

**ORDINANCE NO. 1381**

**AN ORDINANCE OF THE CITY OF CRESTVIEW, FLORIDA, GRANTING A NON-EXCLUSIVE FRANCHISE TO WASTE PRO OF FLORIDA, INC, A PRIVATE CORPORATION FOR THE COLLECTION AND DISPOSAL OF RESIDENTIAL AND COMMERCIAL SOLID WASTE, YARD REFUSE, AND RECYCLING; PROVIDING FOR AUTHORITY; PROVIDING FOR DEFINITIONS AND TERMS; PROVIDING FOR CERTAIN CONDITIONS AND REQUIREMENTS RELATING THERETO; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS,** the Grantee has indicated to Grantor that it is willing to undertake the installation and operation of high quality solid waste, yard refuse, and recycling collection and disposal service under a non- exclusive franchise from Grantor;

**WHEREAS,** the City of Crestview finds it in the public interest to ensure that all areas within its limits are adequately provided with high quality solid waste, yard refuse, and recycling collection and disposal service;

**WHEREAS,** the City of Crestview finds it in the public interest to retain regulatory authority over solid waste, yard refuse, and recycling collection and disposal, to the extent allowed by law, because of the overriding public health, safety and welfare considerations associated with the provision of this service;

**WHEREAS,** the City of Crestview finds it in the public interest to retain control over the use of public rights of way by solid waste, yard refuse, and recycling collectors to ensure against interference with the public convenience, to promote esthetic considerations and to protect the public investment in right of way property;

**WHEREAS,** the City of Crestview finds it in the public interest to attract high-quality solid waste, yard refuse, recycling collectors and that this can be accomplished by protecting capital investments of solid waste, yard refuse, and recycling collectors;

**WHEREAS,** the City of Crestview finds it in the public interest to ensure that high quality solid waste, yard refuse, and recycling collections and disposal service is maintained through a responsive complaint handling procedure; and

**WHEREAS,** the City of Crestview finds that the granting of a non-exclusive franchise is the best means of assuring that the above-described interests of the City of Crestview are promoted.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CRESTVIEW, FLORIDA, AS FOLLOWS:**

**SECTION 1. AUTHORITY.** The authority for enactment of this ordinance is Chapters 180, 403, and 166.021 Florida Statutes; Section 2, City Charter.

**SECTION 2. DEFINITIONS.**

For the purpose of this section the following terms, phrases, words, abbreviations and their derivations shall have the following meaning herein given. 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 and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning, or for those so included the meaning found in section 1-2 of the city code.

***Approved Landfill*** means a place designated by classifications set forth in the Florida Statutes and designed and approved for dumping or disposal of garbage, refuse, rubbish and yard refuse.

***Biohazardous Waste*** means any solid waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts: laboratory and veterinary waste which contain human-disease-causing agents; used disposable sharps, human blood, and human blood products and body fluids: and other materials which, in the opinion of the Department of Health and Rehabilitative Services, represent a significant risk of infection to persons outside the generating facility.

***Biological Waste*** means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biohazardous waste, diseased or dead animals, and other wastes capable of transmitting pathogens to humans or animals.

***Bulk Goods*** means pickups of large items such as Household Furniture and all household White Goods placed at curbside for collection. Debris from remodeling projects including carpet is not considered Bulk Goods.

***Collection and Disposal*** means the actual picking up and discarding of garbage at an approved landfill.

***Commercial Business Establishment*** means any establishment other than a residential dwelling, and shall include, but not be limited to, all retail or wholesale business establishments and manufacturing concerns and any other commercial enterprises offering goods or services to the public.

***Commercial Service*** means the service provided to business establishments, churches, schools, office buildings, hotels, condominiums (with four or more units) and other establishments using either mechanical containers or mobile carts. Commercial service includes businesses that elect to use Roll-off Container Collection Services.

***Construction and Demolition Debris*** means materials generally considered to not be water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction, reconstruction or destruction of a structure as part of a construction, reconstruction or demolition project or from the renovation or maintenance of a structure. The term includes rocks, soils, tree remains, trees, and other vegetative matter, which normally results from land clearing or land development operations for a construction project. Mixing of construction and demolition debris with other types of solid waste, including material that is not from the actual construction, reconstruction or destruction of a structure, will cause it to be classified as other than construction and demolition debris.

***Cover*** shall mean any device, equipment, container, close fitting tarpaulin, chain, rope, wire, or line used on vehicles to prevent any part of a vehicle load to shift, blow, leak, fall, or escape in any manner from the vehicle.

***Curbside*** means that portion of the street right-of-way paralleling any public thoroughfare between the curb-line and abutting property line. If ditching bisects the property and thoroughfare, the curbside then becomes the roadside of the ditch. This designated location shall be as near as possible to the traveled streets or alleys. The intention of a curbside designation is to allow collection by the **Grantee's** personnel in a rapid manner with reaching requirements minimized.

***Curbside Residential Collection Service*** means the Solid Waste, as defined herein, collection services provided to persons occupying residential dwelling units within the City, including residential dwelling units located in mobile home parks who receive collection services at

curbside.

**Customer Billing** means the billing for services provided to residential, commercial and industrial users of solid waste, recycling and yard refuse services, including landfill tipping fees.

**Disposal** means at a site or facility legally empowered to accept it for treatment or disposal and approved by the **Grantor**. The **Grantee** shall be responsible for all disposal and processing fees.

**Dumpsters or Container** means placement and servicing of Mechanical Color Containers (usually measured in cubic yards) or Mobile Carts, for commercial customers. Color containers must be separate and distinct from other containers used outside the corporate limits.

**Fax Back Form** means a method of communication between **Grantor** and **Grantee** to stop or start services for residential or commercial customers.

**Franchisee** means the solid waste franchise holder or **Grantee** duly awarded by the **Grantor**.

**Franchise Area** means the specifically described geographic areas exclusively assigned to the **Grantee** for the purpose of garbage, recycling and trash collection and hauling.

**Franchise Fee** means a five percent ( 5%) assessment levied on the Franchise Grantee.

**Garbage** means every refuse accumulation of animal, fruit or vegetable matter that attends the preparation, use, cooking and dealing in or storage of edibles, which is subject to decay, putrefaction and the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for flies or other germ-carrying insects, or any container of the material.

**Garbage Receptacle/Mobile Cart** means a color coded 96-gallon Mobile Cart supplied separate and distinct from others used inside the corporate limits by the **Grantee** for garbage or garbage cans or plastic garbage bags furnished by the resident for yard waste.

**Grantee** means WASTE PRO OF FLORIDA, INC.

**Grantor** means the City of Crestview a municipal corporation.

**Handicapped Carryout Service** shall be household solid waste or recycling service at the rear or side of residence for handicapped persons.

**Hazardous Waste** shall mean any solid waste, (even though it may be part of a delivered load of waste) which:

(a) is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste," pursuant to any state or federal law, including, but not limited to, the Resource Conservation and Recovery Act, 42 USC 7901, et seq. as amended and the regulations promulgated thereunder; or,

(b) contains polychlorinated biphenyls or any other substance the storage, treatment or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder; or,

(c) contains a "reportable quantity" of one or more "Hazardous Substances," as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder or as defined under Florida Administrative Code, Section 17-7.020(24) and regulations promulgated thereunder; or,

(d) contains a radioactive material the storage or disposal of which is subject to state and federal regulation; or,

(e) contains paint in a liquid form.

**Household Furniture** means all movable, compactable articles or apparatus, such as chairs, tables, sofas, mattresses, etc., for equipping a house.

**Industrial Waste** means any and all debris and waste products generated by manufacturing, food processing (except restaurants), land clearing, any commercial shrubbery or tree cuttings, building construction or alteration (except do-it-yourself projects) and public construction type projects whether performed by a government unit or by contract. Industrial Wastes are not included in the scope of this **Ordinance**.

**Infectious Waste** means those wastes that may cause disease or may reasonably be suspected of harboring pathogenic organisms. Included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes that may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

**Items for Special Pickup** mean pickups of large items such as trees, sod and lumber, discarded automobiles or other items not defined in this Franchise as either garbage or trash and shall be considered as request for special pickup services and such special services shall not be subject to the fees and charges set out in this Franchise, but may be agreed upon by the person requesting such service and the **Grantee**.

**Landfill Tipping Fees** means those fees levied by Okaloosa County or other authorized sources providing State approved disposal sites.

**Loose Refuse** means any refuse, either garbage, household trash or yard waste stored in and collected from any type of container other than a mechanical container or garbage receptacle as described in this section. Refuse that is collected from the ground is considered loose refuse.

**Off-Site** means any location that is not on the property where the waste is generated.

**Out-of-City** means any geographical areas located outside the corporate limits.

**Recycling** means the collection and processing of recyclable material generated by residential customers consisting of newspaper, glass bottles and jars, aluminum cans and metal food cans, polyethylene terephthalate (PET), high density polyethylene (HDPE) bottles and corrugated cardboard set out for the purpose of recycling. Items for recycling may be deleted or added upon an **Ordinance** amendment between the **Grantor** and **Grantee**. One recycling bin will be furnished to each residential unit by **Grantee**.

**Refuse** means Garbage, Rubbish and Trash or a combination or mixture of Garbage, Rubbish and Trash.

**Residence or Residential Unit** means a dwelling for housing one (1) family. *Apartment house* means a building with more than two (2) residential units. *Duplex apartment* shall mean a two (2) residential unit building. *Hotel, motel, store, place of business* means the usual terms

ascribed to such. *Trailer court or mobile home court* means any person within the City renting spaces to trailers, mobile or modular homes. *Mobile Home Subdivision* means a subdivision dedicated to the placement of mobile or manufactured homes within the City.

***Rubbish*** means refuse accumulation of paper, excelsior, rags or wooden or paper boxes or containers, sweeping, and all other accumulations of nature other than garbage, which are usual to housekeeping and to the operation of stores, offices, and other business places, also any bottles, cans or other containers which, due to their ability to retain water, may serve as breeding places for mosquitoes or other water breeding insects.

***Solid Waste*** means Bulk Goods, Garbage, Refuse, Rubbish, Trash, White Goods and Yard Trash.

***Special Waste*** mean solid wastes that can require special handling and management, which are not accepted at a landfill or other disposal facility or which are accepted at a landfill or other disposal facility at higher rates than is charged for refuse, including, but not limited to, asbestos, tires, used motor oils, lead-acid batteries, contaminated soils and biohazardous wastes.

***Storage*** shall mean the interim containment of garbage, refuse and rubbish in an approved manner, after generation and prior to proper and final disposal.

***Tree Trimmings*** are the residue from trimming limbs from shrubs and trees, tree trunks, stumps and bark which shall not exceed six (6) feet in length and four (4) inches in diameter.

***Trash*** means all waste material not of a putrescible nature, newspapers, magazines, yard trimmings, cardboard boxes, clothing and similar discarded personal and household items or other similar waste items. Special Waste and waste generated by building contractors or sub-contractors are not household trash.

***White Goods*** means discarded washers, dryers, refrigerators, ranges, water heaters, freezers, small air conditioning units, and other similar domestic large appliances.

***Yard Trash*** means vegetative matter resulting from landscaping maintenance, including accumulation of lawn, grass, shrubbery cuttings or clippings and dry leaf rakings, palm fronds, small tree branches (which shall not exceed six (6) feet in length and four (4) inches in diameter), bushes or shrubs, green leaf cuttings, fruits, or other matter usually created as refuse in the routine care of lawns and yards, except large branches, trees, or bulky non-containerized material not susceptible to normal loading and collection in loader packer type sanitation equipment used for regular collections from domestic households. Yard Trash does not include any form or matter or debris resulting from storms, tree removal, land clearing, land development, building demolition, home improvement, or waste generated by tree surgeons, landscapers or lawn maintenance services.

**SECTION 3. GRANT OF NON-EXCLUSIVE FRANCHISE.**

Grantee is hereby granted a non-exclusive franchise, including every right and privilege appertaining thereto, to operate and maintain a solid waste, collection, removal, and disposition, upon, over and across the present and future streets, alleys, bridges, easements and other public places within the limits of this franchise for the purpose of collecting, removing, disposing of the solid waste generated by the citizens, residents, inhabitants, business enterprises and other entities therein, and is hereby granted title to all of such solid waste generated within said boundaries, insofar as the Grantor can establish its legal right to make such grant of title.

**SECTION 4. LIMITS OF THE NON-EXCLUSIVE FRANCHISE.**

This non-exclusive franchise covers all the geographical areas within the City of Crestview, Florida depicted on the official land use map adopted by the Grantor on August 13, 2007 to include all changes in boundaries up to and including Ordinance Number 1342. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

**SECTION 5. TERM.**

The non-exclusive franchise shall be granted for a period of five (5) years and nine (9) months commencing January 1, 2008 and ending at midnight on September 30, 2013, unless terminated by reason of a breach of the terms hereof by the Grantee which result in the failure of the Grantee to provide effective and efficient service. In the event of a dispute between the parties as to a breach of the terms hereof, the questions and issue will be submitted to arbitration as provided in Section 16, Arbitration.”

**SECTION 6. FRANCHISE CONSIDERATION.**

Grantee shall pay to the Grantor the sum of 5% of the collected rate charges as a franchise fee for grantor collecting the rate charges from customer as provided herein. Grantor shall retain the fee from monthly receivables before paying the collected rate charges to Grantee.

**SECTION 7. ASSIGNMENT.**

The non-exclusive franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the express approval of the Grantor, which approval shall not be unreasonably withheld, but which shall be reflected by an ordinance amendment. In the event of such assignment, Grantee shall cause its assignee to execute an Agreement of Acceptance, subject to the approval of the Grantor, evidencing that such assignee accepts the assignment subject to any and all of the terms, conditions and limitations imposed hereby, and which acceptance shall include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed upon Grantee in contemplation hereof. Notwithstanding the Grantor's approval of such as assignment and assignees' acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

A transfer of more than twenty five percent (25%) or more of the issued or outstanding stock of Grantee shall constitute an assignment for the purposes of this Section. Likewise, any transfer of the voting rights attendant to twenty five percent (25%) or more of the issued or outstanding stock of Grantee shall constitute an assignment for the purposes hereof.

**SECTION 8. BANKRUPTCY OR INSOLVENCY.**

If the Grantee becomes insolvent and if the Grantee files a petition of voluntary or involuntary bankruptcy, this non-exclusive franchise shall terminate no later than the date of filing of the bankruptcy petition.

**SECTION 9. DEFAULT.**

A. The failure on the part of Grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for a forfeiture of this franchise, but no such forfeiture shall take effect until Grantor has served upon the Grantee written notice of default which notice shall set forth the nature and extent thereof. Grantee shall have thirty (30) days following the notice of default to correct the same. If Grantee protests the reasonableness or propriety of Grantor's declaration, said protest shall be served upon the Grantor in writing within ten (10) days following receipt by the Grantee of the Grantor's notice.

B. If the Grantor and the Grantee cannot agree as to the reasonableness or propriety of the Grantor's declaration of default, then the issue shall be promptly submitted to arbitration as provided in Section 16, "Arbitration" of this ordinance.

**SECTION 10. FIXED RATES.**

The rates set forth in this ordinance are fixed rates for the entire five (5) year and nine (9) months for the term of this franchise and there shall be no increase in rates for any reason during the term of this franchise.

**SECTION 11. RESTORATION.**

The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered.

**SECTION 12. COMPLIANCE WITH LAWS AND ORDINANCES.**

Grantee shall conduct operations under this ordinance in compliance with all applicable laws. Further, Grantee agrees to abide by all the rules and regulations and ordinances which the Grantor has enacted or might enact in the future, and further agrees to abide by any established policy which the Grantor or its duly authorized representative has established or will establish provided, however, it is not intended hereby that Grantor shall have the right of unilaterally modifying the terms of this franchise other than as herein provided and as is required by the execution of the Grantor's police powers. It is also expressly recognized that the authority of the Grantor is subject to preemption by the State of Florida by and through the Florida Public Service Commission and by the United States Government.

**SECTION 13. INSURANCE, LIABILITY AND INDEMNIFICATION.**

A. Grantee shall carry forms and amounts of insurance set forth below in carrying out the work called for in this non-exclusive franchise; such insurance expressly to cover both the Grantor and the Grantee. A certificate showing that the Grantee has in force and effect these forms of insurance shall be filed with the Grantor within ten (10) days from the acceptance of this non-exclusive franchise, and yearly thereafter at least thirty (30) days prior to the date of the expiration of said policies of insurance for each year of said non-exclusive franchise. The aforesaid insurance shall be of such form and written by such companies as are approved by the Grantor and also shall contain an endorsement obligating the insurance company to furnish the Grantor thirty (30) days notice in advance of the cancellation of the insurance. Said policies of insurance shall name Grantor as additional insured. Categories of insurance:

1. Workman's Compensation (including coverage for occupational, employee and all claims disease) containing an agreement by the insurance company to waive subrogation against the City, its employees or its agents. Employer's liability coverage shall be included for a limit of not less than \$100,000 per accident; not less than \$100,000 per employee disease; and not less than \$500,000 for all claims disease.

2. Comprehensive General Liability Insurance with limits of not less than \$1,000,000 for bodily injury or death for any person in any single occurrence, and not less than \$2,000,000 in the aggregate where two (2) or more persons receive bodily injury or death arising out of a single occurrence, and not less than \$100,000 for damages to, or loss of, properties arising out of any single occurrence or fire damage limit of \$50,000 for any one (1) fire.

3. Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 for bodily injury or death for any person in any single occurrence and not less than \$2,000,000 in the aggregate where two (2) or more persons receive bodily injury or death arising out of a single occurrence and not less than \$100,000 for damages to, or loss of, properties arising out of any single occurrence.

4. Umbrella of Excess Liability policy providing not less than \$500,000 combined single limits in excess of the Employer's Liability, Comprehensive General Liability and Comprehensive Automobile Liability limits specified herein.

5. Additional Insurance may be authorized provided the franchisee understands that this section shall preclude it from obtaining such other additional insurance coverage(s) including, but not limited to, business interruptions and at its own cost or to self-insure for such of the above coverages or portions thereof as it deems reasonable, with the prior written consent of the City, which consent shall not be unreasonably withheld.

6. Certificates of Insurance shall be furnished to the City prior to commencement of the operation of the franchise. The appropriate Certificates of Insurance certifying coverages under each of the mandatory and optional categories set forth in paragraph (a) through (e) above shall insure that each certificate has the following special provision annotated on the face: "THE POLICY OF INSURANCE REFLECTED BY THIS CERTIFICATE SHALL NOT BE CANCELLED OR MATERIALLY CHANGED WITHOUT THIRTY (30) DAYS WRITTEN NOTICE TO THE CRESTVIEW CITY COUNCIL." In the event that the City deems it necessary for franchisee to obtain insurance coverage(s) other than those set forth in paragraphs (a) through (d) above, including increased coverage and limits, said additional insurance coverage(s) shall be obtained and maintained at the sole expense of the City.

B. Indemnification.

1. The City shall not be liable or legally responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities and equipment hereunder, and the acceptance of this Ordinance shall signify the agreement of Grantee to indemnify Grantor, the City of Crestview, and the City's officers and employees, and hold them harmless against any and all liability, loss, cost, damage or expense, that may accrue to the City by reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities and equipment hereunder, or the actions of Grantee's officers, directors, agents or employees which result from a breach of duty or any active negligence.

2. The Grantee shall pay and by its acceptance of the franchise specifically agrees that it will pay all expenses incurred by Grantor, the City of Crestview, and its officers or employees in defending itself with regard to all damages and penalties mentioned in Subsection 1 above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by the City's legal staff and any officers or employees of the Grantor and its agents.

3. The Grantee shall immediately advise the City Clerk, by registered mail, of any litigation or claim that might affect the adequacy of the insurance.

4. Neither the provisions of this section nor any damages recovered by the City thereunder shall be construed to limit the liability of the Grantee under any franchise issued hereunder.

5. The parties acknowledge that the City of Crestview is an entity entitled to the privilege of sovereign immunity pursuant to Section 768, Florida Statutes, except to the extent it has been waived, which is not hereby intended.

**SECTION 14. PERFORMANCE BOND.**

Grantee shall furnish to the Grantor a performance bond, in a form approved by Grantor, for the faithful performance of this agreement and all its obligations arising hereunder in the amount of \$2,000,000 dollars. Said bond shall be executed by a surety company approved by Grantor and licensed to do business in Florida.

**SECTION 15. RIGHT TO REQUIRE PERFORMANCE.**

The failure of the Grantor at any time to require performance by the Grantee of any provision hereof shall not affect the right of the Grantor thereafter to enforce same; nor shall waiver by the Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. The Grantor shall have the right to terminate this non-exclusive franchise agreement if Grantee fails to correct violations of this agreement after a period of thirty (30) days upon being notified by the Grantor of such alleged violations. Notice of all alleged violations shall be delivered by certified mail, return receipt requested, to the office of the Grantee.

**SECTION 16. ARBITRATION.**

If any arbitrable controversy shall arise between the parties, it shall be arbitrated in the following manner: After the dispute has arisen either party shall serve written demand for arbitration upon the other party. Within ten (10) days after the service of such notice, each party shall select one (1) arbitrator. Within five (5) days thereafter the two arbitrators shall select a third arbitrator and within ten (10) days thereafter, the three arbitrators will hear the dispute and render a decision unless a majority of the arbitrators agree that additional time is needed. The decision of the arbitrators shall be binding on the parties. Each party will pay the fees and expenses of its arbitrator, and the two arbitrators selected by the parties will agree on the fees and expenses of the third arbitrator together with the agreed upon cost of the arbitration, all of which shall be paid one-half by each party. The decision of the arbitrators will be binding on the parties and may be enforced as provided for by the Florida Law.

**SECTION 17. OPERATIONS DURING DISPUTE.**

In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to this contact, performance or compensation hereunder, the Grantee shall continue to render service in full compliance with all terms and conditions of this contract regardless of the nature of the dispute.

Grantee expressly recognizes the paramount right and duty of Grantor to provide adequate solid waste, collection, and disposal service as necessary governmental functions, and further agrees, in consideration for the execution of this franchise, that in the event of a dispute, said Grantee will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment on the matter in dispute, or arbitrate arbitral disputes, or present the matter to a court of competent jurisdiction in an appropriate suit instituted by Grantee.

**SECTION 18. STANDARD OF PERFORMANCE.**

A. If the Grantee fails to collect materials herein specified for a period in excess of five (5) consecutive scheduled working days or fails to operate the system in a satisfactory manner, for a similar period, the Grantor may proceed as follows (provided such failure is not due to war, insurrection, riot, act of God, or other cause beyond the Grantee's control):

1. At its option, after written notice to the Grantee as provided hereinafter, take over and operate any or all of the Grantee's equipment used in the performance of this non-exclusive franchise.

Use and operate same itself until such matter is resolved and the Grantee is again able to carry out its operation under this non-exclusive franchise. Any and all operating expenses incurred by the Grantor in so doing may be charged to the Grantee.

B. During such period, the liability of the Grantor to the Grantee for loss or damage to such equipment so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability. The liability of the Grantee to third parties shall continue and all claims or demands arising out of the operation of the collection service shall be directed solely to the Grantee and Grantor shall be treated as an agent of Grantee for purposes of determining liability.

C. The provisions of Section 16, "Arbitration" shall be invoked by the Grantor immediately upon its assuming control of the system under this Section.

**SECTION 19. COLLECTION SERVICES AND OPERATIONS.**

A. Frequency of Waste Collection. Grantee shall pick up from curbside adjacent to each residence on the regularly scheduled day all garbage and residential wastes at least twice a week and yard trash, and/or rubbish or white goods at least once a week. Pickups shall not be reduced by holidays, but pickups normally scheduled to be made on a holiday may be rescheduled upon approval by the Grantor after at least five (5) days prior notification to the affected residence by publication or other means approved by Grantor. Said publication shall be at the expense of the Grantee.

B. Quantity. Grantee shall be required to pick up all garbage of volume not in excess of the capacity of a ninety-six (96) gallon mobile cart generated by a residential premise, provided same is placed in the mobile cart. Grantee shall also be required to pick up yard trash and/or rubbish or white goods, and recycling from the curbside in an amount not exceeding two (2) cubic yard per week, which shall be deemed to be equal to ten (10) standard 35 gallon cans or twelve (12) 30 gallon plastic bags and/or recycle bags or a pile of limbs 4 feet X 4 feet X 6 feet allowing for non-compaction or up to 14 empty cardboard boxes not broken down or up to 30 cardboard boxes broken down or up to eight hopper loads of unbundled refuse.

C. Waste Collection.

1. Grantee shall make collections with a minimum of noise and disturbance. Garbage containers shall be handled carefully by the Grantee and shall be thoroughly emptied and left where they were found standing upright and with covers placed adjacent to the waste container at the curbside, or replaced on the container. Waste may be transferred from the householder's containers into tubs, cans, hampers or other containers used by the Grantee in carrying waste to collection trucks. This work shall be done in a sanitary manner. Any waste spilled by the Grantee shall be picked up and removed by Grantee.

2. Grantee shall not be required to collect the following materials:

- a. Materials which have not been prepared for collection in accordance with Crestview City Code.
- b. Materials resulting from remodeling, repair, excavation or construction of buildings or structures, such as earth, plaster, mortar, roofing materials, etc.; commonly referred to as "C&D waste".
- c. Solid waste resulting from industrial processes.
- d. Tree stumps, trunks and limbs larger than four (4) inches in diameter or six (6) feet in length.
- e. Refuse created by any private contractor.

f. Animal waste, dead animals or tires.

D. Special Services. Unusual or special service residential needs such as back door collection, below-ground collection, removal of any refuse other than residential waste as defined herein, or additional pickups shall be provided for a separate fee upon terms agreed to by Grantee and customer. Charges for special services shall not be unreasonable or excessive.

E. Containers, Types and Sizes.

(1) Garbage. Garbage, including diminimous amounts of yard trash, shall be placed for collection separately from yard trash, rubbish and/or white goods, only if required by law, and shall be placed in ninety-six (96) gallon mobile carts to be provided by the Grantee.

(2) Yard Trash. Yard trash, rubbish and/or white goods excluding leaves which shall be bagged, may be placed on curbside for collection.

(3) Location of Residential Waste for Collection. All persons receiving residential service pursuant to agreements, contracts and/or franchises shall be required to place contractor-provided ninety-six (96) gallon mobile carts at curbside for collection. Yard waste, rubbish and/or white goods shall continue to be collected in the location utilized by the prior agreements, contacts and/or franchises, unless otherwise agreed upon by the residential customer and the Grantee. There shall be no special service charges for continuing to collect yard waste, rubbish and/or white goods from these locations. All residential structures not occupied or existing on the effective date of this Ordinance, or one (1) week prior, shall place all items for collection at curbside, as defined herein. All receptacles shall be secured from disturbance by animals, wind and other factors which may tend to scatter the contents.

F. Removal of Improper Receptacles. Any container used for the collection or storage of residential waste which fails to meet the standards prescribed by Ordinance of the Grantor shall be clearly marked by the Grantee, specifying the manner in which the container fails to meet these requirements. Any container which fails to meet these requirements and is so marked shall be removed from service by the person furnishing it. Upon failure of the person furnishing the container to remove it from service after written notice by the Grantee, the Grantee shall remove the container from service and destroy it.

G. Customer Restrictions.

(1) Grantee shall not be required to collect residential waste receptacles containing garbage or refuse not generated in the residence served.

(2) Grantee shall have the right to terminate service to any customer violating any provision of this section.

## **SECTION 20. COMPREHENSIVE PLAN REQUIREMENTS.**

Grantee shall support and implement the goals, objectives and policies emanating from the Comprehensive Plan under auspices of the Florida Growth Management Act. Chief among those requirements are the established levels of service and concurrency management standards pertaining to solid waste and yard refuse collection practices employed by Grantor. Implementation of updated or revised standards and costs thereto shall be borne by the Grantee without an increase in rates to Crestview consumers. Further, Grantee shall provide a company representative to attend meetings of the Technical Review Committee on an annual basis in order to evaluate and make recommendations to the City Council as required. Finally, Grantee acknowledges and understands that changes may occur as a result of legislative action enacted by the Florida Legislature over which the Grantor has no control. Those changes are considered mandatory and shall be implemented notwithstanding the provisions of this franchise.

## **SECTION 21. CUSTOMER BILLING AND COLLECTION.**

Grantor shall be responsible for the monthly billing and collection of charges levied under this franchise in exchange for the Special Services provided by Grantee in Section 31C. hereof and payment of the franchise fee.

A. Grantor shall remit monthly collections of rates to Grantee based on actual fees collected less the 5% franchise fee. Grantor shall assume no responsibility or liability for non-payment of rates or late charges levied by Grantee.

B. Grantee shall not arbitrate any matter between Grantor and a user of these services whereby a complaint is generated as a result of any billing amount or other differences.

## **SECTION 22. GRANTEE OFFICE HOURS.**

The Grantee shall have an office in Crestview during the term of this agreement. The Grantee's office of operation in Crestview shall remain open Monday through Friday from 7:00 a.m. to 5:30 p.m. and on Saturday between 7:00 a.m. and 12:00 p.m. for the purpose of handling complaints; and for that purpose, there shall be maintained an adequate number of telephones and a responsible person in charge during the hours specified above. Consumer complaints are not part of the Grantor's function unless provisions of this franchise are violated by Grantee. These office maintenance requirements do not apply on legal holidays.

## **SECTION 24. COLLECTION EQUIPMENT.**

The Grantee shall have on hand at all times sufficient equipment in good working order to permit Grantee, to perform its duties hereunder fully, adequately, and efficiently. Equipment shall be purchased from nationally known and recognized manufacturers of garbage collection and disposal equipment. Garbage collection equipment shall be kept clean, sanitary, neat in appearance and in good repair at all times. The Grantee shall at all times have available to it, reserve equipment which can be put into service and operation within two (2) hours of any breakdown. Such reserve equipment shall substantially correspond, in size and capability, to the equipment normally used by the Grantee to perform its duties hereunder.

## **SECTION 24. DISPOSAL.**

All solid waste shall be hauled to sites or facilities legally empowered to accept it for treatment or disposal. The Grantor reserves the right to approve or disapprove sites, taking into account all governmental regulations, routes within the franchise area, and the rules and regulations of the governmental body having jurisdiction over said sites or facilities.

## **SECTION 25. ROUTES AND SCHEDULES.**

The Grantee shall periodically provide the Grantor with schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, Grantee shall notify each customer affected by either direct mail or door hangers which the Grantor shall approve for such purpose. Grantee shall also notify customers by placing an advertisement prominently displayed in a local newspaper on a least two (2) occasions, the latter being at least one (1) week prior to the change. All such changes in routes or schedules will also be immediately communicated to the Grantor when determined by the Grantee.

**SECTION 26.     GRANTEE PERSONNEL.**

- A.   Grantee shall assign a qualified and trained person to be in charge and manage operations under this non-exclusive franchise and shall give the name and qualifications of said person to Grantor.
- B.   Grantor has the right to require that Grantee's collection employees wear clean uniforms bearing Grantee's company name.
- C.   Each person employed to operate a vehicle shall, at all times, carry a valid Florida driving license for the type of vehicle being driven.
- D.   The Grantee shall provide operating, safety and risk training for all personnel.

**SECTION 27.     SPILLAGE AND LITTER.**

The Grantee shall not litter premises in the process of making collections. During hauling, all solid waste shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented. In the event of spillage by the Grantee, the Grantee shall promptly clean up the litter.

**SECTION 28.     STORMS AND OTHER EMERGENCIES.**

In case of an unusually severe storm or disruption caused by other severe emergencies not caused by Grantee, Grantor may grant Grantee reasonable variance from regular schedules. As soon as practicable after such storm or other emergency, Grantee shall inform the Grantor of the estimated time required before regular schedules and routes can be resumed and, upon request of Grantor, Grantee shall provide notice to residential premises in the service area. In event of a storm or emergency requiring mass cleanup operations, Grantee shall, upon direction of Grantor, participate in said cleanup to the extent directed, by the Grantor. Grantee shall be compensated after any service period provided by FEMA or other federal or state agencies (usually 90 days) by the Grantor in the amount of actual documented costs, plus those costs set forth in the Disaster Roll-off Price List depicted herein below and shall be excused from conducting regular services if approved by Grantor. Any expenses incurred or revenue received under this provision shall not be included or considered in rate base calculations.

<u>DISASTER ROLL-OFF PRICE LIST</u>			
<u>SIZE</u>	<u>DELIVERY CHARGE</u>	<u>RENTAL PER DAY</u>	<u>PULL CHARGE</u>
20 CU YD	N/C	N/C	\$125
30 CU YD	N/C	N/C	\$165
40 CU YD	N/C	N/C	\$200

**SECTION 29.     NONDISCRIMINATION PROVISION.**

The Grantee agrees that it has adopted and will maintain and enforce a policy of non-discrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request, it will permit reasonable access to its records of employment, employment advertisements, application forms, and other pertinent data and records by Grantor for the purposes of investigation to ascertain compliance with the non-discrimination provisions of this non-exclusive franchise, provided, however, that Grantee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the date of this non-exclusive franchise.

**SECTION 30.     SCOPE OF SERVICES.**

- A.   Residential Solid Waste Collection Services
  - (1). **Frequency of Collection:** The **Grantee** shall collect refuse from residential dwelling units within the franchise area two (2) times per week (at least two days apart), yard waste, bulk waste and recycling one (1) time per week on a schedule approved by the **Grantor** (such approval may not be unreasonably withheld).
  - (2) **Hours of Collection:** Collection shall begin no earlier than 6:00 o'clock a.m., and shall cease no later than 7:00 o'clock p.m. Monday through Saturday. In the case of an emergency, collection may be permitted at times not allowed by this paragraph, provided the **Grantee** has received prior approval from the **Grantor** to be later evidenced by a written memorandum confirming the approval. Should the **Grantee** not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the **Grantee** had not obtained such approval. No collection shall occur on Sundays or holidays except in a time of emergency, or to maintain a regular schedule due to holidays recognized by the **Grantee**. Extra pickups may be requested by customers at additional cost and those shall be billed by the **Grantee**.
  - (3) **Point of Pickup:** Collection of Refuse shall be at Curbside. In the event an appropriate location cannot be agreed upon, the **Grantor** shall determine the location. Special need customers will be serviced at an agreed to location after approval by the **Grantee**.
  - (4) **Receptacles:** The **Grantee** shall provide an 18-gallon Recycling bin for recyclables and a 96-gallon Mobile Cart for Refuse to each residential dwelling unit located within the City limits. The **Grantee** shall be required to pick up all Refuse generated from residential dwellings which has been placed in a Mobile Cart and all acceptable Recyclables placed in a Recycling bin and placed at Point of Pickup (Curbside) or at such other single collection point as may be agreed upon by the **Grantee** and the customer. The **Grantee** shall collect no more than what is placed inside the Mobile Cart on any one service day from a single residence. **Grantee** shall not be required to collect residential waste not generated in the residence served. During high volume periods such as Christmas, arrangements to collect non-containerized materials will be made as agreed upon by the **Grantee** and the **Grantor**. The “fax back” system utilized between the **Grantor** and **Grantee** requesting a change of service or levels of service shall include confirmation of action taken to include address, date and customer name and other data required for the transaction. A weekly fax detailing all carts that have been delivered on a daily basis per Grantor’s request. Once fax is received a cart will be delivered within two weeks.
  - (5) **Method of Collection:** The **Grantee** shall make collections with a minimum of noise and disturbance to the householder. Any garbage or trash spilled by the **Grantee** shall be picked up immediately by the **Grantee**. Receptacles shall be handled carefully by the **Grantee**, shall not be bent or otherwise abused, and shall be thoroughly emptied and left at the proper point of collection.
  - (6) **Handicapped Carryout Service:** Upon approval by the **Grantor**, refuse collection services shall be provided by **Grantee** at the rear or side of the residence for qualified handicapped persons. Customer application for such services shall be made and approved by the **Grantor** and not unreasonably withheld.
  - (7) **Non-Collectable Items:** The **Grantee** shall be responsible for the collection of loose refuse, loose yard waste at no additional costs.

B. Commercial Solid Waste Collection Services:

(1) **Frequency of Collection:** The **Grantee** shall collect refuse from Commercial Business Establishments within the City a minimum of two (2) times per week and a maximum of six (6) times per week. Collection frequencies and number of Mechanical Containers or Mobile Carts shall be mutually agreed to by the **Grantee** and **Grantor**.

(2) **Hours of Collection:** Collection shall begin no earlier than 4:00 o'clock a.m. commercial, and 6:00 o'clock a.m. in Residential neighborhoods and shall cease no later than 7:00 o'clock p.m., Monday through Saturday. In the case of an emergency, collection may be permitted at times not allowed by this paragraph, provided the **Grantee** has received prior approval from the **Grantor** to be later evidenced by a written memorandum confirming the approval. Should the **Grantee** not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the **Grantee** had not obtained such approval. No collection shall occur on Sundays or holidays except in a time of emergency, or to maintain a regular schedule due to holidays recognized by the **Grantee**. Extra pickups may be requested by customers at additional cost that shall be billed by the **Grantor**.

(3) **Point of Pickup:** Collection of refuse shall be at a location mutually agreed upon by the **Grantee** and each individual commercial business establishment. In the event an appropriate location cannot be agreed upon, the **Grantor** shall determine the location.

(4) **Receptacles:** The **Grantee** shall provide Mechanical Containers or Mobile Carts to each commercial business establishment. The **Grantee** and each individual commercial business establishments shall mutually agree upon the quantity and/or size and level of service of the receptacles so as to contain all refuse generated. In the event an appropriate size and level of service cannot be agreed upon, the **Grantor** shall determine the size and level of service.

(5) **Method of Collection:** The **Grantee** will furnish each commercial account with Mechanical Containers or Mobile Carts. The **Grantee** shall make collections with a minimum of noise and disturbance to the customer. Any refuse spilled by the Grantee shall be picked up immediately by the **Grantee**. Loose refuse will be picked up.

**SECTION 31.      RATES AND CHARGES.**

A.      The following residential rate structure is established for solid waste collection and disposal which includes garbage and yard refuse collection and disposal service for a five (5) year and (9) nine month period to be effective with the effective date of this ordinance. These rates and charges include all fees associated with collection and disposal to include landfill tipping fees and any processing fees.

**RESIDENTIAL SOLID WASTE/YARD REFUSE SERVICE**

<i>Rates for 2X per week serviced with 96 gallon cart.</i>	<i>Monthly</i>
<b>Single Family Residential Rate with Recycling</b>	<b>\$19.00</b>

**Note: No charge is assessed for residential indigent carryout service provided the resident lives alone and meets eligibility criteria established by the City.**

B.      The following categories of commercial solid waste service, rate structure and frequency of pickup thereto are established for a five (5) year and (9) month period. These rates and charges include all fees associated with collection and disposal to include landfill tipping fees and any processing fees.

**COMMERCIAL NON-DUMPSTER SERVICE**

<i>Rates for 2X per week serviced with 96 gallon cart.</i>	<i>Monthly</i>
<b>Commercial Business Establishment Rate</b>	<b>\$24.00</b>

**COMMERCIAL - DUMPSTER SERVICE**

FREQUENCY OF PICKUP					
Container Size	2 X Week	3 X Week	4 X Week	5 X Week	6 X Week
2	\$100	\$160	\$220	\$285	\$350
4	\$195	\$300	\$410	\$520	\$630
6	\$290	\$430	\$565	\$700	\$830
8	\$385	\$570	\$750	\$920	\$1070

**Rate Per Container Yard is \$10.00 for additional service (extra lifts).**

C.      Grantee is to provide necessary service to all of Grantor's facilities at no charge to the Grantor, e.g. City Hall complex (1each 6YD 2X WK), Council on Aging (1each 6YD 2X WK), Bob Sikes Library (1each 6YD 2X WK), Public Services complex (+ 2 each 8YD 2X WK for Public Services Building and 1 each 8YD 2X WK for Animal Control facility), wastewater treatment plant (1each 4YD 2X WK and 1each 6YD 2X WK), Twin Hills Park (2 each 6YD 2X WK), Spanish Trail Park (1each 8YD 2X WK), Durell Lee Park (1each 6YD 2X WK), Crestview Community Center (1 each 6 YD 2X WK), Fire Station 2 (1 each 6YD 2X WK), Fire Station 3 (1 each 6YD 2X WK) and Spring Clean Up one time a year for a period of nine days to include a total of ten (10) 30 yard roll offs to be pulled on an as need basis. Five (5) of the ten (10) 30 yard roll offs to be placed at Spanish Trail Park and five (5) at another location to be determined. The 30 yard roll offs utilized during the Spring Clean Up shall be utilized to collect trash in four (4) at each site and white goods in one (1) at each site.

**SECTION 32.      ACCOUNTING; AUDIT.**

Grantee shall keep an accurate set of books and records reflecting the gross revenues derived under and pursuant to the franchise rights herein granted. Said books and records shall reflect, in addition to information normally reflected pursuant to standard accounting procedures, the name and service address of each residential and commercial customer, dates of commencement and termination of service, the service charge and any changes thereto, the billings and billing dates and the receipt of revenues. For the purpose hereof, "gross revenue" shall mean and include any and all fees, without reduction, received by Grantee under and pursuant to the non-exclusive franchise rights herein granted.

Grantor may cause a semi-annual audit to be made of the books and records of Grantee in order to determine whether or not the non-exclusive franchise fees paid pursuant to Section 6, "Franchise Consideration" are the same as those required thereby. The omission of the Grantor to exercise its right to a semiannual audit at any time shall not constitute a waiver of such right, and notwithstanding such omission, the Grantor shall have such continuing right, provided that except in the event of fraud, deceit or such other extraordinary occurrence, each audit shall be made at intervals no less than six (6) months. In the event Grantor elects to exercise its right of audit, Grantor shall provide to Grantee written notice of such election at least forty-eight (48) hours in advance of the time of such audit. Grantor shall have the right to elect the



auditors to make the audit and the audit shall be made at Grantor's expense. Grantee shall make available to the auditor such personnel and record as the Grantor may in its reasonable discretion request in order to complete such audit, and shall make no charge to the Grantor therefor.

**SECTION 33. COMPLAINTS.**

All complaints shall be resolved by Grantee within twenty-four (24) hours. Grantee shall supply Grantor with copies of all complaints on a form approved by grantor and indicate the disposition of each. Such records shall be available for inspection by Grantor at all times during business hours specified herein. The form shall indicate the day and hour on which the complaint was received and the day and hour on which it was resolved. When a complaint is received on the day preceding a holiday or on a Saturday, it shall be serviced on the next working day. The Grantee shall establish procedures acceptable to Grantor to insure that all customers are notified as to the complaint procedure.

**SECTION 34. MONITORING PERFORMANCE AND COMPLIANCE.**

In order to fully implement the provisions of this non-exclusive franchise, a panel for the review of the quality of services provided for in this contract shall be created to consist of three (3) members, one (1) member representing the Grantor, one (1) member representing the Grantee, and a third independent member chosen by the previously named two members. It shall be the function of this committee to review, report and make recommendations to the Grantor regarding the quality of services provided for herein. For the purpose of this function, "Service" shall be defined as the performance of the duties, tasks and obligations of the contractor enumerated herein and the performance of such other duties, tasks and obligations as are generally and reasonably regarded as incident to the safe and satisfactory discharge of responsibilities in the sanitation industry.

**SECTION 35. WAIVER OF RIGHTS.**

Grantee hereby waives its rights under Section 180.16, Florida Statutes or any later legislation creating such or similar rights which places or might place the Grantor in a position requiring the purchase of Grantee's operation or its appurtenances, materials, fixtures, machinery, and real estate appertaining thereto, upon the expiration of this franchise.

**SECTION 36. REPEALER.** All ordinances or code provisions in conflict herewith are hereby repealed.

**SECTION 37. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance; except that where Grantor finds that the invalidated provision is essential to the franchise as a whole, Grantor may terminate said franchise.

**SECTION 38. EFFECTIVE DATE.** This ordinance after adoption by the City Council and filing of Grantee's written acceptance with the City Clerk shall take effect January 1, 2008.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF CRESTVIEW, FLORIDA ON THIS 17TH DAY OF DECEMBER, 2007.**

**S/Charles J. Wells**  
**CHARLES J. WELLS**  
**COUNCIL PRESIDENT**

**ATTEST:**

**S/Janice F. Young**  
**JANICE F. YOUNG**  
**City Clerk**

**APPROVED BY ME THIS 17TH DAY OF DECEMBER, 2007.**

**S/David Cadle**  
**DAVID CADLE**  
**Mayor**

**The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney.**

**S/Ben L. Holley**  
**City Attorney**

**Grantee agrees to the terms of this franchise ordinance.**

**S/E. Ralph Mills**

**By E. Ralph Mills, Waste Pro of Florida, Inc. (Name)**