation to cities for use of ROW is 5% of gross receipts, FY 2015-16 actual revenue \$13.2m



Cable TV – continued

- Ubiquitous service not required
- Public Utility Commission prohibited from taking consumer complaints
- Per federal regulations Cable TV rates are not regulated



Utility Franchising

Budget, Finance, and Audit Committee
March 20, 2017

Nick Fehrenbach
Manager of Regulatory Affairs
Office of Financial Services
City of Dallas



Memorandum



CITY OF DALLAS

DATE March 17, 2017

TO Honorable Mayor and Members of the City Council

SUBJECT FY 2016-17 Financial Forecast Report

Please find attached the Financial Forecast Report based on information through January 2017. This report covers four months of this fiscal year.

We forecast General Fund revenues will exceed expenses at the end of the fiscal year by \$4.3 million. Based on current forecasts, revenues will be \$1 million below budget and expenses will be \$5.2 million below budget. Noteworthy variances are:

- We forecast Municipal Court revenues will be \$2.5 million below budget primarily because of the police department issuing fewer traffic citations.
- We forecast other charges for service will be \$3.1 million below budget primarily because of reductions in Fire-Rescue Department revenues including fire watch inspection services and Mobile Community Health Program services.
- We forecast Fire Department expenditures will be \$0.9 million below budget primarily because of salary and pension savings, offset by increased use of overtime and increased vacation/sick termination payments.
- We forecast Police Department expenditures will be \$2.9 million below budget primarily because of salary and pension savings, offset by increased use of overtime and increased vacation/sick termination payments.

Details related to other budget variances may be found at the end of the report. We will continue to closely monitor revenues and expenditures and keep you informed.

A handwritten signature in blue ink that reads "M. Elizabeth Reich".

M. Elizabeth Reich
Chief Financial Officer

c: T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager
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Mark McDaniel, Assistant City Manager
Eric D. Campbell, Assistant City Manager
Majed A. Al-Ghafry, Assistant City Manager
Alan E. Sims, Interim Chief of Community Services
Theresa O'Donnell, Interim Chief of Economic Development & Neighborhood Services
Directors and Assistant Directors



FY 2016-17

Financial Forecast Report

Information as of January 31, 2017



GENERAL FUND

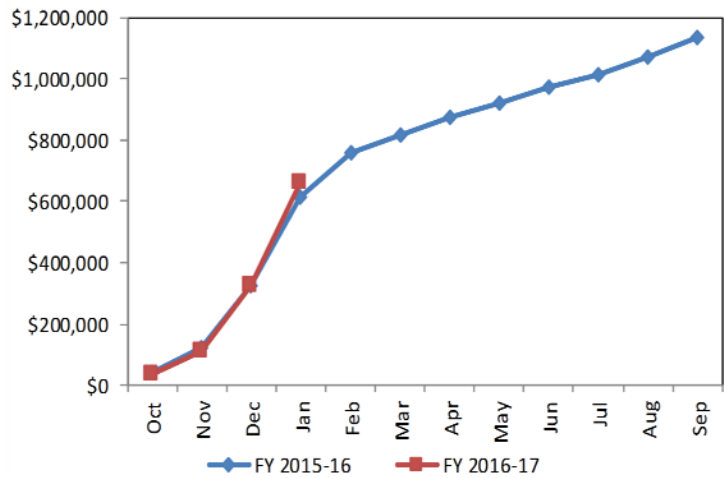
As of January 31, 2017
(000s)

ITEM	AMENDED BUDGET¹	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
Revenues	\$1,229,839	\$659,677	\$1,228,861	(\$978)
Expenditures	1,229,839	362,190	1,224,600	(5,239)
Net Excess of Revenues Over Expenditures/Transfers	\$0	\$297,486	\$4,261	\$4,261

GENERAL FUND REVENUES

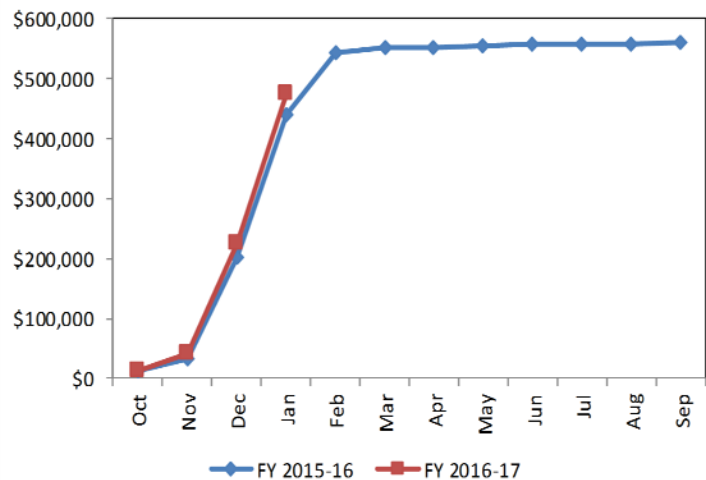
All SOURCES

	FY 2015-16	FY 2016-17	Variance
Oct	\$41,660	\$36,761	(\$4,898)
Nov	77,665	75,718	(1,947)
Dec	203,876	210,273	6,397
Jan	288,996	336,924	47,928
Feb	147,975		
Mar	53,193		
Apr	58,776		
May	49,762		
Jun	47,660		
Jul	45,379		
Aug	56,960		
Sep	62,480		
Total	\$1,134,380	\$659,677	\$474,800



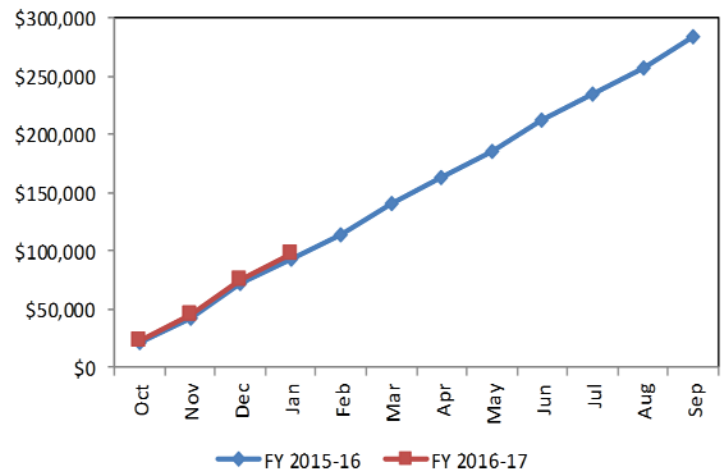
PROPERTY TAX

	FY 2015-16	FY 2016-17	Variance
Oct	\$11,487	\$12,787	\$1,300
Nov	20,589	29,060	8,471
Dec	169,848	181,782	11,934
Jan	237,273	252,156	14,883
Feb	104,025		
Mar	7,675		
Apr	2,364		
May	1,593		
Jun	2,523		
Jul	858		
Aug	852		
Sep	891		
Total	\$559,978	\$475,784	\$36,588



SALES TAX

	FY 2015-16	FY 2016-17	Variance
Oct	\$21,769	\$23,256	\$1,487
Nov	20,524	22,167	1,643
Dec	30,137	30,146	9
Jan	21,258	21,810	552
Feb	20,418		
Mar	27,482		
Apr	22,265		
May	22,311		
Jun	26,609		
Jul	21,921		
Aug	22,670		
Sep	26,554		
Total	\$283,918	\$97,380	\$3,691



GENERAL FUND REVENUES

As of January 31, 2017
(000s)

	AMENDED BUDGET¹	REVENUES YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
TAXES				
Ad Valorem Tax ²	\$610,219	\$475,784	\$611,707	\$1,488
Sales Tax ³	292,189	97,380	293,260	1,071
TOTAL TAXES	902,408	573,164	904,967	2,559
FRANCHISE REVENUES				
Oncor Electric ⁴	51,078	28,417	52,108	1,030
AT&T	9,594	2,621	9,594	0
Atmos Energy ⁵	17,157	3,222	16,157	(1,000)
Time Warner Cable	6,210	1,668	6,210	0
Other	29,737	9,328	30,060	323
TOTAL FRANCHISE REVENUES	113,775	45,256	114,128	353
LICENSES AND PERMITS	4,891	2,171	4,913	22
INTEREST EARNED⁶	1,316	805	2,783	1,467
INTERGOVERNMENTAL⁷	8,501	435	8,936	435
FINES AND FORFEITURES				
Municipal Court ⁸	18,701	4,606	16,191	(2,510)
Vehicle Towing & Storage	7,146	2,575	7,146	0
Parking Fines	5,022	978	5,022	0
Red Light Camera Fines	7,460	0	7,460	0
Public Library ⁹	431	58	305	(126)
TOTAL FINES	38,760	8,216	36,124	(2,636)
CHARGES FOR SERVICE				
Parks	10,522	2,364	10,614	92
Emergency Ambulance	32,091	5,201	32,091	0
Security Alarm	4,380	1,394	4,377	(3)
Street Lighting	648	253	648	0
Vital Statistics	1,600	494	1,601	1
Other ¹⁰	28,311	7,779	25,235	(3,076)
TOTAL CHARGES	77,552	17,485	74,565	(2,987)
INTERFUND REVENUE	75,023	9,969	74,790	(232)
MISCELLANEOUS	7,616	2,176	7,657	41
TOTAL REVENUES	\$1,229,839	\$659,677	\$1,228,861	(\$978)

GENERAL FUND EXPENDITURES

ALL EXPENSES

	FY 2015-16	FY 2016-17	Variance
Oct	\$75,601	\$71,583	(\$4,018)
Nov	78,065	97,700	19,635
Dec	124,594	98,282	(26,312)
Jan	97,321	94,625	(2,696)
Feb	84,683		
Mar	95,576		
Apr	86,104		
May	126,118		
Jun	90,989		
Jul	82,900		
Aug	93,679		
Sep	85,148		

Total \$1,120,778 \$362,190 (\$13,391)

POLICE

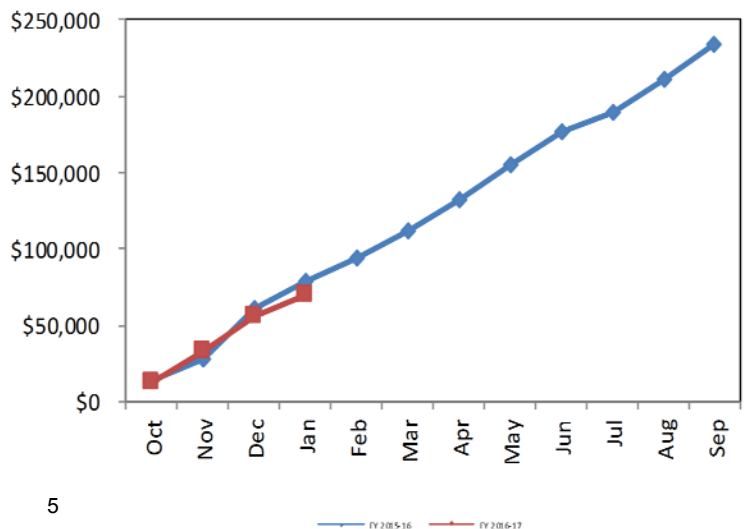
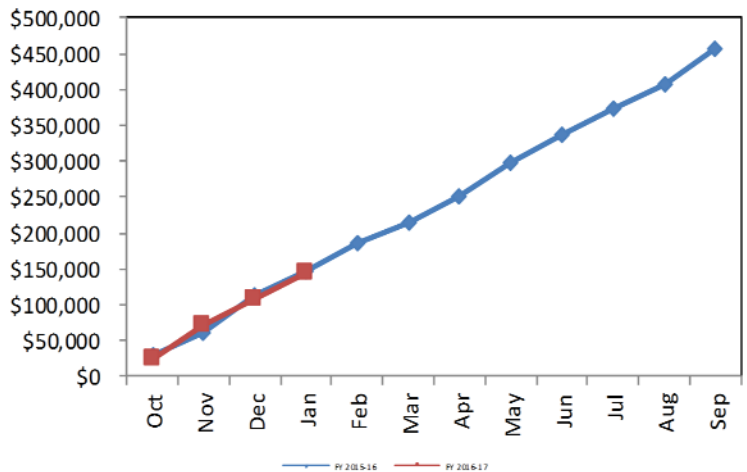
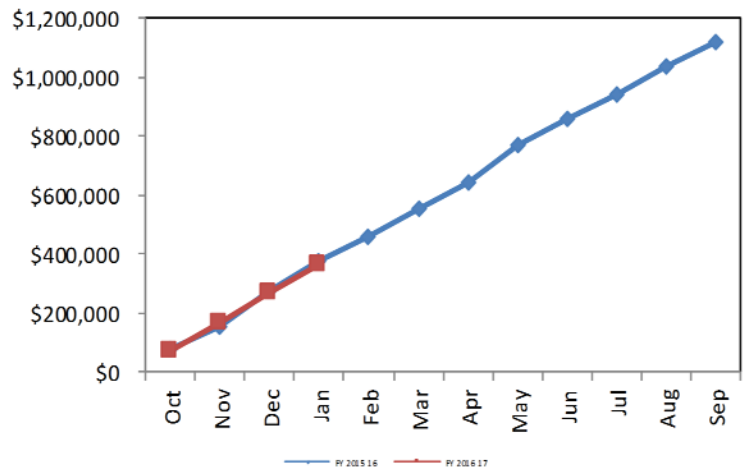
	FY 2015-16	FY 2016-17	Variance
Oct	\$28,488	\$25,289	(\$3,199)
Nov	31,370	46,089	14,719
Dec	52,490	35,634	(16,856)
Jan	35,550	37,304	1,754
Feb	37,126		
Mar	30,058		
Apr	34,931		
May	48,649		
Jun	37,058		
Jul	38,075		
Aug	32,689		
Sep	49,363		

Total \$455,847 \$144,317 (\$3,581)

FIRE

	FY 2015-16	FY 2016-17	Variance
Oct	\$13,994	\$12,198	(\$1,796)
Nov	14,184	20,784	6,600
Dec	32,389	23,355	(9,034)
Jan	17,547	13,952	(3,595)
Feb	16,128		
Mar	18,076		
Apr	19,295		
May	23,154		
Jun	21,372		
Jul	13,779		
Aug	21,006		
Sep	23,230		

Total \$234,154 \$70,290 (\$7,824)



GENERAL FUND EXPENDITURES

As of January 31, 2017
(000s)

DEPARTMENT	AMENDED BUDGET¹	EXPENDITURES YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
Building Services	\$25,312	\$9,859	\$25,312	\$0
Business Dev/Procurement Svcs	3,041	905	3,032	(8)
City Attorney's Office	16,808	5,053	16,808	0
City Auditor's Office	3,194	885	3,122	(73)
City Controller's Office ¹¹	4,682	1,395	4,430	(252)
City Manager's Office	2,098	708	2,098	0
City Secretary's Office	2,029	516	2,021	(9)
Civil Service	2,887	726	2,878	(9)
Code Compliance	42,386	13,152	42,386	0
Court Services	11,976	3,686	11,919	(56)
Elections	1,401	32	1,401	0
Fire ¹²	254,603	70,290	253,736	(867)
Housing	14,403	2,480	14,403	(0)
Human Resources	5,220	1,719	5,171	(48)
Independent Audit	865	-	865	0
Jail Contract - Lew Sterret	7,813	1,953	7,813	0
Judiciary	3,296	1,034	3,233	(62)
Library	29,984	9,718	29,984	0
Management Services	10,235	3,683	10,113	(122)
Mayor and Council ¹³	4,465	1,400	4,533	68
Mobility and Street Services	84,577	30,702	84,548	(29)
Mobility and Street Services-Street Lighting	16,956	5,506	16,956	(0)
Non-Departmental ¹⁴	70,412	5,025	69,990	(423)
Office of Cultural Affairs	19,605	10,980	19,605	0
Office of Economic Development	2,575	1,345	2,575	0
Office of Financial Services	2,957	750	2,896	(60)
Park and Recreation	94,673	32,217	94,432	(241)
Planning & Urban Design ¹⁵	3,029	752	2,875	(153)
Police ¹⁶	478,004	144,317	475,140	(2,864)
Sustainable Dev/Construction	1,386	1,186	1,357	(29)
Trinity Watershed Management	1,318	217	1,318	0
RESERVES AND TRANSFERS				
Contingency Reserve	1,650	0	1,650	0
Liability/Claim Fund	4,283	0	4,283	0
Salary & Benefit Reserve ¹⁷	1,719	0	1,719	0
TOTAL EXPENDITURES	\$1,229,839	\$362,190	\$1,224,600	(\$5,239)

PROPRIETARY FUNDS

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
AVIATION				
BEGINNING FUND BALANCE	\$9,907	\$ -	\$9,907	\$ -
REVENUES:				
Parking	27,143	8,180	26,633	(509)
Terminal Concessions	25,416	7,194	25,416	(0)
Landing Fees	17,784	5,634	17,784	0
Rental on Airport - Terminal	14,789	4,508	14,789	0
Rental on Airport - Field	8,586	2,497	8,586	(0)
Fuel Flow Fees	1,225	348	1,213	(12)
All Remaining Revenues	3,230	1,716	4,214	984
TOTAL REVENUES	98,174	30,078	98,636	462
TOTAL EXPENDITURES	99,188	24,379	99,124	(64)
ENDING FUND BALANCE	\$8,893	\$ -	\$9,419	\$526
CONVENTION AND EVENT SERVICES				
BEGINNING FUND BALANCE	\$29,150	\$ -	\$29,150	\$ -
REVENUES:				
Hotel Occupancy Tax	58,856	12,984	58,517	(339)
Alcoholic Beverage Tax	12,445	3,140	12,528	82
Operating Revenues	25,002	5,309	27,611	2,609
Office of Special Events	100	34	106	7
TOTAL REVENUES¹⁸	96,403	21,467	98,762	2,359
TOTAL EXPENDITURES¹⁸	96,403	21,793	98,762	2,359
ENDING FUND BALANCE	\$29,150	\$ -	\$29,150	(\$0)

PROPRIETARY FUNDS

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
SUSTAINABLE DEVELOPMENT AND CONSTRUCTION				
BEGINNING FUND BALANCE	\$36,856	\$ -	\$36,856	\$ -
REVENUES:				
Building Permits	19,240	7,802	19,603	363
Certificate of Occupancy	1,412	380	1,412	0
Plan Review	3,749	1,538	3,870	121
Registration/License	1,028	359	1,028	0
Special Plats	887	328	887	0
Private Development	1,010	500	1,156	146
Zoning	1,184	333	1,184	0
Interest Earnings	117	155	155	38
All Remaining Revenues	1,477	625	1,477	0
TOTAL REVENUES	30,103	12,019	30,772	668
TOTAL EXPENDITURES¹⁹	36,090	8,084	31,839	(4,251)
ENDING FUND BALANCE	\$30,869	\$ -	\$35,789	\$4,920
MUNICIPAL RADIO				
BEGINNING FUND BALANCE	\$1,288	\$ -	\$1,288	\$ -
REVENUES:				
Local and National Sales	1,980	584	2,000	20
All Remaining Revenues	75	2	16	(59)
TOTAL REVENUES	2,055	586	2,016	(39)
TOTAL EXPENDITURES	2,032	697	1,947	(86)
ENDING FUND BALANCE	\$1,310	\$ -	\$1,357	\$46

PROPRIETARY FUNDS

As of January 31, 2017

(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
WATER UTILITIES				
BEGINNING FUND BALANCE	\$87,038	\$ -	\$87,038	\$ -
REVENUES:				
Treated Water - Retail	294,427	91,660	294,759	332
Treated Water - Wholesale	84,700	27,221	84,226	(474)
Wastewater - Retail	236,075	74,504	233,398	(2,677)
Wastewater - Wholesale	10,554	3,221	10,243	(310)
All Remaining Revenues	31,708	10,388	31,349	(359)
TOTAL REVENUES	657,465	206,995	653,975	(3,489)
TOTAL EXPENDITURES	657,465	165,436	653,975	(3,489)
ENDING FUND BALANCE	\$87,038	\$ -	\$87,038	\$0
COMMUNICATION & INFORMATION SERVICES				
BEGINNING FUND BALANCE	\$11,178	\$ -	\$11,178	\$ -
REVENUES:				
Interdepartmental Charges	58,330	9,191	58,330	0
Telephones Leased	7,723	24	7,723	0
Circuits	1,449	0	1,449	0
Desktop Services	0	2	2	2
Interest	150	47	140	(2)
Equipment Rental	5,002	0	5,002	0
Miscellaneous	171	45	171	1
TOTAL REVENUES	72,825	9,309	72,817	(8)
TOTAL EXPENDITURES	74,838	31,314	74,294	(545)
ENDING FUND BALANCE	\$9,165	\$ -	\$9,701	\$537

PROPRIETARY FUNDS

As of January 31, 2017

(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
EQUIPMENT SERVICES				
BEGINNING FUND BALANCE	\$4,450	\$ -	\$4,450	\$ -
REVENUES:				
Rental/Wreck	33,541	0	34,535	994
Fuel	16,482	0	16,482	0
Auto Auction/Non-Taxable	418	267	418	0
Miscellaneous Revenue	391	86	477	86
Interest and Other	5	0	5	0
TOTAL REVENUES	50,837	353	51,917	1,080
TOTAL EXPENDITURES	50,837	9,279	51,494	657
ENDING FUND BALANCE	\$4,450	\$ -	\$4,873	\$423
 EXPRESS BUSINESS CENTER				
BEGINNING FUND BALANCE	\$1,631	\$ -	\$1,631	\$ -
REVENUES:				
Postage Sales	2,703	519	2,703	0
All Other Revenues	1,278	742	1,278	0
TOTAL REVENUES	3,981	1,262	3,981	0
TOTAL EXPENDITURES	3,780	938	3,780	0
ENDING FUND BALANCE	\$1,833	\$ -	\$1,833	\$0

PROPRIETARY FUNDS

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
SANITATION SERVICES				
BEGINNING FUND BALANCE	\$14,681	\$ -	\$14,681	\$ -
REVENUES:				
Residential Collection	72,502	25,060	73,201	698
Cost Plus Bulk/Brush	122	39	118	(3)
Sale of Recyclables	695	648	845	150
City Facility Collection	737	252	757	20
Landfill Revenue	21,890	10,858	24,147	2,257
TOTAL REVENUES²⁰	95,946	36,858	99,069	3,123
TOTAL EXPENDITURES²⁰	95,946	18,440	96,399	453
ENDING FUND BALANCE	\$14,681	\$ -	\$17,351	\$2,670

OTHER FUNDS

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
9-1-1 SYSTEM OPERATIONS				
BEGINNING FUND BALANCE	\$5,494	\$ -	\$5,494	\$ -
REVENUES:				
9-1-1 Service Receipts - Wireless	6,374	1,760	6,340	(35)
9-1-1 Service Receipts - Wireline	6,450	2,087	6,304	(147)
Interest and Other	48	26	80	31
TOTAL REVENUES	12,873	3,872	12,723	(150)
TOTAL EXPENDITURES	16,389	2,033	16,386	(3)
ENDING FUND BALANCE	\$1,978	\$ -	\$1,831	(\$147)
STORM DRAINAGE MANAGEMENT				
BEGINNING FUND BALANCE	\$6,754	\$ -	\$6,754	\$ -
REVENUES:				
Storm Water Fees	50,856	15,955	50,856	-
Interest and Other	81	50	81	0
TOTAL REVENUES	50,937	16,005	50,937	0
TOTAL EXPENDITURES	53,008	8,076	53,008	0
ENDING FUND BALANCE	\$4,683	\$ -	\$4,683	\$0

OTHER FUNDS

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
EMPLOYEE BENEFITS				
BENEFITS ADMINISTRATION				
TOTAL EXPENDITURES	\$998	\$216	\$997	(\$1)
WELLNESS PROGRAM				
TOTAL EXPENDITURES	\$349	\$51	\$281	(\$68)
RISK MANAGEMENT				
TOTAL EXPENDITURES	\$2,630	\$897	\$2,625	(\$6)
LIABILITY/CLAIMS FUND				
Beginning Balance October 1, 2016				\$3,158
Budgeted Revenue				9,453
FY 2016-17 Available Funds				12,611
Paid October 2016				(596)
Paid November 2016				(315)
Paid January 2017				(422)
Balance as of January 31, 2017				11,278

DEBT SERVICE FUND

As of January 31, 2017
(000s)

DEPARTMENT	BUDGET	YEAR TO DATE	YEAR-END FORECAST	BUDGET VS FORECAST VARIANCE
DEBT SERVICE FUND				
BEGINNING FUND BALANCE	\$10,235	\$ -	\$10,235	\$ -
REVENUES:				
Ad Valorem	242,487	189,001	243,035	547
Interest/Transfers/Other	19,799	652	19,799	0
TOTAL REVENUES	262,287	189,653	262,834	547
TOTAL EXPENDITURES	261,865	10,220	261,865	0
ENDING FUND BALANCE	\$10,657	\$ -	\$11,204	\$547

NOTES

(Dollars in 000s)

1. The General Fund budget was amended/increased based on Council's approved use of contingency reserve funds by \$500 on February 22, 2017 by CR# 17-0438 for additional legal services necessary to continue representing four Dallas City Councilmembers with regard to the Dallas Police and Fire Pension System.
2. Ad Valorem tax revenues are forecast to be \$1,488 over budget based on current year property tax receipts trending above average.
3. Sales tax revenues are forecast to be \$1,071 over budget based on most recent sales tax receipts. Sales tax receipts have increased by 4.1 percent over the most recent 12 months.
4. Oncor Electric revenues are forecast to be \$1,030 over budget based on most recent receipts.
5. Atmos Energy revenues are forecast to be \$1,000 below budget primarily due to a warm fall and winter, which led to decreased gas consumption by customers.
6. Interest earned revenues are forecast to be \$1,467 above budget due to an increase in the market interest rate.
7. Intergovernmental revenues are projected to be \$435 above budget primarily due to refund check received from the Dallas County Elections Department and a Dallas Fire Rescue deployment reimbursement received from the State.
8. Municipal Court revenues are forecast to be \$2,510 below budget primarily as a result of a decrease in the volume of citations being issued.
9. Public Library revenue is projected to be \$126 below budget due to implementation of automatic renewal on materials that have been checked out at library locations and an increase in the usage of e-materials. Fines and late fees are not collected on e-materials as they are electronically recalled on the due date.
10. Other Charges for Services is projected to be \$3,076 below budget primarily due to the reduction of fire watch inspection services at the American Airlines Center and contract delays for the Mobile Community Health Program.
11. City Controller's Office expenditures are forecast to be \$252 below budget due to vacancies and delays in hiring.
12. Fire Department expenditures are forecast to be \$867 below budget primarily due to salary and pension savings offset by increased use of overtime and increased vacation/sick termination payments. Pension savings are a result of the budget including funds to increase the City's contribution rate contingent upon members increasing their contribution rate via plan election, which did not pass.

NOTES

(Dollars in 000s)

13. Mayor and Council expenditures are forecast to be \$68 over budget due to double-filled positions.

14. Non-Departmental expenditures are forecast to be \$423 below budget primarily due to insurance related costs being charged to the Benefits Fund rather than to the General Fund.

15. Planning and Urban Design expenditures are forecast to be \$153 below budget due to vacancies.

16. Police Department expenditures are forecast to be \$2,864 below budget primarily as a result of salary and pension savings offset by increased use of overtime and increased vacation/sick termination payments. Pension savings are a result of the budget including funds to increase the City's contribution rate contingent upon members increasing their contribution rate via plan election, which did not pass. Additionally, we planned to hire 451 officers this year, but as it is now, that will be extremely difficult if not impossible so we will only be able to hire 300.

17. Salary and Benefit Reserve funds allocated to City Attorney's Office (\$148) and City Manager's Office (\$133) to offset vacation/sick termination payments.

18. Convention and Event Services is projected to be \$2,359 above budget in revenues and expenditures due to large catered events that exceeded the contractual minimum guarantees.

19. Sustainable Development and Construction is projected to be \$4,251 below budget due to vacancies and technology enhancements deferred to FY 2017-18.

20. Sanitation Services revenues are projected to be \$3,123 above budget due to an increase in cash customers at the landfill. Expenses are projected to be \$453 above budget due to increase in landfill activity.

Memorandum



CITY OF DALLAS

DATE March 17, 2017

TO Members of the Budget, Finance, & Audit Committee: Jennifer S. Gates (Chair),
Philip T. Kingston (Vice Chair), Erik Wilson, Rickey D. Callahan, Scott Griggs,
Lee M. Kleinman

SUBJECT December 31, 2016 Quarterly Investment Report

The City of Dallas Investment Policy, in accordance with the Texas Public Funds Investment Act, requires that the City Council and City Manager receive quarterly investment reports. The purpose of this report is to provide a means for Council members, Council committee members, and staff to regularly review and monitor the City's investment position, and to demonstrate compliance with the City's Investment Policy and the Public Funds Investment Act. We have included summary reports on each of the City's individual portfolios, as well as summary information on the combined portfolio.

For the quarter ended December 31, 2016 the City's individual portfolios and the combined portfolio are in compliance with the relevant provisions of the Public Funds Investment Act and the investment strategies adopted in Sec. 17.0 of the City's Investment Policy.

Please let me know if you need additional information.

M. Elizabeth Reich
Chief Financial Officer

Attachment

c: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Rosa A. Rios, City Secretary
Daniel F. Solis, Administrative Judge
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager
Theresa O'Donnell, Interim Chief of Economic
Development & Neighborhood Services

Mark McDaniel, Assistant City Manager
Eric D. Campbell, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Joey Zapata, Assistant City Manager
Alan E. Sims, Interim Chief of Community Services
Directors and Assistant Directors



CITY OF DALLAS

December 31, 2016

QUARTERLY INVESTMENT REPORT

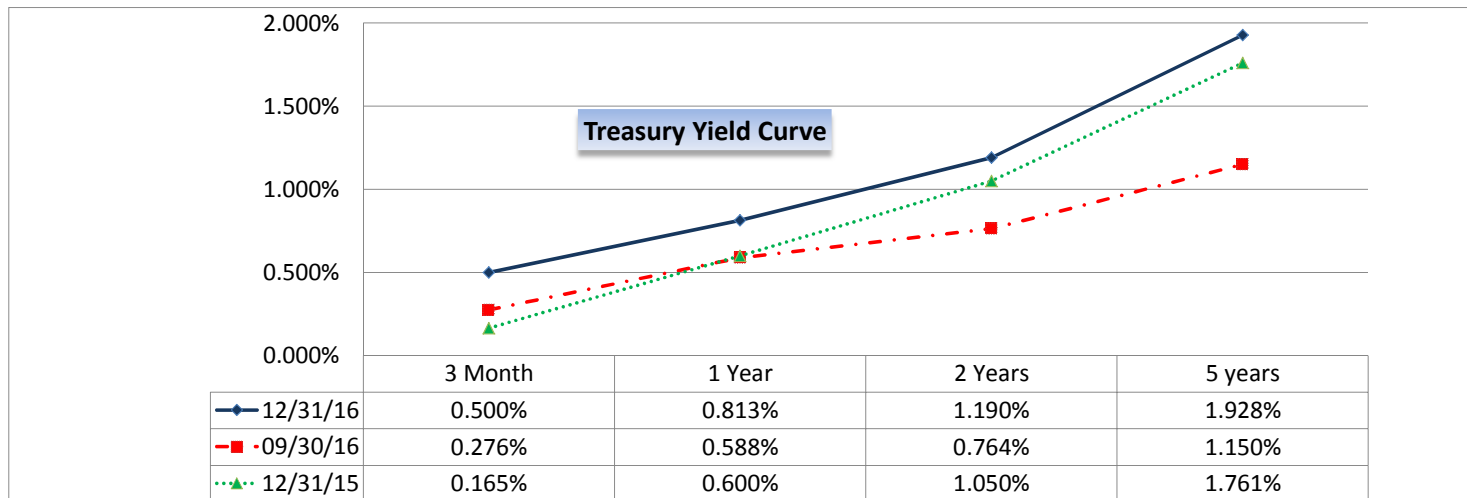
Budget, Finance, & Audit Committee
March 20, 2017

- Labor market continued to strengthen and growth of economic activity continued at the modest pace that began at mid-year 2016.
- Job gains remained solid as in recent months and the unemployment rate declined
- Household spending rose moderately but business fixed investment remained soft
- Inflation increased since earlier 2016 but was still below the 2 percent longer-term objective, partly reflecting earlier declines in energy prices and in prices of non-energy imports
- The Federal Open Market Committee (FOMC) decided to raise the top of the target range for the federal funds rate to 0.50 to 0.75 percent.

Source: FOMC December 14, 2016 Statement

National Economic Data	12/31/2015	12/31/2016
Fed Funds Effective Rate Target	0.25% -0.50%	0.50%-0.75%
2 Years Treasury Note	1.050%	1.190%
10 Years Treasury Note	2.270%	2.445%
Monthly Unemployment Rate	5.00%	4.70%
Weekly Initial Jobless Claims	285,000	235,000
Monthly Change in Nonfarm Payrolls	262,000	156,000
Monthly New Housing Starts	1,143,000	1,226,000

Source: Bloomberg



Source: Bloomberg

City of Dallas
Portfolio Holdings
Combined Investment Summary
As of 12/31/2016

Portfolio Description	Face Amount	Book Value	Market Value	Accrued Interest	Market Value + Accrued Interest	*Unrealized Gain/(Loss)	Weighted Average Yield To Maturity
01 The City's Investment Pool	1,586,470,000	1,586,549,469	1,585,033,108	2,263,885	1,587,296,993	(1,516,360)	1.07%
02 Convention Center Reserve	23,000,000	23,000,000	22,459,774	8,400	22,468,174	(540,226)	1.34%
03 Water Reserve	90,000,000	89,969,928	88,908,200	261,833	89,170,033	(1,061,728)	1.26%
04 Art Endowment	2,235,000	2,235,000	2,194,902	10,899	2,205,801	(40,098)	1.32%
05 Ida Green Library Fund	1,000,000	1,000,000	988,928	833	989,761	(11,072)	1.25%
10 DWU Commercial Paper Program	17,180	17,180	17,180	0	17,180	-	0.40%
14 Trinity Parkway Escrow	548,793	548,793	548,793	0	548,793	-	0.42%

*Unrealized gain/loss is the difference between the market value and book value and does not represent an actual gain or loss. Gains and losses are realized only when a security is sold prior to maturity. Since it is the City's practice to hold investments until they mature, the temporary gains and losses are unlikely to be realized.

City of Dallas
Trade Activity by Portfolio
As of: 09/30/2016 - 12/31/2016

Portfolio Description	Beginning Face Amount	Beginning Weighted Average Yield To Maturity	Purchased/Deposited	Matured/Called/ Redeemed	Ending Face Amount	Ending Weighted Average Yield To Maturity
City's Investment Pool*						
Federal Agricultural Mortgage Corp.	232,270,000	0.95%	86,000,000	101,500,000	216,770,000	1.12%
Federal Farm Credit Bank	285,000,000	0.91%	-	20,000,000	265,000,000	0.92%
Federal Home Loan Bank	209,850,000	1.11%	35,000,000	70,000,000	174,850,000	1.15%
Federal Home Loan Mortgage Corp.	374,000,000	0.98%	145,000,000	80,000,000	439,000,000	1.21%
Federal National Mortgage Assoc.	154,830,000	1.15%	-	-	154,830,000	1.15%
Total Portfolio	1,255,950,000	1.00%	266,000,000	271,500,000	1,250,450,000	1.12%

*Trade activity excludes local government investment pools and money market mutual funds.

Convention Center Reserve						
Federal Home Loan Mortgage Corp.	4,000,000	1.25%	-	-	4,000,000	1.25%
Federal National Mortgage Assoc.	19,000,000	1.36%	-	-	19,000,000	1.36%
Total Portfolio	23,000,000	1.34%	-	-	23,000,000	1.34%

Water Reserve						
Federal Home Loan Bank	5,000,000	1.50%	-	-	5,000,000	1.50%
Federal Home Loan Mortgage Corp.	30,000,000	1.22%	-	-	30,000,000	1.22%
Federal National Mortgage Assoc.	55,000,000	1.26%	-	-	55,000,000	1.26%
Total Portfolio	90,000,000	1.26%	-	-	90,000,000	1.26%

Art Endowment						
Federal Home Loan Mortgage Corp.	2,235,000	1.32%	-	-	2,235,000	1.32%
Total Portfolio	2,235,000	1.32%	-	-	2,235,000	1.32%

Ida Green Library Endowment						
Federal Agricultural Mortgage Corp.	1,000,000	1.25%	-	-	1,000,000	1.25%
Total Portfolio	1,000,000	1.25%	-	-	1,000,000	1.25%

DWU Commercial Paper						
Money Market - Tax Exempt	15,404	0.27%	1,776	-	17,180	0.40%
Total Portfolio	15,404	0.27%	1,776	-	17,180	0.40%

Trinity Parkway Escrow						
Money Market	548,341	0.37%	452	-	548,793	0.42%
Total Portfolio	548,341	0.37%	452	-	548,793	0.42%

City of Dallas
 Summary Statement by Portfolio
 As of: 09/30/2016 - 12/31/2016

Portfolio Description	Beginning Face Amount	Ending Face Amount	Beginning Book Value	Ending Book Value	Beginning Market Value	Ending Market Value	Deposits/ (Redemptions)	Change in Market Value	Accrued Interest	Ending Weighted Average Yield To Maturity
City's Investment Pool¹										
Local Govt. Investment Pool	256,020,000	327,020,000	256,020,000	327,020,000	256,020,000	327,020,000	71,000,000	-	-	0.89%
Money Market	53,000,000	9,000,000	53,000,000	9,000,000	53,000,000	9,000,000	(44,000,000)	-	-	0.42%
US Agency	1,255,950,000	1,250,450,000	1,256,062,222	1,250,529,469	1,258,642,977	1,249,013,108	(5,500,000)	(4,123,869)	2,263,885	1.12%
*Total Portfolio	1,564,970,000	1,586,470,000	1,565,082,222	1,586,549,469	1,567,662,977	1,585,033,108	21,500,000	(4,123,869)	2,263,885	1.07%
Convention Center Reserve²										
US Agency	23,000,000	23,000,000	23,000,000	23,000,000	22,961,871	22,459,774	-	(502,097)	8,400	1.34%
Total Portfolio	23,000,000	23,000,000	23,000,000	23,000,000	22,961,871	22,459,774	-	(502,097)	8,400	1.34%
Water Reserve²										
US Agency	90,000,000	90,000,000	89,959,757	89,969,928	89,953,500	88,908,200	-	(1,045,300)	261,833	1.26%
Total Portfolio	90,000,000	90,000,000	89,959,757	89,969,928	89,953,500	88,908,200	-	(1,045,300)	261,833	1.26%
Art Endowment³										
US Agency	2,235,000	2,235,000	2,235,000	2,235,000	2,232,669	2,194,902	-	(37,767)	10,899	1.32%
Total Portfolio	2,235,000	2,235,000	2,235,000	2,235,000	2,232,669	2,194,902	-	(37,767)	10,899	1.32%
Ida Green Library Endowment⁴										
US Agency	1,000,000	1,000,000	1,000,000	1,000,000	998,150	988,928	-	(9,222)	833	1.25%
Total Portfolio	1,000,000	1,000,000	1,000,000	1,000,000	998,150	988,928	-	(9,222)	833	1.25%
DWU Commercial Paper⁵										
Money Market - Tax Exempt	15,404	17,180	15,404	17,180	15,404	17,180	1,776	-	-	0.40%
Total Portfolio	15,404	17,180	15,404	17,180	15,404	17,180	1,776	-	-	0.40%
Trinity Parkway Escrow⁶										
Money Market	548,341	548,793	548,341	548,793	548,341	548,793	452	-	-	0.42%
Total Portfolio	548,341	548,793	548,341	548,793	548,341	548,793	452	-	-	0.42%

Notes 1-6: See Page 6 for Strategy Statement by Portfolio.

*Numbers may not sum due to rounding

City of Dallas
Strategy Statement and Compliance by Portfolio
As of: 09/30/2016 - 12/31/2016

STRATEGY COMPLIANCE STATEMENT

For the quarter ended December 31, 2016 the portfolios are in compliance with the relevant provisions of the Public Fund Investment Act and the investment strategies adopted in Sec. 17.0 of the City's Investment Policy.

STRATEGY STATEMENT BY PORTFOLIO

1) City's Investment Pool

The City's Investment Pool is an aggregation of the majority of City funds that includes tax receipts, enterprise fund revenues, fine and fee revenues, as well as some, but not all, bond proceeds, grants, gifts and endowments. This portfolio is maintained to meet anticipated daily cash needs for City of Dallas operations, capital projects and debt service. In order to ensure the ability of the City to meet obligations and to minimize potential liquidation losses, the dollar-weighted average stated maturity of the Investment Pool shall not exceed 1.5 years.

2) Convention Center Bond Reserve and Water Bond Reserve

Non-pooled reserve funds for outstanding revenue bonds (Convention Center and Water) are set at levels required by their respective bond ordinances. These funds will be used to pay principal and/or interest at final maturity or if called prior to final maturity.

3) Art Endowment

The Art Endowment Fund was created by the City from a \$1,285,026 repayment to the General Fund from the Convention Center. Pursuant to Resolution No. 84-311 dated September 26, 1984, this endowment fund was created to provide additional monies for the arts, not to replace the current level of support. Funds received as gifts to the City with instructions that the income generated by the investment of said funds be used for specified purposes are invested as separate non-pooled portfolios in order to maximize return.

4) Ida Green Library Endowment

The Ida M. Green Endowment Fund was created with the proceeds from the sale of stock from the estate of Ms. Green pursuant to Resolution No. 87-0836. Its purpose is to provide funds for the operating and capital expenses of the library's Texas Center for the Book and Children's Center. Funds received as gifts to the City with instructions that the income generated by the investment of said funds be used for specified purposes are invested as separate non-pooled portfolios in order to maximize return.

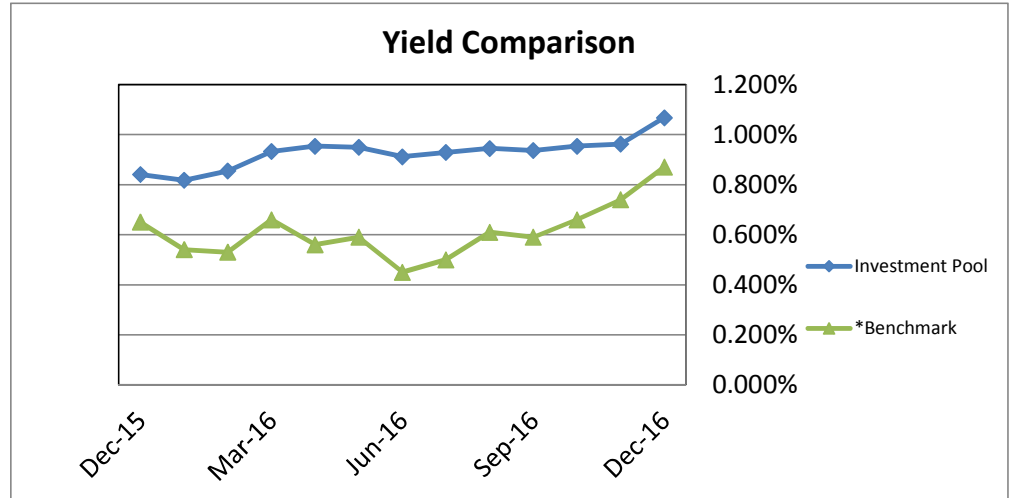
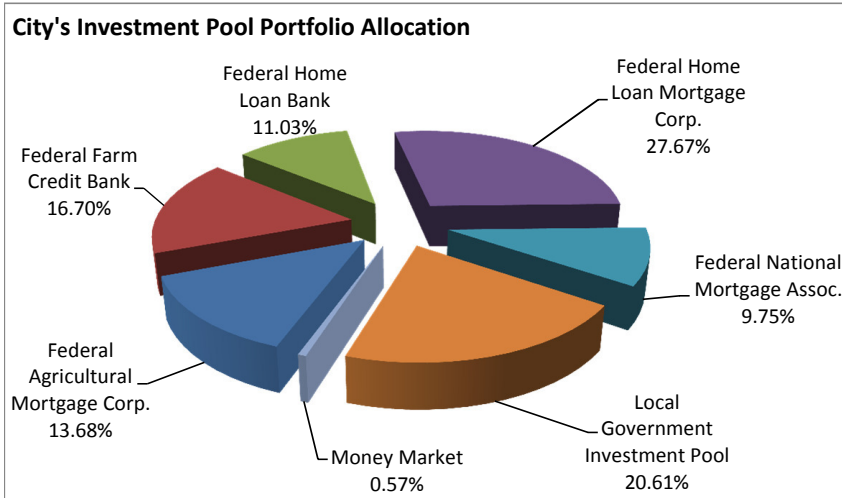
5) DWU Commercial Paper Program and GO Commercial Paper Program

The City issues tax-exempt commercial paper notes as an interim financing tool for construction and capital projects. The investment of the proceeds from the issuance of commercial paper debt should have a high degree of liquidity in order to fund payments to contractors.

6) Trinity Parkway Escrow

The Trinity Parkway Escrow portfolio was created with the deposit of \$5,000,000 on November 16, 1999 in an escrow account in accordance with an agreement dated as of January 1, 1999 between the City, North Texas Tollway Authority ("NTTA"), and TxDOT pertaining to development of the Trinity Parkway. These funds will be used to reimburse NTTA for specified payment related to project feasibility. Permitted investments for this account are defined in the Escrow Agreement as those that are consistent with the Public Funds Investment Act.

City of Dallas
City's Investment Pool Portfolio Allocation
Investment Summary
As of 12/31/2016



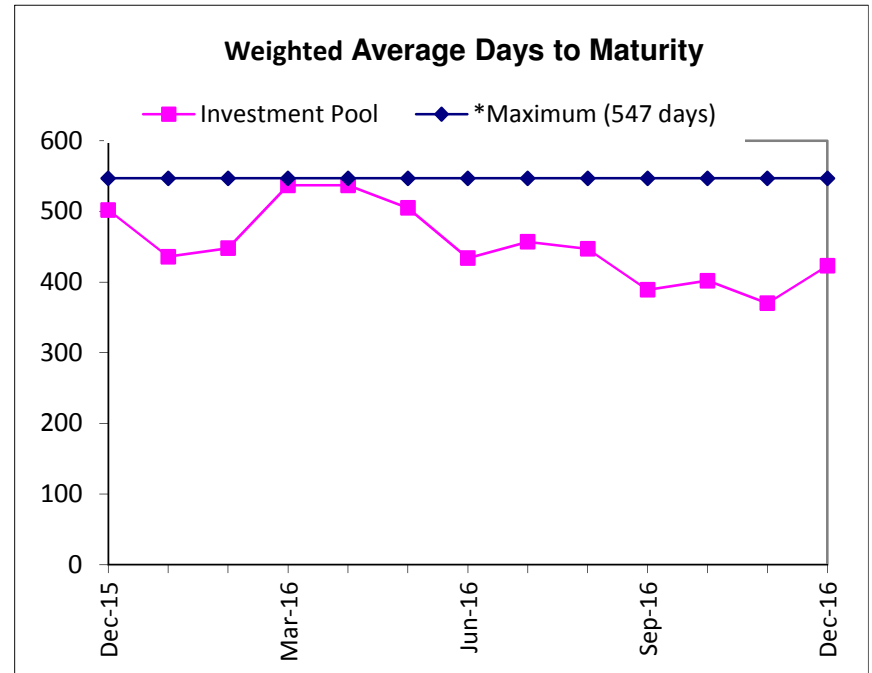
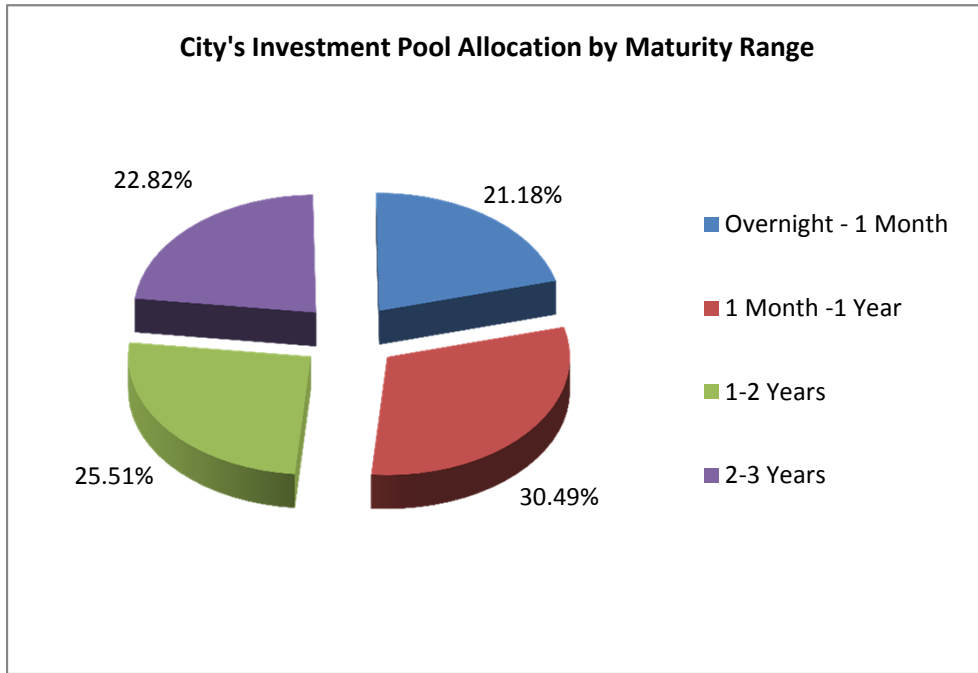
Description	Face Amount	Book Value	Market Value	**Unrealized Gain/(Loss)	Weighted Average Days To Maturity	Weighted Average Yield To Maturity	% of Portfolio
Federal Agricultural Mortgage Corp.	216,770,000	216,965,515	216,717,198	(248,317)	511	1.12%	13.68%
Federal Farm Credit Bank	265,000,000	264,978,298	264,398,665	(579,633)	462	0.92%	16.70%
Federal Home Loan Bank	174,850,000	174,944,558	174,695,197	(249,361)	599	1.15%	11.03%
Federal Home Loan Mortgage Corp.	439,000,000	438,926,787	438,594,473	(332,314)	583	1.22%	27.67%
Federal National Mortgage Assoc.	154,830,000	154,714,311	154,607,575	(106,735)	500	1.15%	9.75%
Local Government Investment Pool	327,020,000	327,020,000	327,020,000	-	1	0.89%	20.61%
Money Market	9,000,000	9,000,000	9,000,000	-	1	0.42%	0.57%
***Total Portfolio	1,586,470,000	1,586,549,469	1,585,033,108	(1,516,360)	423	1.07%	100.00%

*As per Section 17.1 of the City's Investment Policy, the benchmark for the Investment Pool is the 12-month moving average yield on treasury 1-year constant maturities as reported by Federal Reserve Statistical Release H.15.

** Unrealized gain/loss is the difference between the market value and book value and does not represent an actual gain or loss. Gains and losses are realized only when a security is sold prior to maturity. Since it is the City's strategy to hold investments until they mature, the temporary gains and losses are unlikely to be realized.

*** Numbers may not sum due to rounding

City of Dallas
City's Investment Pool Allocation by Maturity Range
As of 12/31/2016



Description	Face Amount/Shares	Book Value	Market Value	Weighted Average Yield To Maturity	Weighted Average Days To Maturity	% of Portfolio
Overnight - 1 Month	336,020,000	336,020,000	336,020,000	0.88%	1	21.18%
1 Month - 1 Year	483,830,000	483,673,203	483,737,184	0.88%	232	30.49%
1-2 Years	404,620,000	404,766,611	404,309,185	1.18%	593	25.51%
2-3 Years	362,000,000	362,089,655	360,966,739	1.37%	880	22.82%
**Total Portfolio	1,586,470,000	1,586,549,469	1,585,033,108	1.07%	423	100%

*As per Section 13.0 of the City's Investment Policy, the dollar-weighted average stated maturity of the Investment Pool shall not exceed 1.5 years (547 days).

** Numbers may not sum due to rounding

City of Dallas
Date To Date
Broker/Dealer Activity
As of: FY 16-17 Year to Date

FY 16-17 Year to Date		
Description	Awarded	%
Primary Dealers		
Bank of America	\$30,000,000	11.28%
Daiwa Capital Markets	0	0.00%
Morgan Stanley	0	0.00%
Jefferies & Co.	0	0.00%
Wells Fargo	0	0.00%
Secondary Dealers		
Coastal Securities	50,000,000	18.80%
Hilltop Securities Inc.	25,000,000	9.40%
Mutual Securities	0	0.00%
Piper Jaffray & Co.	0	0.00%
Samco Capital Market	40,000,000	15.04%
SunTrust Robinson Humphrey, Inc.	15,000,000	5.64%
Vining Sparks	56,000,000	21.05%
Secondary Dealers - M/WBE		
Bonwick Capital - M/WBE	0	0.00%
Loop Capital - M/WBE	0	0.00%
Ramirez & Co. - M/WBE	20,000,000	7.52%
Rice Financial - M/WBE	10,000,000	3.76%
Stern Brothers & Co. - M/WBE	20,000,000	7.52%
Total	\$266,000,000	100.00%

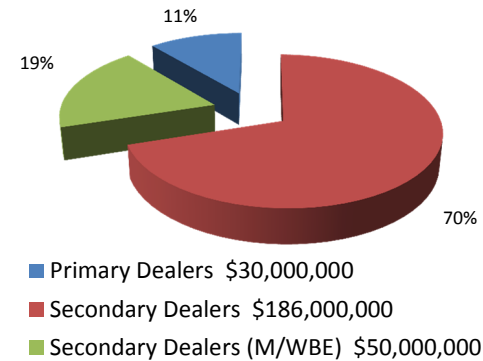
Notes:

Section 9 of the City's investment Policy requires the investment committee to annually review and adopt a list of qualified broker/dealers. These firms represent the broker dealer firms that are currently approved by the Investment Committee as of January 2016.

It is the City's policy to solicit three or more competitive bids/offers each trade except for agency securities purchased at issue.

Q1 FY 16-17		
Description	Awarded	%
Bank of America	\$30,000,000	11.28%
Coastal Securities	50,000,000	18.80%
Hilltop Securities Inc.	25,000,000	9.40%
Ramirez & Co. - M/WBE	20,000,000	7.52%
Rice Financial - M/WBE	10,000,000	3.76%
Samco Capital Market	40,000,000	15.04%
Stern Brothers & Co. - M/WBE	20,000,000	7.52%
SunTrust Robinson Humphrey, Inc.	15,000,000	5.64%
Vining Sparks	56,000,000	21.05%
Total	\$266,000,000	100.00%

Broker/Dealer Activity FY16-17 to Date



CITY OF DALLAS

December 31, 2016

QUARTERLY INVESTMENT REPORT

For the quarter ended December 31, 2016 the portfolios are in compliance with the relevant provisions of the Public Funds Investment Act and the investment strategies adopted in Sec. 17.0 of the City's Investment Policy.

Chief Financial Officer: M. Elizabeth Reich

City Controller: [Signature]

Treasury Manager: Conni Heege