

ORDINANCE NO. 222

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, PROVIDING FOR THE EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC., OF FLORIDA, A PRIVATE CORPORATION, FOR THE COLLECTION AND DISPOSAL OF ALL RESIDENTIAL AND COMMERCIAL TRASH, GARBAGE, AND OTHER REFUSE WITHIN THE TOWN LIMITS; PROVIDING FOR THE COLLECTION OF RESIDENTIAL RECYCLABLE MATERIALS WITHIN THE TOWN LIMITS; PROVIDING FOR AUTHORITY; PROVIDING DEFINITIONS; PROVIDING FOR GRANT OF EXCLUSIVE FRANCHISE; PROVIDING FOR TERM; PROVIDING FOR ASSIGNMENT; PROVIDING FOR DEFAULT; PROVIDING FOR CUSTOMER BILLING AND COLLECTION; PROVIDING FOR RATE CHARGES; PROVIDING FOR SCOPE OF SERVICES; PROVIDING FOR DISPOSAL SITE AND FEES; PROVIDING FOR FRANCHISEE'S BUSINESS OFFICE; PROVIDING FOR PERFORMANCE BOND; PROVIDING FOR INSURANCE; PROVIDING FOR NOTICE OF CLAIMS OR LITIGATION; PROVIDING FOR INDEMNIFICATION AND HOLD HARMLESS; PROVIDING FOR HOLIDAYS; PROVIDING FOR ACCESS TO RECORDS; PROVIDING FOR COLLECTION EQUIPMENT; PROVIDING FOR PROTECTION OF FRANCHISE AREA; PROVIDING FOR SPECIAL WASTE, INFECTIOUS WASTE, HAZARDOUS WASTE, BIOHAZARDOUS WASTE AND BIOLOGICAL WASTE; PROVIDING FOR MODIFICATIONS TO LEVEL OF SERVICE; PROVIDING FOR MODIFICATIONS TO SCOPE OF SERVICE; PROVIDING FOR COOPERATION/COORDINATION; PROVIDING FOR CONSUMER COMPLAINTS; PROVIDING FOR STORMS AND OTHER EMERGENCIES; PROVIDING FOR FRANCHISEE'S REPRESENTATIVES; PROVIDING FOR CONDUCT OF FRANCHISEE'S EMPLOYEES; PROVIDING FOR COMPLIANCE WITH STATE, FEDERAL AND MUNICIPAL LAW; PROVIDING FOR STANDARDS OF PERFORMANCE; PROVIDING FOR DEFAULT AND DISPUTE OF THE AGREEMENT; PROVIDING FOR PERMITS AND LICENSES; PROVIDING FOR TITLE TO MATERIALS; PROVIDING FOR MODIFICATION; PROVIDING FOR NONDISCRIMINATION PROVISION; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR PUBLIC SERVICE PROJECTS; PROVIDING FOR VENUE; PROVIDING FOR SOVEREIGN IMMUNITY; PROVIDING FOR CONFLICTING ORDINANCES AND RESOLUTIONS; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Town finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality solid waste collection and disposal service; and

WHEREAS, Waste Management, Inc., of Florida has indicated to the Town that it is willing to undertake the installation and operation of quality waste collection and disposal service under an exclusive franchise; and

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

WHEREAS, the Town finds it in the public interest to retain control over the use of public rights of way by solid waste collectors to ensure against interference with the public convenience, to promote aesthetic considerations and to protect the public investment in right of way property; and

WHEREAS, the Town finds it in the public interest to ensure that quality solid waste collections and disposal service is maintained through a responsive citizen complaint handling procedure; and

WHEREAS, that granting an exclusive franchise is the best means of assuring the above-described interests of the Town are promoted.

NOW, THEREFORE, for and in consideration of the respective covenants herein contained, the parties agree as follows:

SECTION 1. AUTHORITY. The authority for enactment of this Ordinance is Section 166.021 and Chapter 403 Part IV, Florida Statutes, and the Town Code.

SECTION 2. DEFINITIONS. The following words, terms, or phrases when used in this Ordinance, shall have the meanings respectively ascribed to them herein. 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 the Town Code.

Biohazardous Waste means any solid waste or liquid waste, which 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 Waste means any waste that requires additional management due to its bulk or weight and shall include, without limitation, household furniture, bicycles, push type lawn mowers with oil and gas drained and White Goods. Bulk Waste does not include any form of matter or debris resulting from tree removal, land clearing, land development, or Special Waste as defined under the Franchise.

Commercial Business Establishment means any establishment other than a curbside residential dwelling, multi-family residential dwelling (apartments – condominiums) and mobile home parks, 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, schools, office buildings and other establishments other than multi-family residential dwelling (apartments - condominiums) or mobile home parks using either mechanical containers or mobile carts. Commercial service includes businesses which elect to use Roll-off Container Collection Services.

Construction and Demolition Debris means materials generally considered to be not 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 which 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.

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 alley. The intention of a curbside designation is to allow collection by the Contractor's personnel in a rapid manner with reaching requirements minimized.

Curbside Residential Collection Service means the refuse collection services provided to persons occupying residential dwelling units within the Town, including residential dwelling units located in mobile home parks, apartments, etc. who receive collection services at curbside.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including ground waters, or otherwise enter the environment.

Dumpsters means placement and servicing of Mechanical Containers (usually measured in cubic yards) for commercial customers.

Franchisee means the solid waste franchise holder duly awarded by the Town.

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

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 excluding Recyclable Materials as defined herein.

Garbage Cart shall mean the plastic receptacle furnished by the Franchisee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) and multi-family dwelling unit owners, upon request with the Town's approval.

Handicapped Carryout Service shall mean providing household solid waste service at the rear or side of the residence for handicapped persons as certified by the Town.

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 works type construction projects whether performed by a government unit or by contract. Industrial Wastes are not included in the scope of this contract.

Infectious Waste means those wastes, which 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 which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological I specimens, hypodermic needles, contaminated clothing, and surgical gloves.

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

Off-Site means any location, which is not on the property where the waste is generated.

Recycling means both commercial and residential recycling.

Refuse means both rubbish and garbage or a combination or mixture of rubbish and Garbage, including paper, glass, metal and other discarded matter or materials.

Residential Dwelling Unit means any structure or shelter, or any part thereof, used or constructed for residential living including single family homes, multi-family homes, apartments, condominiums and mobile home parks, which receives curbside collection or dumpster service.

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 sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, trash, yard waste, clean debris, white goods, special waste or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

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, white goods, tires, used motor oils, mattresses, furniture, lead-acid batteries, contaminated soils and biohazardous wastes.

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 subcontractors is 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 Waste 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, bushes or shrubs, green leaf cuttings, fruits, or other matter usually created as refuse in the care of lawns and yards. Yard Waste generated by professionals (i.e.; landscapers, tree surgeons, tree trimmers) is excluded.

SECTION 3. GRANT OF EXCLUSIVE FRANCHISE. The Town Council does hereby grant to Waste Management, Inc., of Florida (Waste Management, Franchisee or Grantee), an exclusive mandatory franchise, including every right and privilege appertaining thereto, to operate a sanitary garbage service for the collection and disposal of all manner of solid waste other than biohazardous waste, biological waste, construction and demolition debris, hazardous waste, industrial waste, infectious waste, items for special pickup and white goods within the Town.

This exclusive right shall apply to the collection and disposal of all solid wastes and recycling, as defined herein, generated by the citizens, residents, inhabitants, business enterprises, and other entities therein, and includes title to all of such solid waste and recyclables generated within said boundaries insofar as the Town can establish its legal right to make such grant of title. Any person now or hereafter occupying any residential unit or operating a commercial business establishment within any portion of the Franchise Area shall be required to utilize the services of the Franchisee for garbage collection and disposal.

SECTION 4. TERM. This exclusive franchise shall be granted for a period of four (4) years unless sooner terminated due to a breach of the terms hereof which shall result in the material failure by Waste Management to provide efficient and timely service to the residents and businesses of Cinco Bayou. This franchise term commences August 15, 2011 and ends August 14, 2015. The term of this exclusive franchise may be automatically renewed for additional two (2) year terms, each commencing at the end of the initial term, under the same terms and conditions unless either party provides written notice to the other of their intent to cancel or renegotiate, in writing, and delivered by United States Mail, return-receipt-requested, posted no later than 120 days before the anniversary date of the exclusive franchise.

SECTION 5. ASSIGNMENT. The 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.

SECTION 6. DEFAULT. 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 written notice of default upon the Grantee 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 reasonable justification of Grantor's declaration, said protest shall be served upon the Grantor in writing with ten (10) days following receipt by the Grantee of the Grantor's notice.

SECTION 7. CUSTOMER BILLING AND COLLECTION. The Town shall retain the

right and responsibility for residential customer account establishment, billing and collection of charges to residential customers. Waste Management will bill the commercial customers directly on a monthly basis. Waste Management will invoice the Town quarterly in arrears based on the residential units in the Town.

SECTION 8. RATE CHARGES.

A. The Town will provide the Franchisee, on a monthly basis, with a detailed list and summary report of the number of Residential Dwelling Units.

B. All residential collection services prices include disposal costs. The Residential Dwelling Unit Rates shall be established as follows:

1. Residential Dwelling Units: \$14.56 per month per unit for service.
2. Residential Service Includes:
 - Twice-Weekly Municipal Solid Waste - not to exceed 40 pounds per cart pick-up
 - Once-Weekly Yard Waste Collection - Disposal
 - Once-Weekly Curbside Recycling
 - Once-Weekly Bulk Waste Pick-up – Not to exceed 3 cubic yards per bulk pick-up. Resident must call Franchisee to request the pick-up.

Total Per Household (Residential Dwelling Unit) Per Month: \$14.56

C. Initially, the rates for collection services to Commercial Business Establishments shall be established as follows:

1. **Dumpster Service:**

	1 X WK	2 X WK	3 X WK	4 X WK	5 X WK	6 X WK
2 YD	\$ 60.13	\$ 115.55	\$ 166.45	\$ 217.35	\$ 268.89	\$ 320.44
4 YD	\$ 110.38	\$ 199.94	\$ 289.01	\$ 379.67	\$ 469.22	\$ 558.77
6 YD	\$ 153.55	\$ 282.40	\$ 414.45	\$ 551.68	\$ 683.09	\$ 809.47
8 YD	\$ 196.07	\$ 372.58	\$ 550.26	\$ 727.39	\$ 904.06	\$1,080.22
Commercial Accounts Serviced by a Dumpster – Billed Directly to the Customer						
Casters – Additional \$20.00 per month, 2 yd and 4 yd <u>only</u>						
Lock Bar – Additional \$10.00 Month						

The dumpster service rate includes furnishing, as well as, repair and maintenance of the container. The rate includes disposal fees.

2. **Commercial Hand Pick-up Service:** \$26.00 per month per 96 gallon cart for twice per week service. This rate includes disposal fees.

3. Franchisee shall be responsible for billing all commercial accounts.

4. Franchisee will provide containerized commercial (dumpster) accounts with Mechanical Containers at no charge and waives the right to negotiate fees with such customers.

5. Franchisee will provide hand pick-up commercial accounts with a 96 gallon garbage cart at no charge and waives the right to negotiate fees with such customers.

D. The Town agrees that it may receive an annual adjustment to the commercial collection rates. The rates shall be adjusted annually in the amount equivalent to the net increase or decrease in the Consumer Price Index (CPI), effective September 1 of each year calculated on the February BLS Consumer Price Index for all Urban Consumers, Southern States.

SECTION 9. SCOPE OF SERVICES.

A. Residential Solid Waste Collection Services:

1. **Frequency of Collection:** The Franchisee shall collect refuse from Residential Dwelling Units within the Franchise Area two (2) times per week, recycling and yard waste will be picked up one (1) time per week.

2. **Hours of Collection:** Collection shall begin no earlier than 6:00 o'clock a.m., and shall cease no later than 6:00 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 Franchisee has received prior approval from the Town Manager, or designee, to be later evidenced by a written memorandum confirming the approval. Should the Franchisee not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the Franchisee 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 Franchisee. Special pickups may be requested by customers at additional cost which shall be billed by the Franchisee.

3. **Point of Pickup:** Collection of Refuse shall be at curbside. In the event an appropriate location cannot be agreed upon, the Town Manager, or designee, shall determine the location.

4. **Receptacles:** Garbage shall be placed for collection separately from rubbish and shall be placed in the Garbage Carts furnished by the Franchisee with capacities of 96 gallons. Smaller carts of 64 gallons will be made available to special needs customers (elderly or handicapped) and multi-family dwelling unit owners, upon request with the Town's approval. Franchisee shall not be required to collect residential waste not generated in the residence served. Non-containerized rubbish, trash or yard waste shall not be collected by the Franchisee, however, yard waste may be bagged or bundled (not to exceed forty pounds). Limbs exceeding four (4) inches in diameter or six (6) feet in length will not be picked up.

5. **Method of Collection:** The Franchisee shall make collections with a minimum of noise and disturbance to the householder. Any garbage or trash spilled by the Franchisee shall be picked up immediately by the Franchisee. Receptacles shall be handled carefully by the Franchisee, shall not be bent or otherwise abused, and shall be thoroughly

emptied and left at the proper point of collection.

6. **Handicapped Carry-out Service:** Upon notification by the Town, collection services shall be provided by Franchisee at the rear or side of the residence for qualified handicapped persons at no extra charge. Customer application for such services shall be made and approved by the Town.

7. **Special Services:** Services such as backdoor collection, removal of any Refuse other than Garbage or Rubbish, Bulk Waste, or White Goods as defined herein or additional pick-ups shall be provided on a separate fee basis upon terms agreed to by the Franchisee and the Customer. Charges for Special Services shall not be unreasonable or excessive.

B. Commercial Solid Waste Collection Services:

1. **Frequency of Collection:** The Franchisee shall collect Refuse from Commercial Business Establishments within the Town a minimum of one (1) time per week and a maximum of six (6) times per week. Collection frequencies and number of Mechanical Containers shall be mutually agreed to by the Franchisee and each individual Commercial Business Establishment.

2. **Hours of Collection:** Collection shall begin no earlier than 6:00 o'clock a.m., and shall cease no later than 6:00 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 Franchisee has received prior approval from the Town Manager or his designee to be later evidenced by a written memorandum confirming the approval. Should the Franchisee not confirm and obtain in writing the approval to operate on an emergency basis, it shall be conclusively presumed that the Franchisee 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 Franchisee. Special pickups may be requested by customers at additional cost which shall be billed by the Franchisee.

3. **Point of Pickup:** Collection of refuse shall be at a location mutually agreed upon by the Franchisee and each individual Commercial Business Establishment. In the event an appropriate location cannot be agreed upon, the Town Manager or his designee shall determine the location.

4. **Receptacles:** The Franchisee shall provide Mechanical Containers to each Commercial Business Establishment requiring a dumpster. The Franchisee shall provide a plastic garbage cart with a capacity of 96 gallons to each Commercial Business Establishment not requiring dumpster service. The quantity and/or size of the receptacles shall be mutually agreed upon by the Franchisee and each individual Commercial Business Establishment.

5. **Method of Collection:** The Franchisee shall make collections with a minimum of noise and disturbance to the customer. Any garbage or trash spilled by the Franchisee shall be picked up immediately by the Franchisee.

SECTION 10. DISPOSAL SITE AND FEES. All solid waste collected by Franchisee under the Scope of Service as defined herein shall be disposed of at a site or facility legally

empowered to accept it for treatment or disposal. The Franchisee shall be responsible for all disposal fees.

SECTION 11. FRANCHISEE'S BUSINESS OFFICE. The Franchisee shall maintain a telephone listed in the name in which it conducts business as Franchisee and must answer same at all reasonable times and must have a permanent address where bills can be paid. There shall be an adequate number of telephones and a responsible franchise representative in charge during franchisee business for the purpose of addressing consumer complaints.

SECTION 12. PERFORMANCE BOND. Franchisee shall furnish a performance bond for the faithful performance of this franchise and all of its obligations arising hereunder in the amount of Three Hundred Thousand Dollars (\$300,000.00), made payable in favor of the Town. Said bond shall be executed by a surety company licensed to do business in Florida.

SECTION 13. INSURANCE.

A. Liability Insurance.

1. The Franchisee shall not commence any work in connection with this Franchise Agreement until all required insurance has been obtained and such insurance has been approved by the Town.

2. All insurance policies shall be with insurers licensed to do business in the State of Florida, and any insuring company is required to have a minimum rating of A, in the Best's Key Ratings Guide published by A. M. Best & Co., Inc.

3. The Town shall be furnished proof of coverage by a certified, complete duplicate of all insurance contracts including every endorsement. The complete insurance contracts must be delivered to the Town Manager, or designee, not less than ten (10) days prior to the commencement of any and all contractual agreements between the Town and the Franchisee.

4. The insurance definition of insured or additional insured shall include subcontractor, sub-subcontractor, and any associated or subsidiary companies of the Franchisee which are involved and which are a part of this Franchise Agreement.

5. The Town reserves the right during the term of this franchise to request additional certified copies of any insurance contracts to support any Certificates of Insurance.

6. The designation of Franchisee shall include any associated or subsidiary company which is involved and is a part of the Franchise Agreement and such, if any associated or subsidiary company involved in the project, must be named in the Workers Compensation coverage.

7. All policies shall be written to assure that the Town will be notified of cancellation at least thirty (30) days prior to the effective date of such cancellation or amendment. Such notice shall be given directly to the Town Manager, or designee.

B. Workers Compensation Insurance.

1. The Franchisee shall secure and maintain during the life of this Franchise Agreement Workers Compensation insurance for all employees employed including supervision, administration and management personnel. In case any work is sublet with the approval of the Town, the Franchisee shall require the Subcontractor to provide Workers Compensation Insurance for all employees and such evidence of insurance shall be furnished to the Town not less than ten (10) days prior to the commencement of any and all sub-contractual agreements,
2. Such insurance shall comply with the Florida Workers Compensation Law.
3. Workers Compensation insurance shall also include Employer's Liability coverage and shall include Broad Form All States Endorsement.
4. Coverage shall include a waiver or subrogation clause in favor of the Town. Also, this endorsement must be indicated on all Certificates of Insurance.

C. Business Automobile and Public Liability Insurance.

1. The Franchisee shall maintain Business Automobile Liability insurance coverage throughout the term of this Franchise Agreement. The insurance shall include owned, non-owned and hired motor vehicle coverage.

2. The Franchisee shall carry other Public Liability insurance against all other bodily injury, property damage and personal injury exposures.

3. If the insurance is issued with an aggregate limit of liability, the aggregate limit of liability shall apply only to the locations included in this Franchise Agreement. If, as the result of any claims or other reasons, the available limits of insurance reduce to less than those stated in the LIMITS OF LIABILITY, the Franchisee shall notify the Town Manager, or designee, in writing. The Franchisee shall purchase additional liability insurance to maintain the requirements established in this Franchise Agreement. Umbrella or Excess Liability insurance can be purchased to meet the limits of liability specified in this Franchise Agreement.

a)	Comprehensive Automobile and General	\$5 Million each occurrence
b)	Liability Insurance, Professional Liability Insurance	\$5 Million each occurrence
c)	Personal Injury	\$250,000.00

SECTION 14. NOTICE OF CLAIMS OR LITIGATION. The Franchisee shall report to the Town any incident or claim that results from performance of this Franchise Agreement. Within ten (10) days of the Franchisee's knowledge, the Town Manager, or designee, shall receive written notice describing the incident or claim. In the event such incident or claim involves injury to a third party, verbal notification shall be given to the Town within two

(2) days of when the Franchisee becomes aware of the incident or claim. A detailed written report shall be made to the Town within ten (10) days.

SECTION 15. INDEMNIFICATION AND HOLD HARMLESS. Franchisee shall protect, defend, indemnify and hold the Town, its officers and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to any property, including all reasonable costs from investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Franchise Agreement or Franchisee's officers, employees, agents, subcontractors, licensees or invitees regardless of where the injury, death or damage may occur, unless such injury, death or damage is caused by the negligence of the Town or other parties, in whole or in part. In the event of joint negligence on the part of the Owner and the Contractor, any loss shall be apportioned in accordance with provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the date first above written. The Town shall give Franchisee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement.

SECTION 16. HOLIDAYS. The Town shall not require the Franchisee to provide service on the following holidays: New Years Day, Fourth of July, Thanksgiving, and Christmas, If the regular collection day for any route(s) falls on any of the aforementioned holidays, the Franchisee shall collect the refuse on the next regular business day.

SECTION 17. ACCESS TO RECORDS. The Town or the Franchisee may audit the others records at any time and shall always have access to the financial records and customer lists which pertains to this Franchise.

SECTION 18. COLLECTION EQUIPMENT.

A. The Franchisee shall have on hand at all times and in good working order such equipment as shall permit the Franchisee to adequately and efficiently perform its contractual duties. Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection and disposal equipment. Equipment shall be kept in good repair, appearance and in a sanitary and clean condition at all times. The Franchisee shall have available reserve equipment which can be put into service in the event of any breakdown. Such reserve equipment shall correspond in size and capacities to the equipment used by the Franchisee to perform the contractual duties.

B. Franchisee must put on the sides of its truck, the following: (a) the name of the company in letters large enough to be seen from a reasonable distance, and (b) phone number.

SECTION 19. PROTECTION OF FRANCHISE AREA. No collector other than Franchisee may make any pickups within the Franchise Area for the services defined in this Franchise Agreement. Franchisee may not charge a customer for services under this Franchise Agreement any amount other than that prescribed by the Town or as otherwise provided in this Franchise Agreement.

SECTION 20. SPECIAL WASTE, INFECTIOUS WASTE, HAZARDOUS WASTE,

BIOHAZARDOUS WASTE AND BIOLOGICAL WASTE:

A. The Franchisee shall not be required to collect and dispose of Special Waste, Infectious Waste, Hazardous Waste, Biohazardous Waste or Biological Waste, but may offer such service in the service area. All such collection and disposal for those types of waste in this section, when done by the Franchisee, shall be in strict compliance with all federal, state and local laws and regulations.

B. The Franchisee shall refuse to collect Solid Waste from a customer if the Franchisee believes that such Solid Waste contains Special Waste, Infectious Waste, Hazardous Waste, Biohazardous Waste and Biological Waste for collection.

SECTION 21. MODIFICATIONS TO LEVEL OF SERVICE. The Town may modify the level of collection services provided under the Franchise if it is determined to be in the best interest of the Town or to comply to changes in laws and regulations. The Town and the Franchisee agree to negotiate any impacts of such modifications in good faith, and shall reduce same to writing and shall execute same as amendments to this Franchise Agreement.

SECTION 22. MODIFICATIONS TO SCOPE OF SERVICE. The Town may modify the scope of the Franchise to include collection services not originally included in the scope of services as specified in Section 9 of this Franchise. The Town and Franchisee agree to negotiate any impact of such modification of the scope of services in good faith, and shall reduce same to writing and shall execute same as amendments to this Franchise Agreement.

SECTION 23. COOPERATION/COORDINATION. The Town and its authorized representatives shall be permitted access at every reasonable facility for the inspection of all work, equipment and facilities of Franchisee. The Franchisee shall cooperate with the authorized representative of the Town in every reasonable way in order to facilitate the progress of the work contemplated under this Franchise.

SECTION 24. CONSUMER COMPLAINTS. The Franchisee shall maintain a register on all accounts and indicate the disposition of each complaint. Such record shall be available for Town inspection at all times during business hours and shall indicate the day and hour on which the complaint was received and the day and hour on which it was resolved. Legitimacy of the challenged complaints shall be determined on the basis of joint inspection by the Town Manager, or designee, and representative of the Franchisee. Disputes shall be referred to the Town Manager and his decision shall be final.

SECTION 25. STORMS AND OTHER EMERGENCIES. In case of a storm or other emergency, the Town Manager, or designee, may grant the Franchisee reasonable variance from regular schedules and routes. As soon as practicable after such storm, the Franchisee shall advise the Town Manager and the customer of the estimated time required before regular schedules and routes can be resumed. In the case of a storm where it is necessary for the Franchisee to acquire additional equipment and to hire extra crews to clean the service area of debris and refuse resulting from the storm, the Franchisee shall work with the Town as practicable for the efficient cleanup of the service area. The Franchisee shall receive extra compensation above the Franchise Agreement for additional men, overtime, and cost of rental equipment, provided he has first secured prior written authorization from the Town Manager, or designee. The total cost for such service shall be based on rates jointly agreed to in advance by the Town and the Franchisee. In the event of such storm or other

emergency, the Town reserves the right to assign route or pick-up priorities as deemed necessary by the Town Manager.

SECTION 26. FRANCHISEE'S REPRESENTATIVES. The Franchisee shall assign a qualified person or persons to be in charge of the operations within the service area, and he/she shall be responsible to the Town Manager and be accessible at reasonable times of call. The Franchisee shall give the names and day and night telephone numbers of these persons to the Town. Supervisory personnel must be present on the routes to direct operations in a satisfactory manner. Said supervisors must be available for consultation with the Town Manager and customers within a reasonable, practicable time after notification of a request for such consultation. The supervisors shall operate a vehicle which is radio equipped.

SECTION 27. CONDUCT OF FRANCHISEE'S EMPLOYEES. The Franchisee shall ensure that its employees serve the public in a courteous, helpful and impartial manner. Franchisee's collection employees will be required to follow the regular walk for pedestrians while on private property. No trespassing by employees will be permitted, nor crossing property of neighboring premises unless residents or owners of both such properties shall have given permission. Care shall be taken to prevent damage to property including cans, carts, racks, trees, shrubs, flowers and other plants. The Franchisee shall also be responsible for complying to the following terms and conditions:

A. Each vehicle operator shall at all times carry a valid driver's license for the type of vehicle that is being driven.

B. The Franchisee shall provide operating and safety training for all personnel.

C. The Franchisee's solid waste collection employees shall wear a uniform or shirt bearing the company's name.

SECTION 28. COMPLIANCE WITH STATE, FEDERAL AND MUNICIPAL LAW.

The Franchisee shall comply with all applicable Municipal, County, State and Federal laws relating to wages, hours, and all other applicable laws relating to the employment or protection of its employees, now or hereafter in effect.

SECTION 29. STANDARDS OF PERFORMANCE. If the Franchisee fails to perform as herein specified for a period in excess of fifteen (15) consecutive scheduled working days or fails to operate the system in a satisfactory manner after written notice, or a similar period, the Town may proceed as necessary to continue the performance itself until such matter is resolved and the Franchisee is again able to carry out its operation under this exclusive franchise. Any and all operating expenses incurred by the Town in so doing may be charged to the Franchisee.

SECTION 30. DEFAULT AND DISPUTE OF THE AGREEMENT. It shall be the duty of the Town Manager to observe closely the agreed upon refuse collection and disposal services and if, in the opinion of the Town Manager, there has been a breach of the Franchise where any of the following events occur:

A. The Franchisee takes the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking re-adjustment of its indebtedness under the federal United States, or any state thereof, or consent to the appointment of a receiver trustee, or liquidator of all, or substantially all, of its property; or,

B. By order or decree of a court, the Franchisee shall be adjudged bankrupt, or an order shall be made approving a petition filed by any of its creditors or by any of the Stockholders of the Franchisee seeking its reorganization or the readjustment of its indebtedness under federal bankruptcy laws or under any law or statute of the United States or of any state thereof; provided that, if any such judgment is stayed or vacated within sixty (60) days after the entry thereof, any notice of cancellation shall be and become null, void, and of no effect; or,

C. By or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or government bond, agency, or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of the Franchisee and such possession of control shall continue in effect for a period of sixty (60) days; or,

D. The Franchisee shall voluntarily abandon, desert, or discontinue its operation hereunder granted, for a period in excess of fifteen (15) consecutive scheduled working days, then such shall be considered a material breach of this Franchise and the Town Manager shall notify the Franchisee in writing of the breach.

SECTION 31. PERMITS AND LICENSES. The Franchisee shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.

SECTION 32. TITLE TO MATERIALS. The Town reserves the right at all times to hold title and ownership to all waste collected by the Franchisee.

SECTION 33. MODIFICATION. The terms and conditions of this Franchise may be modified from time to time by mutual agreement of the parties as evidenced by a written agreement duly executed by the parties hereto or their representatives. No modification or amendment of this Franchise shall be valid and effective unless evidenced by the required agreement in writing.

SECTION 34. NONDISCRIMINATION PROVISION. The Franchisee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Franchisee and the provision of services. The Franchisee agrees that on written request it will permit reasonable access by Town to its records of employment, employment advertisements, application forms, and other pertinent data and records for purposes of investigation to ascertain compliance with the nondiscrimination provisions of this franchise, provided, however, that the Franchisee 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 the franchise.

SECTION 35. SAVINGS CLAUSE. If any section, subsection, sentence, clause, phrase,

word 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 the Town finds that the invalidated provision is essential to the franchise as a whole, the Town may terminate said franchise.

SECTION 36. PUBLIC SERVICE PROJECTS. Waste Management will provide dumpster service for the Town Hall (4yd dumpster serviced 2x per week) as well as roll off containers for spring and fall community cleanups (up to 3 – 20 yard containers emptied 2 times each) at no cost to the Town. Waste Management will provide the Town with one single-stream recycling container for capturing recyclables from patrons utilizing the Town's Sea Way Boat Launch. The recycling container shall be placed within Town limits and is to be serviced free of charge and on an as-needed, on-call basis.

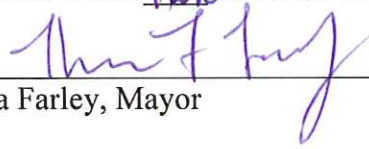
SECTION 37. VENUE. The parties intend that this Franchise Agreement and the relationship of the parties shall be governed by the laws of the State of Florida. The venue for any action arising out of this Franchise Agreement shall be exclusively in Okaloosa County, Florida and nowhere else.

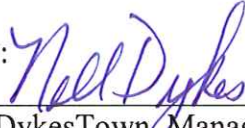
SECTION 38. SOVEREIGN IMMUNITY. Nothing contained herein is intended to nor shall be construed to waive the Town of Cinco Bayou's rights and immunities under the Florida Constitution, common law or Section 768.28, Florida Statutes as amended from time to time.

SECTION 39. CONFLICTING ORDINANCES AND RESOLUTIONS. All ordinances or parts of ordinances and all resolutions in conflict herewith be and the same are hereby repealed.

SECTION 40. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption by the Town Council of the Town of Cinco Bayou, Florida, and the signature of the Mayor, and upon filing of Franchisee's written acceptance with the Town Clerk.

ADOPTED THIS 10~~th~~ DAY OF AUGUST, 2011.

By: 
Theresa Farley, Mayor

ATTEST:
By: 
Nell Dykes Town, Manager/Clerk

The form and legal sufficiency of the foregoing has been reviewed and approved by the Town Attorney


C. Jeffrey McClunis, Town Attorney



APPROVAL AND ACCEPTANCE

WASTE MANAGEMENT, INC., OF FLORIDA does hereby approve and accept the foregoing solid waste collection and disposal franchise and, as Franchisee, agrees to perform, assume and comply with all of the terms, conditions, covenants and obligations of said Franchise and authorizes the undersigned officer to execute this Approval and Acceptance.

Dated this 7 day of September 2011.

WASTE MANAGEMENT, INC., OF FLORIDA

By: 
Name: R. D. McConell
Title: Area Vice President