

ORDINANCE NO. 1442

AN ORDINANCE OF THE CITY OF MAITLAND, FLORIDA, GRANTING EARTHHAUL, LLC. A NON-EXCLUSIVE FRANCHISE TO PROVIDE ROLL-OFF CONTAINER COLLECTION AND DISPOSAL OF WASTE WITHIN THE CITY OF MAITLAND, FLORIDA; OUTLINING THE FRANCHISEE'S DUTIES AND PROVIDING FOR TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE WILL OPERATE; PROVIDE FOR SEVERABILITY AND PROVIDE FOR AN EFFECTIVE DATE.

Whereas, the City of Maitland, Florida (the "City") has determined that the public health, safety and welfare require that non-exclusive franchises be awarded to qualified companies for the collection, transport, and disposal of Construction and Demolition Debris in the City; and

Whereas, EarthHaul, LLC, (the "Franchisee") has the necessary equipment, personnel and experience to properly perform the collection; and

Whereas, Sections 7-32 through 7-37 outline the requirements of such franchises in order to ensure the orderly collection, transport and disposal of Construction and Demolition ("C&D") Debris in the City and to minimize the potential for adverse effects it may have on the local environment; and

Whereas, the City requires all haulers providing C&D Debris container collection in the City to obtain a non-exclusive franchise in order to regulate this business, ensure its orderly operation; and

Whereas, the Franchisee has applied to the City for a C&D container collection franchise; and

Whereas, the City has reviewed the Franchisee application for the purpose of determining whether the Franchisee meets the requirements for the granting of such franchise; and

Whereas, the City has determined that the grant of such franchise to Franchisee is in the public interest; and

Whereas, Franchisee intends to use public right of ways and infrastructure to provide C&D Debris container collection service; and

Whereas, the City intends to receive value for the franchise issued; and

Whereas, Franchisee agrees to and acknowledges that it shall arrange for the proper disposal and recycling of all C&D Debris collected in the City, and the City is not instructing Franchisee how to collect, transport, recycle or dispose of C&D Debris so long as its operation is consistent with City Code and applicable laws; and

Whereas, the City and Franchisee desire to enter into a C&D Debris container collection franchise agreement (the "Franchise") in order that Franchisee may perform C&D Debris collection services in the City.

Now, therefore, based on the mutual promises contained herein, the parties agree as follows:

Section 1. Grant of Franchise

- a. The City hereby grants to Franchisee a non-exclusive C&D Debris container collection Franchise ("Franchise") authorizing Franchisee to engage in the business of collecting, transporting and disposing of C&D Debris placed in roll off containers by residential or commercial generators in the City.
- b. This grant is pursuant to Franchisee's application for the Franchise, which application is incorporated herein by reference.
- c. "Construction and Demolition Debris" or "C&D" means debris and wastes accumulated from land clearing, excavating, building, rebuilding and altering of buildings, structures, roads, streets, sidewalks or parkways by an owner or contractor. Such construction debris may be either commercial or residential in character.
- d. "Construction and Demolition Debris Container" means a container used for the collection of C&D Debris, located on or adjacent to the property where the C&D Debris is generated.
- e. The City reserves the right to rescind this grant of Franchise should the City determine it is in the City's best interest to do so.

Section 2. Acceptance of Franchise

- a. Franchisee hereby accepts the Franchise on the terms and conditions set forth in this Agreement, City Code and all related ordinances and resolutions.
- b. Franchisee shall notify the City of any non-franchised C&D haulers known to be operating within the City without a non-exclusive C&D container collection franchise.

Section 3. Exclusion to Franchise

The following services are expressly excluded from this Franchise:

- a. Self-haul materials, which are generated by a residential or commercial entity and delivered by that entity directly to a recycling facility, transfer station or disposal facility.
- b. Removal of materials from a premises by a contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company.
- c. Removal of C&D debris from a construction site by the construction contractor, provided that the hauling is performed by the contractor itself and not a subcontracted hauling company.

Section 4. Term of Franchise

- a. The term of the initial Franchise granted to Franchisee shall commence on the effective date and terminate no later than June 1, 2026.
- b. Thereafter, this Agreement and the Franchise granted herein shall automatically renew its term for a one-year period unless:
 - (1) Franchisee is in default under this Agreement or
 - (2) The City determines to change the non-exclusive franchise system.
- c. If the City determines to change the non-exclusive franchise system to an exclusive franchise system, the City shall provide notice of such change to Franchisee one hundred and twenty (120) days prior to the end of the initial term or one hundred and twenty (120) days prior to the end of each one-year term if extended.
- d. No later than one hundred and twenty (120) days prior to the end of the initial term or each one-year term if extended, Franchisee shall provide the City with updated application information identifying all material changes since the submission of the initial application or the last application update.
- e. No later than one hundred twenty (120) days prior to the end of the initial term or one hundred and twenty (120) days prior to the end of each one-year term if extended the City may give notice of a desire to negotiate material changes to this Agreement.

Section 5. Conditions for Effectiveness

The effectiveness of this Franchise is subject to Franchisee's satisfaction of each and all of the conditions set forth below, each of which may be waived in whole or in part by the City.

- a. **Accuracy of Representations.** The representation and warranties made by Franchisee in its Application for Franchise are true and correct on and as of the effective date.
- b. **Absence of Litigation.** There is no litigation pending on the effective date in any court challenging the award or execution of this Franchise or seeking to restrain or enjoin its performance.
- c. **Furnishing of Insurance.** Franchisee has furnished evidence of the Insurance required by Section 14 of this Agreement.

Section 6. Limitations on Scope of Franchise

Under the terms of this Agreement, the Franchisee has the non-exclusive authority to provide construction and demolition debris box service to all generators in the City, except for those that have been specifically exempted pursuant to Section 3.

Section 7. Franchise Fees

- a. During the term of the Agreement, Franchisee shall pay to the City franchise fees for the use of the streets and right of ways and the right to engage in the business of collecting, recycling and disposing of C&D Debris kept, accumulated or generated in the City.
- b. Franchise fees shall be payable on all gross C&D Debris box collection revenues received from all customers located within the City. The franchise fee shall be calculated based on gross collection revenues prior to Franchisee imposing the franchise fee on its customers. The franchise fee shall be fifteen percent (15%) of such received revenue.
- c. The City reserves the right to modify the amount of the franchise fees and manner of payment at any time during the term of this Franchisee by an Ordinance of the City.
- d. The franchise fees shall not be owed by Franchisee for revenues received from federal, state and local governments.

Section 8. Franchise Fee Payment

- a. Franchise fees shall be payable on a monthly basis, and shall be due and payable on the fifteenth (15th) day of the month immediately following the month in which collection services were provided. Each payment shall be calculated in accordance with the provisions of Section 7.
- b. Each franchise fee payment shall be accompanied by a written statement, verified by the person making the payment, or a duly authorized representative of the person, showing the calculation of the franchise fee payable in such form and detail as the City may require and such other information as the City may determine is material to a determination of the amount due.
- c. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.
- d. If franchise fees are not paid by the Franchisee at the times required by this Section, then in addition to the franchise fees, the Franchisee shall pay a late payment charge as set forth in Section 22.
- e. Franchisee shall pay all required franchise fees to:

City of Maitland
Attn: Finance
1776 Independence Lane
Maitland, Florida 32751
- f. If Franchisee remits franchise fees by personal delivery to the City, such franchise fees shall be deemed timely paid only if delivered on or before the due date. If Franchisee remits franchise fees by mail or other delivery service, such franchise fees shall be deemed timely only if (1) the envelope containing the franchise fee payment bears a postmark or receipt showing that the payment was mailed or sent on or before the due date or (2) Franchisee submits proof satisfactory to the City Manager that the franchise fee payment was in fact deposited in the mail or sent on or before said due date.

- g. In the event Franchisee believes that it has paid franchise fees in excess of the fees due to the City, Franchisee may submit a request for refund to the City Manager. If proof of overpayment is satisfactory to the City Manager, the City Manager shall authorize the City to refund to Franchisee any overpayment. Franchisee shall not apply any overpayment as a credit against any franchise fees or other amounts payable to the City unless specifically so authorized by the City Manager in writing.

Section 9. Ownership of Construction and Demolition Debris

The City does not gain any ownership or right to possess C&D Debris collected by Franchisee pursuant to this Agreement. Subject to the provisions of this Agreement and the requirements of the City's municipal code, Franchisee shall have title to and may retain, recycle, process, dispose of, or use the C&D Debris which it collects.

Section 10. Disposal of Construction and Demolition Debris

Franchisee shall dispose of C&D Debris collected or transported by Franchisee only by taking such C&D Debris to a landfill, transfer station, recycling facility or materials recovery facility which is lawfully authorized to accept such material. Franchisee shall not dispose of such C&D Debris by depositing it on any land, whether public or private, or in any lake, river, stream or other waterway, in any sanitary sewer or storm drainage system, or in any location not lawfully authorized to accept such materials.

Section 11. Reports

- a. By February 28th of each year, Franchisee shall file with the City Manager an annual report of the quantities of C&D Debris collected, transported, recycled, and disposed for the previous calendar year. Such report shall be in such form and detail as required by the City Manager. The report shall contain, but not be limited to, the following information:
 - (1) The C&D Debris tonnage collected and removed within the City during the previous year;
 - (2) The C&D Debris tonnage collected and removed during the previous year within the CITY that was recycled and the location of the facility where such C&D Debris was recycled (weight tickets shall be retained by the Franchisee and made available to the City upon request for up to three years after the date first issued);
 - (3) The C&D Debris tonnage collected and removed within the City that was disposed of during the previous year and the location of the disposal facility where the disposal of such C&D Debris occurred (weight tickets shall be retained and made available to the City upon request for up to three years after the date first issued).
 - (4) Gross revenues earned during previous year on all C&D debris box collection services provided to customers located within the City.
- b. Franchisee shall maintain customer records containing such information as may be required by the City Manager pertaining to the number and types of accounts served by the Franchisee. The City reserves the right to prescribe the format for providing this

information. This information shall be provided to the City Manager upon request. Customer records shall be retained for a period of three years.

- c. The City Manager shall establish guidelines, forms and other appropriate material to assist Franchisee in preparing the reports required by this Section. A Franchisee's failure to file the reports required by this Section shall constitute cause for termination or suspension of its Franchise.
- d. Each annual report shall be submitted to:

City of Maitland
Attn: City Manager, Non-Exclusive Franchise
1776 Independence Lane
Maitland, Florida 32751
- e. If the annual report required under subsection a. is not filed by the due date, the report shall be deemed delinquent, and the Franchisee shall pay to the City a delinquent report charge in the amount of fifty dollars (\$50.00). If the report remains delinquent for more than fifteen (15) days, the Franchisee shall pay to the City a delinquent report charge in the amount of one hundred dollars (\$100.00). Such delinquent report charge shall be in addition to any franchise fees or other charges payable by the Franchisee for the same period of time.
- f. Upon the reasonable request of the City Manager, Franchisee shall submit to the City monthly reports including a listing of each debris box size in the City from which Franchisee collected C&D Debris during the reportable month; the number of collections of each listed debris box during the reportable month; the total volume of C&D Debris collected in the City during the reportable month; the total weight (in tons) of C&D Debris disposed of by Franchisee at landfills and transfer stations during the reportable month; the total weight and the weight by material category (in tons) of C&D Debris disposed of by Franchisee at recycling and materials recovery facilities during the reportable month; the total weight and the weight by material category (in tons) of disposed of by Franchisee at recycling and materials recovery facilities during the reportable month; the number of service locations by volume (cubic yards) of service provided; Franchisee's gross receipts for collection services provided in the City during the reportable month; and such additional information as may be required by the City Manager. Such monthly reports shall be prepared in a form as required by the City Manager.

Section 12. Inspection Authority

- a. Franchisee shall at all times maintain accurate and complete accounts of the following records.
 - (1) All revenues and income arising out of its operations under the Franchise granted pursuant to this Agreement.
 - (2) Any service complaints received and how they were resolved.
 - (3) All C&D Debris collected, recycled and/or disposed of; the source of such C&D Debris; and the final destination of such C&D Debris in such form and detail as may be required by the City Manager.
 - (4) Franchisee's books, accounts and records reasonably necessary for the enforcement of this Agreement shall be made available for inspection, examination

and audit during normal business hours by authorized officers, employees and agents of the City.

- (5) The City shall provide Franchisee written notice at least three (3) business days prior to any inspection, audit or examination of these records.
- b. In the event any audit conducted by the City or by the City's representative discloses that Franchisee has made any intentional misrepresentation with respect to the franchise fees or its diversion amounts to the City or discloses that Franchisee has underpaid franchise fees due to the City, then in addition to any other remedies available to the City, Franchisee shall reimburse the City for the City's costs incurred in the performance of the audit. Such reimbursement shall be paid by Franchisee, along with any underpaid franchise fees, late payments and interest, within thirty (30) days of the date the City notifies Franchisee of the amount of the City's costs.

Section 13. Service Fees

Franchisee shall set its own service fees for C&D Debris collection services, provided that the City determines that there is reasonable free market competition and that service fees are fair to the C&D debris box collection service customers. The City reserves the right to establish maximum service fees for C&D Debris box collection service with one hundred and twenty (120) days' notice to Franchisee. Such maximum service fees, should they be established, will be adjusted annually as determined by the City, at its sole discretion.

Section 14. Insurance Requirements

Franchisee shall obtain and shall maintain throughout the term of this Agreement, at Franchisee's sole cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of work pursuant to this Agreement by Franchisee, its agents, representatives, employees or contractors.

- a. **Minimum Scope and Limits of Insurance.** Franchisee shall maintain at least the following minimum insurance coverage:
- (1) **Comprehensive General Liability:** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
 - (2) **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include hired autos and non-owned autos.
 - (3) **Workers' Compensation and Employers Liability:** Workers' Compensation limits as required by the State of Florida.
- b. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be approved by the City's Risk Manager. Franchisee shall be responsible for payment of all deductibles or self-insured retentions.
- c. **Other Insurance Provisions.** The required insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverage.

- (a) The City, its officers, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of Franchisee; products and completed operations of Franchisee; premises owned, leased or used by Franchisee; and automobiles owned, leased, hired or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees and agents and contractors.
- (b) Franchisee's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officers, employees, agents or contractors shall be excess of Franchisee's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or contractors.
- (d) Coverage shall state that Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City.

- d. Placement of Insurance. Insurance shall be placed with insurers acceptable to the City's Risk Manager. Franchisee must place insurance with a current A.M. Best rating of no less than A:VII. The City's Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the City and the general public are adequately protected.
- e. Proof of Insurance. Franchisee shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Proof of insurance shall be mailed or personally delivered to the City's address provided in Section 25 of this Agreement.

Franchisee acknowledges that the C&D Demolition Debris Box Collection Franchise granted to Franchisee will not become effective, and Franchisee will have no authority to perform C&D Debris collection in the City, unless Franchisee provides satisfactory proof of insurance prior to beginning operations as a franchisee.

Section 15. Indemnity

Franchisee agrees to defend, with counsel agreed upon by both parties, indemnify, and hold harmless the City, and its agents, officers, servants, and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the City's employees, agents or officers which arise from, or are connected with, or are caused by willful or negligent acts or omissions of Franchisee, or its agents, officers or employees, in the performance of the non-exclusive Franchise or this Agreement, or in performing the work or services therein, and all costs and expenses of investigating and defending against same; provided, however, that

Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising solely from the negligence or willful misconduct of the City, its agents, officers, servants and employees.

Section 16. Collection Equipment

- a. Containers shall be covered during transportation to prevent C&D Debris from escaping from the container.
- b. All equipment used or provided by Franchisee shall be kept in a safe and sanitary condition. Vehicles shall be cleaned and painted, as needed, to maintain a clean and sanitary appearance.
- c. Vehicles will be subject to periodic, unscheduled inspections by the City and determination as to sanitary condition shall be made by the City.
- d. City shall have the right to prohibit the use of any vehicle that fails to comply with the provisions set forth herein.
- e. Violations of this provision shall subject the Franchisee to liquidated penalties as set forth in Section 22 of this Agreement.

Section 17. Abandoned Containers

- a. If Franchisee abandons any container used to provide C&D Debris services under this Franchise, the City may remove the container and/or dispose of the contents of the container.
- b. If the City removes a container abandoned by Franchisee and/or disposes of the contents of any container abandoned by Franchisee, the City may charge Franchisee for the City's costs incurred in such removal/disposal and for the City's costs of storage of the container. Franchisee shall reimburse the City for such costs within ten (10) days of the date of the City's invoice for such costs.
- c. For the purposes of this Section, "abandoned" includes:
 - (1) Franchisee's failure to remove the container within 30 days upon termination of the C&D Debris Box Collection Franchise or such additional time as granted in writing by the City.
 - (2) Franchisee's failure to remove the container within a reasonable period after the expiration of the Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the term of said Franchise or Franchisee has been granted a subsequent C&D Debris Box Collection Franchise authorizing Franchisee to collect and transport the type or types of C&D Debris for which the container was used pursuant to this Agreement.
 - (3) Franchisee's failure to dispose of the contents of the container within five (5) days after the City Manager issues written notice to Franchisee to dispose of the contents.

Section 18. Franchisee Provided Construction and Demolition Debris Containers

- a. General. Containers used for storage and transportation of C&D Debris shall be painted and shall prominently display the name of the Franchisee (as listed in this

Agreement), Franchisee's customer service telephone number, and the number of the container.

- b. **Cleaning, Painting, Maintenance.** Franchisee shall make reasonable efforts to replace, clean or repaint all containers as needed so as to present a clean appearance.
- c. **Inspections by City.** Containers will be subject to periodic, unscheduled inspections by the City and determination as to sanitary condition shall be made by the City.
- d. City shall have the right to prohibit the use of any container that fails to comply with the provisions herein.
- e. Violations of this provision shall subject the Franchisee to liquidated penalties as set forth in Section 22 of this Agreement.

Section 19. Personnel

- a. **Driver Qualifications.** Franchisee agrees that all drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the State of Florida.
- b. **Safety Training.** Franchisee shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of C&D Debris, or who are otherwise directly involved in such collection.

Section 20. Compliance With Law

Franchisee shall perform all collection, recycling and disposal operations in accordance with applicable federal, state, and local law, in accordance with all regulations promulgated under such laws, and in accordance with the terms and conditions of this Agreement.

Section 21. Permits and Licenses

Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Franchise required of Franchisee by any governmental agency.

Section 22. Liquidated Penalties

- a. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance, and to serve as a specific measure of successful performance under this Agreement. The Parties further recognize that if Franchisee fails to perform its obligations, City and customers within the City will suffer damages that are and will be impractical and extremely difficult to ascertain and determine. The Parties agree that the Liquidated Penalty amounts provided in this Section represent a reasonable estimate of the amount of such damages for the specified breaches, without prejudice to City's right to treat uncorrected non-performance as an event of default under Section 23. The City may determine the occurrence of events giving rise to Liquidated Penalties through the observation of its own employees or representatives, or by investigation of a customer or customer complaints.

- b. Upon delivery of written notice to the Franchisee, the City may impose the following Liquidated Penalties upon the Franchisee, in addition to any other available remedies the City may have.
 - (1) Failure to maintain public containers or vehicles in clean and sanitary condition as required by this Agreement: \$50.00 per day per incident.
 - (2) Failure to label containers with Franchisee's name (as listed in this Agreement), Franchisee's customer service telephone number, and the number of the container: \$100 per day per incident.
 - (3) Failure to remit franchise fee to City by the fifteenth (15th) of the month as required in Section 8: \$100.00 per occurrence plus late fees of two percent (2%) per month for every month thereafter until paid.
 - (4) Failure to maintain or submit documents and reports as required under the terms of this Agreement after ten (10) days notice: \$50.00 per incident per day.
 - (5) Failure to perform any other requirements of this Agreement not specifically stated in this Section, and not corrected or in the process of correction within twenty-four (24) hours of notice from the CITY: \$250.00 each incident each day.

Section 23. Default, Termination

- a. Default. The City shall provide written notice of a default or failure to comply with any obligation or duty imposed on Franchisee under this Agreement or City ordinance. The City Manager or his or her designee and Franchisee shall thereupon meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City Manager shall have the right to terminate this Agreement.

Whereupon, Franchisee shall be suspended from providing C&D Debris Box Collection for a period of five (5) years from the date of the termination. After five (5) years, should the Franchisee provide proof that the event causing the Franchisee to default has been corrected, and at the sole and complete discretion of the City, the Franchisee may be reinstated upon reapplication.

- b. A default under this Agreement shall include, but not be limited to, any of the following:
 - (1) Misrepresentation. Any misrepresentation made to the City by the Franchisee or failure to disclose required information in any reports submitted to the City, in Franchisee's application to enter into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
 - (3) Fraud or Deceit. If the Franchisee practices, or attempts to practice, any fraud or deceit upon the City or its customers.
 - (4) Failure to Maintain Coverage. If the Franchisee fails to provide or maintain in full force and effect the Worker's Compensation or liability coverage as required by this Agreement.

- (5) Violations of Regulation. If the Franchisee violates any regulations, permits, orders or filing of any regulatory body having jurisdiction over the Franchisee which violation or non-compliance materially affects the Franchisee's ability to perform under this Agreement, provided that the Franchisee may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise shall be deemed to have occurred during the pendency of the contestation or appeal, to the extent the Franchisee is able to adequately perform during that period.
- (5) Acts or Omissions. Any other act or omission by Franchisee which materially violates the terms, conditions, or requirements of this Agreement, City Code, as it may be amended from time to time, or any order, directive, rule, or regulation issued hereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notices, if the Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- (6) Failure to Pay Franchise Fees. If the Franchisee fails to pay the franchise fees in the amount owed to the City pursuant to Section 7 according to the schedule specified in Section 8.
- c. Termination. If the City Manager determines, at his or her sole discretion, that the Franchisee has defaulted under the terms of this Agreement, failure to cure will result in suspension, penalties, or a notice of termination of this Agreement by the City in accordance with subsection e.
- d. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by Force Majeure. Force Majeure means acts of God including landslides, lightening, forest fires, storms, floods, freezing and earthquakes, civil disturbances, lockouts, wars, blockades, public riots, explosions, or government restraint.
- e. The City Manager shall serve written notice, either personally or by registered or certified mail, postage prepaid of the termination of a Franchise under this Agreement to the last place of business of the Franchisee and the Franchisee shall cease operation under this Agreement within ten (10) days after receipt of said notice unless Franchisee has requested an appeal hearing before the City prior to the expiration of the ten (10) day period. In the event Franchisee requests such an appeal hearing, said Franchisee may continue collecting, transporting, recycling and disposing of C&D Debris until the City has rendered its decision on the termination of the Franchise.
- f. Any Franchisee whose Franchise has been terminated has the right to an appeal hearing before the City Council. Franchisee shall request such a hearing in writing to the City Clerk within ten (10) calendar days after receipt of notice of termination, and the City Council shall hold the appeal hearing not later than thirty (30) days following the receipt of the written request if requested by Franchisee. The Clerk shall give written notice of the time, date and place of the appeal hearing to Franchisee and the City Manager. The City Council shall render its decision after the close of the appeal hearing and its decision shall be final; provided, however, that nothing herein shall limit Franchisee's right to seek judicial review or remedies.

Section 24. Conditions Upon Termination

- a. In the event the C&D Debris Box Collection Franchise is terminated:
- (1) Franchisee shall have no right or authority to engage in C&D Debris collection, recycling or disposal operations in the City for a period of five (5) years from the date of the termination. After five (5) years, should the Franchisee provide proof that the event causing the Franchisee to default has been corrected, and at the sole and complete discretion of the City, the Franchisee may be reinstated upon reapplication.
 - (2) Franchisee shall, however, remain liable to the City for any and all franchise fees that would otherwise be payable by Franchisee, for any and all late payment charges and interest assessed pursuant to Section 8 of this Agreement, for any and all delinquent report charges assessed pursuant to Sections 11 and 22 of this Agreement, and for any indemnity obligations under Section 15 of this Agreement.
 - (3) Franchisee shall have a continuing obligation to submit to the City all reports required by Section 11 of this Agreement which relate to C&D Debris activities performed by Franchisee up to and including the date of termination.
 - (4) Franchisee shall allow the C&D Debris generators served by Franchisee to arrange for C&D Debris collection services with a collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators.
- b. In the event the Franchise is terminated, then within the time period specified by the City and if directed by the City Manager, Franchisee shall remove all of Franchisee's C&D Debris box containers from all of Franchisee's collection service locations and shall properly recycle or dispose of all C&D Debris in such containers.

Section 25. Notices

Except as otherwise provided in this Agreement, all notices required by this Agreement or by the C&D Debris Box Collection Franchise shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To CITY:
City of Maitland
Attn: City Manager, Non-Exclusive Franchise
1776 Independence Lane
Maitland, Florida 32751

To FRANCHISEE:
EarthHaul, LLC.
306 Lynwell Dr
Orlando, FL 32809

Notice shall be deemed effective on the date personally served or, if mailed, three (3) days after the date deposited in the mail.

Section 26. Relationship of Parties

The parties intend that the Franchisee shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee or agent of the Franchisee shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Franchisee shall have the exclusive control over the manner and means of conducting the construction and demolition debris collection services performed under this Agreement and all persons performing such services. Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents shall not obtain any rights to retirement benefits, worker's compensation benefits, or any other benefits which accrue to the employees of the City by virtue of their employment with the City.

Franchisee agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, Franchisee, association, organization, or corporation. Franchisee has not directly or indirectly colluded, conspired, connived or agreed with any person, partnership, Franchisee, association, organization, or corporation to secure any advantage against the City.

Section 27. Compliance with Law

In providing the services required under this Agreement, Franchisee shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of Florida, the City and other states, cities or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional or local administrative and regulatory agency, now in force and as they may be enacted, issued or amended during the term of this Agreement.

Section 28. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

Section 29. Jurisdiction

The parties agree that this Agreement is made in and will be performed in the City and any lawsuits between the parties arising out this Agreement shall be filed in a court of competent jurisdiction located in Orange County, Florida.

Section 30. Assignment

- a. Franchisee acknowledges that this Agreement involves rendering a vital service to the businesses within the City, and that the City has franchised Franchisee to perform the services specified herein based on (1) Franchisee's experience, skill and reputation for conducting its construction and demolition debris collection in a safe, effective and responsible fashion, at all times in keeping with applicable waste management laws,

regulations and good waste management practices, and (2) Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Franchisee to perform the services to be rendered by the Franchisee under this Agreement.

- b. Any Franchise granted is a privilege to be held in trust by the original Franchisee. A Franchise issued by the City shall not be transferred, sold, leased, assigned, or relinquished, or delegated to another person, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy laws or otherwise, without the written prior approval of the City. This restriction includes the transfer of ownership of the Franchise, or a majority of the ownership or control of the Franchisee, or the conveyance of a majority of the Franchisee's stock to a new controlling interest. Franchises shall become void upon the abandonment of same by the Franchisee. The City shall not unreasonably withhold approval of a Franchise assignment, provided that such assignment does not unreasonably impact competition and the assignee meets all of the requirements established by the City for the granting of this Franchise and is qualified to perform its obligations as required by this Agreement.
- c. Franchisee shall promptly notify the City in writing in advance of any proposed assignment, sale, or transfer. In the event the City approves of any assignment, sale, or transfer, said approval shall not relieve Franchisee of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect.

Section 31. Binding on Successors

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

Section 32. Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other party of any provision of this Franchise.

Section 34. Notice of the City's Right to Grant Exclusive Franchise

The parties agree that in the event the City determines to change the system from a non-exclusive franchise system to an exclusive franchise system, Franchisee shall be entitled to notice of one hundred and twenty (120) days prior to the expiration of this Agreement.

Section 35. Entire Agreement

This Franchise ordinance represents the full and entire agreement between the parties with respect to the matters covered herein.

Section 36. Interpretation

This ordinance shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

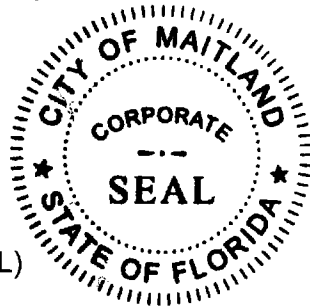
Section 37. Amendment

This Agreement may not be modified or amended in any respect except by a written agreement duly approved as required by the Charter of the City of Maitland and signed by the parties.

Section 38. Severability

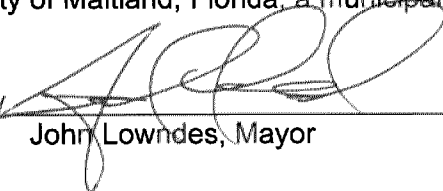
If any nonmaterial provision of this ordinance is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 28th day of April 2025.



(SEAL)

City of Maitland, Florida, a municipal corporation

By 
John Lowndes, Mayor

ATTEST:


Lori S. Hollingsworth, City Clerk

First Reading: April 14, 2025

Second Reading: April 28, 2025

FRANCHISEE

By _____

Curtis Walker, President

Company EarthHaul, LLC.

Notary:

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City of Maitland, Florida, a municipal corporation

By

John Lowndes, Mayor

(SEAL)

ATTEST:

Lori S. Hollingsworth, City Clerk

FRANCHISEE

By

[Signature]

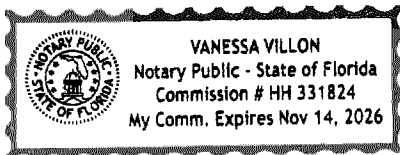
Curtis Walker, President *FL DL*

Company EarthHaul, LLC.

Notary:

Vanessa Villon

V Villon



04/21/2025