

ORDINANCE NO. 27663

An ordinance granting a franchise to S. Benitez Enterprises, Inc., a Texas corporation, pursuant to Chapter XIV of the Dallas City Charter and Chapter 18 of Article IV of the Dallas City Code, to own, operate and maintain a solid waste collection service within the City of Dallas; providing for its terms and conditions; providing for liquidated damages for failure to adhere to the terms and conditions in the franchise ordinance; providing for payment of a franchise fee; providing for the payment of the publication fee; providing for the filing of an acceptance by Franchisee; and providing an effective date.

WHEREAS, safe and responsible solid waste collection, transport, and processing is necessary for the protection of the public health and a compelling governmental interest;

WHEREAS, solid waste haulers often use heavy equipment which contribute substantially to damage and wear and tear of the public ways, necessitating expenditures of City of Dallas resources for the maintenance and repair of those public ways, for which the City of Dallas is entitled to reasonable compensation and reimbursement;

WHEREAS, the franchise and regulation of solid waste collection, transport, and processing is necessary and furthers a compelling public interest;

WHEREAS, the City of Dallas is authorized to grant one or more non-exclusive franchises for the provision of solid waste collection service to premises within the City of Dallas; and

WHEREAS, the city council of the City of Dallas is of the opinion that the granting of the franchise on the terms and conditions set forth in this ordinance is in the public interest and in the interest of the City of Dallas and its residents. Now, Therefore,

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

SECTION 1. Preamble. That the declarations contained in the preambles to this ordinance are material and are hereby repeated and incorporated herein as a part of this ordinance as though they were fully set forth in this Section 1.

SECTION 2. Definitions. That for the purpose of this ordinance the following terms, phrases, words and their derivations shall have the meaning given in this ordinance. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; words in the singular number include the plural number; and the use of any gender shall be applicable to all genders whenever the tense requires. The word "shall" is mandatory and not merely directory. The word "may" is not mandatory and is merely permissive. Words defined elsewhere in this ordinance shall be accorded that meaning throughout this ordinance. Words not defined shall be given their common and ordinary meaning.

(a) AFFILIATE and AFFILIATED means any entity controlling, controlled by, or under common control with the franchisee.

(b) AUTHORIZED AREA means the entire area from time to time within the corporate limits of the City of Dallas.

(c) CITY means the City of Dallas, a municipal corporation, a political subdivision of the State of Texas.

(d) CITY CHARTER means the city's organic law, equivalent to a constitution, which defines the city's existence and prescribes the powers, duties, and organization of the city's governmental structure.

(e) CITY CODE means the ordinances of the city codified into the Dallas City Code, The Revised Code of Civil and Criminal Ordinances of the City of Dallas, Texas (1960 Edition, 1997 Printing), as amended from time to time.

(f) CITY MANAGER means the city manager or the city manager's designated assistant or representative.

(g) CONTROL (and its variants) means actual working control, by whatever means exercised. Without limiting the generality of the foregoing, for the purposes hereof, a change in control shall be deemed to have occurred at any point in time when there is: (i) a change in working or effective voting control, in whatever manner effectuated, of franchisee; (ii) an agreement of the holders of voting stock or rights of franchisee which effectively vests or assigns policy decision-making in any person or entity other than franchisee; or (iii) a sale, assignment or transfer of any shares or interest in franchisee which results in a change in the control of franchisee.

(h) COUNCIL means the governing body of city. This section does not authorize delegation of any decision or function that is required by the city charter or state law to be made by the council. In any case in which a hearing is held pursuant to this ordinance, the council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

Unless otherwise stated in this ordinance or prohibited by the city charter or state law, the council may delegate to the city manager or the director the exercise of any and all of the powers conferred upon city by its charter or by general law relating to the administration and

enforcement of this ordinance and to franchisee's exercise of the rights and privileges conferred in this ordinance.

(i) DIRECTOR means the director of the department of sanitation services, or the director's designated representative.

(j) FRANCHISE means the grant of the non-exclusive permission and privilege to use public ways under this ordinance, and all of the incidental rights and obligations as described by this ordinance.

(k) FRANCHISEE means S. Benitez Enterprises, Inc., a Texas corporation, the grantee of rights under this ordinance; or the successor, transferee, or assignee of this ordinance.

(l) PUBLIC WAYS means all dedicated rights-of-way, streets, highways, and alleys for use by the general public and easements dedicated for the benefit of all utilities. Public ways does not include property of city which is not a dedicated public way, street, highway, or alley or available for use by the general public or easements not dedicated for the benefit of all utilities.

(M) SOLID WASTE COLLECTION SERVICE means the term as defined in Section 18-29(5) of the Dallas City Code.

(n) THIS ORDINANCE means this document.

SECTION 3. Granting of franchise. That subject to all the terms and conditions contained in this ordinance, the Texas Constitution, the city charter, the city code, other city ordinances as from time to time may be in effect, and applicable federal law, city hereby grants franchisee non-exclusive permission and privilege solely for the purpose of operating and maintaining a solid waste collection service in, over, along and across the public ways in the authorized area. This grant is subject to the following additional conditions:

(a) Franchisee purpose. Franchisee accepts the grant set forth above and agrees to operate and maintain the solid waste collection service in the authorized area in accordance with the terms and provisions of this ordinance.

(b) Other services. By granting this ordinance, city is not authorizing any non-solid waste collection service to be provided and does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered by franchisee which are not solid waste collection services. Franchisee shall immediately notify city if it provides any non-solid waste collection services within the authorized area.

(c) No priority. This ordinance does not establish any priority for the use of the public ways by franchisee or by any present or future recipients of franchise agreements, franchisees, permit holders, or other users of the public ways. In the event of any dispute as to the priority of use of the public ways, the first priority shall be to the public generally, the second priority to city, the third priority to the State of Texas and its political subdivisions in the performance of their various functions, and thereafter, as between recipients of franchise agreements, franchisees and other state or local permit holders, as determined by the city manager in the exercise of the city's powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

(d) City's use of public ways. Franchisee acknowledges that by this ordinance it obtains no rights to use or further use of the public ways other than those expressly granted in this ordinance. Franchisee acknowledges and accepts at its own risk, provided that city has the legal authority for the use or uses in question, that city may make use in the future of the public ways in which the solid waste collection service is located in a manner inconsistent with franchisee's use of such public ways for the solid waste collection service, and in that event

franchisee shall not be entitled to compensation from city unless compensation is available to all users of the public ways which are affected in a similar manner and are similarly situated in relevant respects with the franchisee.

(e) Emergencies. City may temporarily suspend the operation of the solid waste collection service of franchisee in the event of a public emergency or calamity as determined by city. In such event, neither city nor any agent, contractor, or employee of city shall be liable to franchisee or its customers or third parties for any damages caused them or the solid waste collection system. Where reasonably possible, prior notice shall be given to franchisee. In any event, notice of such action shall be given to franchisee after such action is taken.

(g) Compliance with law and standards of operation. Franchisee shall be subject to and comply with all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future.

(h) Other approvals and authorizations. This ordinance does not relieve and franchisee shall comply with any obligation to obtain permits, licenses and other approvals from city or other units of government, which are required for the operation and maintenance of the solid waste collection service.

(i) City's right of eminent domain reserved. Nothing in this ordinance shall limit any right city may have to acquire by eminent domain any property of franchisee.

(j) Taxes, fees and other assessments. Nothing in this ordinance shall be construed to limit the authority of city to impose a tax, fee, or other assessment of any kind on any person. Franchisee shall pay all fees necessary to obtain and maintain all applicable federal, state, and

local licenses, permits, and authorizations required for the construction, installation, upgrading, maintenance, or operation of its solid waste collection service.

(k) Disputes among public ways users. Franchisee shall respect the rights and property of city and other authorized users of the public ways. Disputes between franchisee and other similar franchisees over use of public ways shall be submitted to the director for resolution; provided, however, that franchisee reserves its rights to submit such disputes directly to a court of competent jurisdiction.

SECTION 4. Service requirements.

(a) It is expressly understood and agreed that franchisee may collect, transport, and deliver for disposal all solid waste within the authorized area where the individuals or companies contract with franchisee for those services, excluding residential service (other than apartment complexes and motels). Franchisee shall, at its own expense, furnish personnel and equipment to collect, transport, and deliver solid waste and shall establish and maintain the contracted solid waste collection service in an efficient and businesslike manner.

(b) All vehicles used by franchisee for the collection and transportation of solid waste shall display a decal issued by the director in or upon a conspicuous place on the vehicle, in accordance with the applicable requirements of the city code. All vehicles shall be covered at all times while loaded and in transit to prevent the spillage of solid waste onto the public ways or properties adjacent to the public ways. Any spillage will be promptly recovered by franchisee. All vehicles owned by franchisee shall be clearly marked with franchisee's name in letters not less than four inches in height. All vehicles shall be cleaned and maintained by franchisee so as to be in good repair, of good appearance and, when idle, free of solid waste residue as may cause odor, provide a breeding place for vectors, or otherwise create a nuisance. In addition, franchisee

shall comply with the requirements for solid waste collection vehicles contained in Section 18-45 of the Dallas City Code.

(c) Franchisee expressly agrees to assume liability and responsibility for all costs of repair to the public ways and other facilities that are damaged as a result of the negligence of franchisee, its officers, agents, or employees, during franchisee's operations pursuant to this ordinance.

(d) Franchisee will comply with all rules, regulations, laws and ordinances pertaining to the disposal of solid waste as directed by responsible governmental agencies having jurisdiction. Disposal of all solid waste collected by franchisee from premises within the authorized area must be made at an authorized solid waste disposal, collection, or processing facility.

SECTION 5. Indemnity and insurance.

(a) **INDEMNIFICATION OF CITY.** FRANCHISEE SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS OFFICERS, BOARDS, COMMISSIONS, EMPLOYEES, AGENTS, ATTORNEYS, AND CONTRACTORS (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST:

(1) ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY FRANCHISEE'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS FRANCHISE, OR BY ANY NEGLIGENT OR STRICTLY

LIABLE ACT OR OMISSION OF FRANCHISEE, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, IN THE OPERATION OR MAINTENANCE OF THE SOLID WASTE COLLECTION SERVICE, OR IN THE DISPOSAL, HANDLING, OR TRANSFER OF ANY SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE; FRANCHISEE'S OBLIGATION TO DEFEND AND INDEMNIFY INDEMNITEES UNDER THIS SUBPARAGRAPH SHALL EXTEND TO CLAIMS, LOSSES, AND OTHER MATTERS COVERED UNDER THIS SUBPARAGRAPH THAT ARE CONTRIBUTED TO BY THE NEGLIGENCE OF ONE OR MORE INDEMNITEES, PROVIDED, HOWEVER, THAT INDEMNITY WILL BE REDUCED BY THE PROPORTIONATE AMOUNT THROUGH WHICH THE INDEMNITEE CONTRIBUTED TO THE LIABILITY, AS PROVIDED UNDER TEXAS LAW, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF EITHER FRANCHISEE OR CITY UNDER TEXAS LAW; THE ABOVE INDEMNIFICATION SHALL NOT, HOWEVER, APPLY TO ANY JUDGMENT OF LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY; AND

(2) ANY AND ALL LIABILITY, OBLIGATION, DAMAGES, FINES, PENALTIES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, LIENS, AND LOSSES, WHICH MAY BE IMPOSED UPON OR ASSERTED AGAINST THE INDEMNITEES BECAUSE OF ANY VIOLATION OF ANY STATE OR FEDERAL LAW OR REGULATION GOVERNING THE SOLID WASTE COLLECTION SERVICE OR RELATED TO THE COLLECTION, DISPOSAL, TRANSFER, OR HANDLING BY

FRANCHISEE, ITS OFFICERS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS, OF SOLID WASTE COLLECTED THROUGH THE SOLID WASTE COLLECTION SERVICE REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, FAULT, OR OTHER WRONGFUL CONDUCT OF THE INDEMNITEES CONTRIBUTED TO ANY VIOLATION; AND FRANCHISEE SHALL PAY ALL JUDGMENTS, WITH COSTS, ATTORNEY'S FEES, AND EXPENSES AWARDED IN SUCH JUDGMENT WHICH MAY BE OBTAINED AGAINST CITY RELATED TO ANY SUCH CLAIM. UPON THE WRITTEN REQUEST OF CITY, FRANCHISEE SHALL IMMEDIATELY, AT ITS SOLE COST AND EXPENSE, CAUSE ANY LIEN COVERING CITY'S PROPERTY AS DESCRIBED IN THIS SUBPARAGRAPH TO BE DISCHARGED OR BONDED.

(3) THIS SUBSECTION SHALL NOT BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY FROM SUIT OR LIABILITY AVAILABLE TO CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS SUBSECTION ARE SOLELY FOR THE BENEFIT OF CITY AND FRANCHISEE AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

(b) Franchisee's assumption of risk. Franchisee undertakes and assumes for its officers, employees, agents, contractors, and subcontractors (collectively "Franchisee" for the purpose of this subsection), all risk of dangerous conditions, if any, on or about any city-owned or controlled property, including the public ways, **AND FRANCHISEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST AND FROM ANY CLAIM ASSERTED OR LIABILITY IMPOSED UPON THE INDEMNITEES FOR PERSONAL INJURY OR PROPERTY DAMAGE TO ANY**

PERSON (OTHER THAN FROM AN INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT) ARISING OUT OF FRANCHISEE'S OPERATION, MAINTENANCE, OR CONDITION OF THE SOLID WASTE COLLECTION SERVICE OR FRANCHISEE'S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

(c) Defense of city. In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, franchisee shall, upon notice from any of the indemnitees, at franchisee's sole cost and expense, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants, and the associated costs of document production), resist and defend the same with legal counsel selected by franchisee and consented to by city, such consent not to be unreasonably withheld; provided, however, that franchisee shall not admit liability in any such matter on behalf of the indemnitees without city's written consent and provided further that the indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of franchisee and execution of any settlement agreement on behalf of the city by the city attorney, and further provided that for the search, review, and production of documents, the city attorney may elect to handle some or all of the process in-house at the expense of the franchisee.

(d) Expenses. The indemnitees shall give franchisee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5. Nothing herein shall be deemed to prevent the indemnitees from participating in the defense of any litigation by their own counsel at their own expense. Franchisee shall pay all expenses incurred by the indemnitees in participating in the defense,

provided that the participation has been requested or required by franchisee in conducting the defense. These expenses may include out-of-pocket expenses reasonably and necessarily incurred, such as attorney fees and the reasonable value of any services rendered by city's counsel and the actual expenses of the indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by the indemnitees in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided the Indemnites by franchisee.

(e) Insurance required. Not later than the effective date of this ordinance, franchisee shall procure, pay for, and maintain insurance coverage in at least the minimum amounts and coverages described in Exhibit A, attached to and made a part of this ordinance. The insurance shall be written by companies approved by the State of Texas and acceptable to city. The insurance shall be evidenced by the delivery to city of policies of insurance, including all endorsements executed by the insurer or its authorized agent stating coverages, limits, exclusions, deductibles, and expiration dates, which demonstrate compliance with all applicable provisions of the insurance laws and rules in the State of Texas. **THIS ORDINANCE SHALL NOT TAKE EFFECT UNTIL THE INSURANCE POLICY HAS BEEN DELIVERED TO CITY AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.** If satisfactory evidence of the required insurance is not submitted within 30 days after the date the council approves this ordinance, then this ordinance shall be considered null and void and shall have no force or effect.

(f) Changes in insurance coverage. Franchisee shall provide the city with true and complete copies of all changes to insurance policies, including any cancellation, coverage change, or termination notice, or any replacement insurance, before these changes become

effective. The director may prevent franchisee from operating a solid waste collection service under this franchise until satisfactory evidence of insurance coverage required under this section is presented to the director.

(g) Adjustments to insurance requirements. City reserves the right to review the insurance requirements stated in Exhibit A during the effective period of this ordinance and to recommend to the council reasonable adjustments in the insurance requirements contained in the city code prior to the anniversary renewal of the insurance when deemed necessary and prudent by city's Risk Management Division of the Human Resources Department. Any adjustments shall be mutually agreeable to city and franchisee, and based upon changes in statutory law, court decisions, or the claims history of the industry as well as franchisee. When any insurance coverage limit changes are agreed, franchisee shall pay any resulting increase in cost due to the changes.

(g) Liability of franchisee. Approval, disapproval, or failure to act by city regarding any insurance supplied or not supplied by franchisee shall not relieve franchisee of full responsibility or liability for damages and accidents as set forth in this ordinance. The bankruptcy, insolvency, or denial of liability by any insurer of franchisee shall not exonerate franchisee from the liability obligations of franchisee provided for under this ordinance.

SECTION 6. Fees, payments and compensation.

(a) Compensation required. Because the special use of the public ways by franchisee and the special business purpose for which the public ways are being used requires rental compensation for the rights and privileges granted under this ordinance, franchisee shall pay city throughout the term of this ordinance a fee in an amount equal to four percent of franchisee's gross receipts, calculated monthly and payable based on the gross receipts realized during the

calendar month immediately preceding the calendar month in which the payment is due (hereinafter called the “franchise fee”).

(b) Payment procedures. Franchisee shall pay the franchise fee to city each month during the term of this ordinance. The monthly payment required by this ordinance shall be due and payable by certified check, electronic funds transfer, or other means that provide immediately available funds on the day the payment is due not later than 3:00 p.m. of the thirtieth (30th) calendar day following the end of each calendar month. If the thirtieth (30th) calendar day following the end of a calendar month falls on a Saturday, Sunday, or official city holiday, then the payment is due on the business day prior to the due date. Subject to applicable law, the compensation set forth in this Section 6 shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any monthly payment or partial payment is received by the city later than 10 days after the due date, franchisee shall pay interest on the past due amount at the rate prescribed in Section 2-1.1 of the Dallas City Code. Payment shall be accompanied by a monthly report certified by an officer of franchisee showing the total gross receipts of the preceding calendar month. The monthly report shall also include a detailed breakdown of gross receipts and the computation of the payment amount.

(c) Annual report. Franchisee shall file with city by February 1 of each calendar year an annual report showing the total gross receipts of the preceding calendar year along with the information required under Section 18-41 of the Dallas City Code. Such annual report shall include a detailed breakdown of gross receipts and the computation of the payment amount.

(d) City audit. City may audit franchisee (or any affiliate of franchisee who has information directly pertaining to gross receipts) as often as is reasonably necessary to verify the

accuracy of the franchise fees paid to city. All books, records, accounts, or other documents in paper or electronic form, necessary for the audit shall be made available by franchisee at a single location in the Dallas-Fort Worth metropolitan area. Any net undisputed amount due to city, plus interest at the rate of 10 percent per annum, compounded monthly, calculated from the date each portion of the underpayment was originally due until the date franchisee remits the underpayment to the city, shall be paid by franchisee within 45 days after city's submitting an invoice for the underpayment to franchisee with reasonable detail supporting the amount claimed. If the amount of the underpayment exceeds five percent of the total franchise fee owed for the audit period, franchisee shall pay city's audit costs as well. City's right to audit and franchisee's obligation to retain records related to the franchise fee shall be limited to the previous two calendar years preceding the date that written notice of intent to audit is served.

SECTION 7. Term; performance evaluation.

(a) Term and extensions. The term of this ordinance shall be twenty (20) years from the effective date of this ordinance plus any extensions mutually agreed to by city and franchisee; provided that the term, including extensions, shall not be longer than 40 years.

(b) Franchisee rights upon termination. Subject to applicable law, this ordinance and all rights, permissions, and privileges of franchisee under this ordinance shall automatically terminate on the expiration of the term of this ordinance, unless extended by mutual agreement, court order, or applicable law.

(c) Performance evaluation. In order to: (i) assure that franchisee is complying with the terms of this ordinance, as it may be from time to time amended, and (ii) promote a sharing of information between city and franchisee, city may schedule a performance evaluation no more

often than every five years during the term of this ordinance, subject to Subsection (d) of this section, in accordance with the following process:

(1) At least 90 days prior to each performance evaluation, city shall notify franchisee of the date, time and location of the evaluation. Such notice shall include specification of any additional information to be provided by franchisee pursuant to Subsection (c)(2)(D) below. Unless specifically waived by the council, attendance of franchisee's duly authorized representative at these meetings is mandatory.

(2) Within 60 days from receipt of notification, franchisee shall file a report with city that is sworn to by a representative of franchisee knowledgeable of the operations of franchisee within the authorized area, in reasonable detail, specifically addressing, at a minimum, the following areas:

(A) compliance of franchisee's vehicles with solid waste and air quality requirements;

(B) customer service, including but not limited to a listing of customer complaints and their resolution;

(C) history in regard to prompt and accurate payment of franchise fees;

(D) any other topic deemed material or relevant by city for its enforcement of this ordinance.

(3) All reports to be prepared under this subsection and submitted by franchisee shall be based upon information for at least the most recent five-year period, inclusive of the most current quarter available. No report under this subsection shall be based upon data that ends more than six months before the time of the performance evaluation.

(4) Following receipt of the report, but not less than 30 days prior to the performance evaluation, city may request additional information, clarification or detailed documentation concerning those topics identified for inclusion in the performance evaluation. Franchisee shall make reasonable effort to provide such additional information to city prior to the meeting. In the event that the information cannot be made available prior to the performance evaluation, franchisee shall notify city in writing explaining the reasons for any delay. The city may authorize a delay of the performance evaluation for a reasonable time to allow franchisee to submit the additional documentation.

(5) The council shall hear any interested persons during such performance evaluation. Franchisee shall be entitled to all the rights of due process consistent with city proceedings, including but not limited to, the right to be heard, the right to present evidence, and the right to ask questions of witnesses.

(6) Upon request of city, franchisee shall assist city in notifying customers of the evaluation session. The actual costs associated with the notification, in an amount not to exceed \$1,000.00, shall be borne by franchisee.

(d) Additional performance evaluations. Notwithstanding Subsection (c), the council may initiate and conduct such additional performance evaluations regarding franchisee's performance under this ordinance as the council, in its sole discretion, may deem justified or necessary under the circumstances. Franchisee shall be given reasonable notice of the date, time, and location of any such additional performance evaluations.

SECTION 8. Transfers of ownership and control.

(a) Franchisee ownership, management and operation.

(1) Only franchisee and its affiliates, if any, shall operate, manage, and maintain the solid waste collection service. Franchisee shall not otherwise directly or indirectly transfer or assign, in whole or in part, the operation, management, ownership, or maintenance of the solid waste collection service without the prior written consent of the council as provided in Subsections 8(b) and 8(c) below.

(2) This section shall not apply to franchisee's employment contracts and other personnel decisions, nor shall it prohibit franchisee from contracting for or subcontracting, in whole or in part, any operational, management or maintenance functions in connection with the solid waste collection service, so long as franchisee does not relinquish its decision making authority over, or its responsibilities under, this ordinance for any particular function; nor shall it prohibit franchisee from complying with this ordinance or other requirements of federal, state, or local laws and regulations.

(3) Franchisee shall provide the director written notice, within five calendar days after its occurrence, of any change in the corporate or business structure, change in the chief executive or the top executive structure, change in the board of directors, or other change in the corporate or business method of governance of franchisee, regardless of whether or not it results in a transfer or assignment of the franchise or a transfer of control or ownership of franchisee.

(b) Transfer and assignment procedures. This ordinance or the solid waste collection service shall not be transferred or assigned, by operation of law or otherwise, nor shall title to franchisee's rights and obligations under this ordinance or to the solid waste collection service pass to or vest in any person, other than for mortgaging or financing of solid waste collection operations or to an affiliate of franchisee under the conditions described below, without the prior

written consent of the council. This ordinance shall not be leased or subleased without the prior written consent of the council. The procedures related to transfer or assignment are as follows:

(1) The council's written consent shall not be required for a transfer solely for security purposes (such as the grant of a mortgage or security interest), but shall be required for any realization on the security by the recipient, such as a foreclosure on a mortgage or security interest. The director shall be advised in writing of a transfer solely for security purposes at least 60 days before such transfer occurs.

(2) Franchisee may, without additional approval by the council, transfer or assign this ordinance to an affiliate provided that the affiliate: (i) assumes all of franchisee's obligations and liabilities under this ordinance occurring both before and after the transfer or assignment; (ii) agrees to comply with all provisions of this ordinance; and (iii) has the legal, technical and financial ability to properly perform and discharge such obligations and liabilities, which abilities are each at least as great as those of franchisee. The director shall be advised in writing of such transfer and of the affiliate's qualifications at least 60 days before such transfer occurs. The city shall be reimbursed any reasonable, documented costs it incurs in connection with such transfer, including the expenses of any investigation or litigation respecting a proposed or consummated transfer, up to a maximum of \$10,000.00.

(c) Transfer of control. There shall be no transfer of or acquisition of control of franchisee without the prior written consent of the council.

(d) Schedule of ownership. Franchisee represents and warrants that its current ownership is as set forth on Exhibit C, attached to and made a part of this ordinance, and that it has full legal and equitable title to the solid waste collection service as of the effective date of this ordinance.

(e) Applications for consent/procedure/restrictions. If franchisee seeks to obtain the consent of the council to any transactions or matters described in this section, franchisee shall submit an application for such consent to the city and shall submit or cause to be submitted to the city such additional documents and information as the director may request that are reasonably related to the transaction, including the purchase price of the solid waste collection service, and the legal, financial, and technical qualifications of the proposed transferee or new controlling entity.

(1) The council shall have 120 days from the date of submission of a complete and accurate application to act upon the application for consent. If the council fails to act upon such application for consent within 120 days, such application shall be deemed as consented to unless city and franchisee otherwise agree to an extension of time.

(2) The council shall not unreasonably withhold its consent to any proposed transaction. The council may: (i) grant its consent outright, (ii) grant such consent with conditions, which conditions it finds are necessary to ensure performance of franchisee or its successor under this Ordinance, or (iii) deny consent.

(3) Nothing in any approval by the city under this section shall be construed to waive or release any rights of city in and to the public ways, public places of city or property owned by city.

(4) Nothing in any approval by city under this section shall be construed as a waiver or release of any of city's police powers, or as an exercise of eminent domain.

(5) City's granting of consent in any one instance shall not require it to grant consent in other instances.

(6) Franchisee shall reimburse city for the incidental costs incurred by city in considering any request of franchisee under this section. Such reimbursement shall not exceed \$10,000.00, shall be supported by invoices, and shall not include any costs or expenses incurred by city in defending any denial of the request; provided, however, that city does not waive its right to request that its attorney's fees and other costs be reimbursed by court order in any litigation related to denial of a request under this section.

(f) City approval requirements. Before any transfer, assignment, sale, foreclosure, or other change of control described under this section becomes effective and before the council shall consider giving its consent, the proposed transferee, assignee, purchaser, buyer, foreclosing party, or other person or entity seeking to obtain the rights and obligations under this ordinance through a change of control shall provide the director: (i) an agreement and acceptance in writing to comply with all terms of this ordinance, as amended; (ii) all evidence of insurance required under this ordinance, as amended; (iii) the legal name and address of the transferee, and all persons sharing control of the transferee, with a full description of their experience in the solid waste disposal industry, as well as the name and address of the person to be contacted for notices; (iv) payment of outstanding franchise fees and any other fees, taxes, and payments, including fees, interest, and penalties, due from franchisee to the city; and (iv) evidence satisfactory to the director that transferee has the legal, technical, and financial ability to properly perform and discharge all obligations and liabilities of this ordinance.

(g) Transfer of control requirements. In the event of a transfer of control, before such transfer becomes effective and before the council shall consider giving its consent, the proposed transferee shall agree in writing to not take any action that will keep franchisee from complying with this ordinance.

SECTION 9. Defaults.

(a) Events of default. The occurrence of any one or more of the following events at any time during the term of this ordinance shall constitute an event of default by franchisee under this ordinance:

(1) The failure or refusal by franchisee to pay the franchise fee when due as prescribed by this ordinance, or any failure to perform on any agreed or court-mandated extension or modification of such payment obligation.

(2) Franchisee's material violation of or failure to comply with any provision or condition of Article IV of Chapter 18 of the Dallas City Code relating to solid waste collection service franchisees or any other applicable provision or condition of the city code.

(3) Franchisee's material violation of or failure to comply with any of the other terms, covenants, representations, or warranties contained in this ordinance, or franchisee's failure or refusal to perform any obligation contained in this ordinance.

(4) Franchisee's failure or refusal to pay or cause to be paid any of city's governmentally-imposed taxes of any kind whatsoever, including but not limited to real estate taxes, sales taxes, and personal property taxes on or before the due date for same; provided, however, franchisee shall not be in default under this subsection with respect to the non-payment of taxes which are being disputed in good faith in accordance with applicable law.

(5) The entry of any judgment against franchisee in which another party becomes entitled to possession of substantially all of franchisee's assets of the solid waste collection service, for which change in possession the consent of the council has not been obtained, and such judgment is not stayed pending rehearing or appeal for 45 or more days following entry of the judgment.

(6) The dissolution or termination, as a matter of law, of franchisee without the prior consent or approval of city, which approval, if formally requested, shall not unreasonably be withheld.

(7) Franchisee's filing of a voluntary petition in bankruptcy; being adjudicated insolvent; obtaining an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. §301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of franchisee, or any of franchisee's property or this ordinance or of any and all of the revenues, issues, earnings, profits or income thereof; making an assignment for the benefit of creditors (except secured creditors); or failing to pay franchisee's debts as they become due such that franchisee is unable to meet its obligations under this ordinance.

(8) Franchisee attempts to dispose of any of the facilities or property of its solid waste collection service with the intent of preventing city from purchasing it as provided for in this ordinance.

(9) Franchisee engages in any fraudulent or deceitful conduct with city or its customers.

(10) Franchisee knowingly or intentionally makes a false statement or a misrepresentation as to a material matter in the application for or in the negotiation of this ordinance, or in connection with any report of gross income as required by this ordinance.

(11) Any director, officer, employee, or agent of franchisee is convicted of the offense of bribery or fraud connected with or resulting from the granting, term extension, or renewal of this ordinance.

(12) Franchisee's failure or refusal to comply with or a violation of any applicable local, state, or federal law or regulation.

(b) Default procedures. Upon the occurrence of an event of default which can be cured by the immediate payment of money to city or a third party, franchisee shall have 30 days from written notice of the occurrence of the event of default from the director to cure the default before city may exercise any of the default remedies provided for in Section 10. Upon the occurrence of an event of default by franchisee which cannot be cured by the immediate payment of money to city or a third party, franchisee shall have 60 days from the date of written notice from city to franchisee of the occurrence of the event of default to cure the event of default before city may exercise any of its rights or remedies provided for in Section 10, unless the director, the city manager, or the council authorizes a longer cure period upon a showing of good cause to extend the cure period. If an event of default is not cured within the time period allowed for curing the event of default, as provided above, the event of default becomes, without additional notice, an uncured event of default, which shall entitle city to exercise the remedies provided for in Section 10.

SECTION 10. Remedies.

(a) Default remedies. Upon the occurrence of any uncured event of default as described in Section 9, the director shall report the occurrence of same to the city manager and the council. The council shall be entitled in its sole discretion and upon recommendation of the director and the city manager to exercise any or all of the following cumulative remedies:

(1) Exercise its rights to impose liquidated damages as described in Subsection (e).

(2) Authorize the city attorney to commence an action against franchisee at law or in equity, or both, including an action for monetary damages and specific performance.

(3) Suspend the franchise granted under this ordinance.

(4) Revoke the franchise granted under this ordinance.

(b) Suspension procedure. Upon the occurrence of an uncured event of default, the director may suspend the operation of the solid waste collection service doing business under this ordinance. If the director determines that suspension of the franchise is necessary to cure an event of default, the director shall comply with the procedures established in Section 18-37 of the Dallas City Code.

(c) Revocation procedure. Upon the occurrence of an uncured event of default, the council shall have the right to revoke this ordinance. Upon revocation, the rights, permissions, and privileges comprising the franchise granted under this ordinance shall be automatically deemed null and void and shall have no further force or effect and the provisions that are contractual in nature which are also included as a part of this ordinance are hereby automatically terminated, except that franchisee shall retain the obligation to report gross income and make franchisee fee payments covering the period prior to the effective date of the revocation. Upon revocation, city shall retain any portion of the franchise fee and other fees or payments paid to it, or which are due and payable to it, to the date of the revocation. Notwithstanding the above, prior to any council hearing to formally consider revocation of the franchise granted under this ordinance, the director shall notify franchisee in writing at least 10 days in advance of the council hearing at which the issue of revocation shall be considered and decided. Franchisee shall have the right to appear before the council in person or by legal counsel and raise any

objections or defenses franchisee may have that are relevant to the proposed revocation. In addition, the following procedures shall apply in regard to the revocation hearing:

(1) The council shall hear and consider the issue of revocation, shall hear any person interested in the issue, and shall determine, in its sole discretion, whether or not any violation by franchisee has occurred justifying a revocation of the franchise.

(2) At such hearing, franchisee shall be provided due process, including the right to be heard, to ask questions of witnesses, and to present evidence.

(3) Upon completion of the hearing described above, the council shall render a decision. Within a reasonable time, the director shall transmit a copy of the decision to franchisee. Franchisee shall be bound by the council's decision, unless it appeals the decision to a court of competent jurisdiction within 15 days after the date of the decision. Franchisee reserves the right to challenge both the decision itself and the fairness of the process followed by the city in the proceeding.

(4) The council reserves the right, in its sole discretion, to impose liquidated damages or to pursue other remedies as provided in this Section 10 in lieu of a revocation.

(d) Letter of credit. As security for the faithful performance by franchisee of the provisions of this ordinance and compliance with all orders, permits, and directions of city and the payment of all claims, liens, fees, liquidated damages, and taxes to city, franchisee shall deposit with city, no later than the effective date of this ordinance, an unconditional and irrevocable letter of credit in a penal amount equal to one month's franchise fee payment. The initial value of the letter of credit shall be established on the basis of the monthly franchise fee that would have been paid on the previous calendar year's monthly average gross receipts on a cash basis from any source derived at any location regardless of whether those receipts were

earned entirely within the authorized area. The letter of credit shall be updated annually in January of each calendar year during the term of this ordinance. The value of the annually updated letter of credit will be equal to the average monthly franchise fee payment submitted by franchisee as required in this ordinance during the previous calendar year. The letter of credit must be issued by a federally-chartered or state-chartered financial institution with a principal office or branch located in Dallas County and otherwise acceptable to the council, on terms acceptable to the council and approved by the city attorney. The letter of credit shall expressly provide that partial draws are permitted and that a draft thereon to the order of the city will be honored upon presentation to the issuing financial institution at a principal office or branch located within Dallas County of a letter of demand from city delivered in person or by courier delivery. The letter of demand must be signed by a person purporting to be the city's chief financial officer, city manager, or director. No supporting documents will be required and no other language, other than a demand to pay and a recitation of title, will be required as conditions for permitting the draw. Failure to timely deposit the letter of credit, or the failure to maintain the letter(s) of credit in the full amount required under this subsection and in effect during the entire term of this ordinance, or any renewal or extension of this ordinance, shall constitute a material breach of the terms of this ordinance.

(1) If franchisee fails to make timely payment to city or its designee of any amount due as a result of this ordinance or fails to make timely payment to city of any taxes due; or fails to repay city for damages and costs; or fails to comply with any provision of this ordinance which city reasonably determines can be remedied by an expenditure of monies, city may draw upon the letter of credit an amount sufficient to repay city with interest as set forth in this ordinance, if not otherwise specified by law. If the interest rate is not set forth in this

ordinance or set by federal, state or local law, then the interest rate shall be the prime rate as established in the Wall Street Journal on the day before city sends notice to franchisee of its intent to draw on the letter of credit.

(2) Within three days after a drawing upon the letter of credit, city shall send written notification of the amount, date, and purpose of the drawing to franchisee by certified mail, return receipt requested.

(3) If, at the time of a draw by city, the aggregate amount realized from the letter of credit is insufficient to provide the total payment toward which the draw is directed, the balance of such payment, plus accrued interest, shall constitute an obligation of franchisee to city until paid. If the interest rate is not set forth in this ordinance or set by laws, then interest shall be the prime rate as established in the Wall Street Journal on the day before city sends notice to franchisee of its intent to draw the letter of credit.

(4) No later than 30 days after mailing of notification to franchisee of a draw pursuant to Subsection (d)(2) above, franchisee shall cause the letter of credit to be restored to the full amount required under this ordinance. Failure to timely restore the letter of credit shall constitute a material breach of the terms of this ordinance.

(5) The rights reserved to city with respect to this letter of credit are in addition to all other rights and remedies of city, whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other rights city may have.

(e) Liquidated damages. The parties agree that: (1) the harm or damage caused by any material breach of this franchise, other than the failure to pay franchise fees, is of a kind that is difficult or incapable of estimation; and (2) the amount of liquidated damages stipulated in the

ordinance is a reasonable forecast of just compensation. Therefore, in addition to the other remedies provided for in this Section 10, liquidated damages in the amounts set forth below may be assessed by the council upon franchisee, following the notice and opportunity to cure procedures in Subsection (f) below, for failure or refusal to comply with any material term or condition of this ordinance or for any other uncured event of default. In the event the council determines that franchisee has committed, continued, or permitted a material failure or refusal of compliance or other uncured event of default that has not been cured as provided in this ordinance, franchisee shall pay \$2,000 per day for each day or part of a day that the material failure or refusal or other uncured event of default is committed, continued, or permitted, unless the council at the time of imposition of the civil penalty determines that good cause justifies a lesser penalty, based upon the surrounding circumstances, frequency, number, and seriousness of the material violations or uncured events of default in question and the public interest served by imposing a lesser civil penalty.

(f) Liquidated damages procedure. Liquidated damages may be assessed by the council in accordance with the following procedure:

(1) Following notice from the director, which notice, at the director's election, may be combined with the notice described in Section (9)(b), franchisee shall meet with the director to attempt to resolve any disagreements on whether liquidated damages should be assessed or what liquidated damages should be recommended to the council. If there is no resolution of the issue within 15 days after the mailing of the notice, then the director shall present the director's recommendation regarding liquidated damages to the city manager for review and concurrence. If the city manager concurs in the director's recommendation that liquidated damages should be assessed, the matter shall be presented to the council. The director

27663

shall notify franchisee of the recommendation of the city manager to the council, the time and date of the proposed hearing concerning the issue of liquidated damages, and a statement that franchisee has a right to appear and be heard before the council on the matter. In order to appear before and be heard by the council, franchisee must comply with applicable council procedures which can be obtained from the city secretary.

(2) Upon presentation of the recommendations of the director and the city manager, the council may decide on one or more of the following courses of action:

(A) to authorize the city attorney to proceed against franchisee under Section 10(a)(2);

(B) to assess liquidated damages in the amount provided above for the applicable material violation or uncured event of default. Council may provide for a lesser amount and may suspend all or part of said assessment upon reasonable conditions for any reasonable period, up to the end of the franchise;

(C) to determine that liquidated damages are not justified under the circumstances and assess no damages; or

(D) to remand the matter to the city manager or the director for further investigation, consideration, and recommendation to the council.

(3) Assessment of liquidated damages by the council shall be a monetary obligation of franchisee to city in the amount determined by the council and shall be paid in full by franchisee within 15 business days after the date of assessment by the council.

(4) The procedures stated in this Subsection (f) do not apply to the council's determination to require the payment of money, in lieu of other available remedies, in a revocation proceeding under Subsection (b)(4).

(g) Remedies cumulative. Subject to applicable law, the rights and remedies of city set forth in this Section 10 shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity. If the council determines that a violation by franchisee was franchisee's fault and within its control, the council may pursue any or all of the remedies provided in Section 10. The remedies of city created under this ordinance shall be cumulative to the maximum extent permitted by law. The exercise by city of any one or more remedies under this ordinance shall not preclude the exercise by city, at the same or different times, of any other remedies for the same material uncured event of default. Notwithstanding any provision of this ordinance, however, city shall not recover both liquidated damages and actual damages for the same violation, breach, non-compliance, or material uncured event of default.

(h) Curable violations. Franchisee shall not be found in violation of this ordinance or any other applicable law or regulation, and shall suffer no penalties or damages as a result, if the violation occurs without fault of franchisee or occurs as a result of circumstances beyond its control, and, if curable, is promptly cured. Franchisee shall not be excused by mere economic hardship nor by the negligence or malfeasance of its directors, officers or employees.

(i) City right to purchase. In the event city revokes the franchise granted under this ordinance for cause, terminates the franchise as provided in Subsection (j) below, or denies renewal of the franchise granted under this ordinance, city shall have the right (but not the obligation) subject to the applicable provisions of city charter, directly or as an intermediary, to purchase the assets of the solid waste collection system through its authority under, and procedures applicable to, eminent domain.

(j) Termination in the public interest. Nothing in this section shall be construed as affecting the right of the council under the city charter to terminate this ordinance without cause

in the public interest when it is deemed inconsistent with the public use of city's public ways or is deemed to cause or constitute a nuisance.

SECTION 11. Providing Information.

(a) Complete and accurate books required. Franchisee shall keep complete and accurate books of account and records of its solid waste collection service business and operations under and in connection with this ordinance in accordance with generally accepted accounting principles and generally accepted government auditing standards.

(b) City review of documentation. City may fully review such of franchisee's books, accounts, documents, and other records of franchisee or franchisee's affiliates during normal business hours on a non-disruptive basis and with such advance notice as is reasonably necessary to monitor compliance with the terms of this ordinance. All books, accounts, documents, and other records shall be made available at a single location in the Dallas-Fort Worth metropolitan area. Books, accounts, documents, and other records that are kept on an electronic basis shall also be made available on the same basis as the paper books, accounts, documents, and other records; where possible, such items shall be made available in a CD-ROM disk or other similar platform in a format that is readable by city's computers. The reviewable items shall include, but shall not be limited to, records required to be kept by franchisee pursuant to law and the financial information underlying the written report accompanying the franchise fee. To the extent permitted by law, city agrees to treat any information disclosed by franchisee under this section as confidential, if and only to the extent that franchisee provides prior written notice that specific information is confidential as trade secrets or proprietary competitive information. Blanket or overly broad claims of confidentiality will be of no effect.

(c) Additional reports. Franchisee shall, when required by the council, the city manager, or the director, report to city any reasonably requested information relating to franchisee or the affiliates or necessary for the administration of this ordinance. The director shall have the right to establish formats for these additional reports, determine the time for these reports and the frequency with which these reports, if any, are to be made, and require that any reports be made under oath.

SECTION 12. General.

(a) Entire agreement. This ordinance (with all referenced exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement and the rights, privileges, and permissions between city and franchisee, superseding all oral or written previous negotiations or agreements between city and franchisee relating to matters set forth in this ordinance. This ordinance can only be modified by an ordinance amendment approved by council.

(b) Notices. Except as otherwise provided in Subsection 12(c) of this ordinance, any notice, payment, statement, or demand required or permitted to be given under this ordinance by either party to the other may be effected by any of the means described in Subsection 12(d) of this ordinance. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three days after mailing.

If to City:

City Manager
City of Dallas
Dallas City Hall
1500 Marilla – Room 4/f/North
Dallas, Texas 75201

With a copy to:

Director
Department of Sanitation Services
3112 Canton Street
Dallas, Texas 75226

If to Franchisee:

Sebastian Benitez
President
S. Benitez Enterprises, Inc.
2800 Fulghum Road
Hutchins, Texas 75141

Either city or franchisee may change its address or personnel for the receipt of notices at any time by giving notice of the change to the other party as provided in this Subsection 12(b). Any notice given by either city or franchisee must be signed by an authorized representative.

(c) Notice of claim. This ordinance is subject to the provisions of Section 2-86 of the Dallas City Code, relating to requirements for filing a notice of a breach of contract claim against city. Section 2-86 of the Dallas City Code is expressly incorporated by reference and made a part of this ordinance as if written word for word in this ordinance. Contractor shall comply with the requirements of Section 2-86 as a precondition of any claim against city relating to or arising out of this ordinance.

(d) Delivery of notices. Notices required to be given under this ordinance may be transmitted in any of the following four ways:

(1) By personal delivery, in which case they are deemed given when delivered.

(2) By delivery to Federal Express, United Parcel Service, or other nationally recognized overnight courier service, in which case they shall be deemed given when received for such service.

(3) By being deposited in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed given three calendar days after having been deposited in the U.S. Mail.

(4) By facsimile or electronic mail transmission where the sender's transmittal log shows successful transmission to all the recipients (with any replacement transmission as a recipient shall request) and with a hard copy on the same date or the next day mailed to all by first class mail, postage prepaid, in which case notice shall be deemed given on the date of facsimile or electronic mail transmission.

(e) City/franchisee meetings. Franchisee shall meet with the director, the city manager or the council at reasonable times to discuss any aspect of this ordinance or the services or facilities of franchisee. At all meetings, franchisee shall make available personnel qualified for the issues to be discussed and such meetings shall be at city's offices unless otherwise agreed.

(f) Legal construction. This ordinance shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. This ordinance is not a contract for goods or services within the meaning of Texas Local Government Code §§271.151 *et seq.*

(g) No inducement. Franchisee, by accepting this ordinance, acknowledges that it has not been induced to accept this ordinance by any promise, oral or written, by or on behalf of city or by any third person regarding any term or condition not expressed in this ordinance. Franchisee further pledges that no promise or inducement, oral or written, has been made to any city employee or official regarding the grant, receipt or award of this ordinance.

(h) Franchisee acknowledgement. Franchisee further acknowledges by acceptance of this ordinance that it has carefully read the terms and conditions of this ordinance and accepts the obligations imposed by the terms and conditions herein.

(i) No waiver by city. No failure by city to insist upon the strict performance of any covenant, provision, term or condition of this ordinance, or to exercise any right, term or remedy upon a breach thereof shall constitute a waiver of any such breach of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this ordinance, but each and every covenant, provision, term or condition of this ordinance shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(j) Governmental licenses. Franchisee shall, at its expense, obtain and maintain all additional governmental regulatory licenses necessary to operate the solid waste collection service in accordance with this ordinance.

(k) Severability. If any section, paragraph, or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this ordinance.

(l) City retained powers. In addition to all rights provided in this ordinance, city reserves all rights and powers conferred by federal law, the Texas Constitution, Texas statutes and decisions, the City Charter, city code, and city ordinances which city is allowed to exercise.

(m) Material misinformation. The provision of information by franchisee or any of its affiliates to city in connection with any matters under this ordinance which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall constitute a violation of this ordinance and shall be subject to the remedies

provided in Section 10. Each day that franchisee or an affiliate fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this ordinance.

(n) Hearing procedures. The following additional procedures shall apply to any hearing held in connection with any action taken by the council in connection with this ordinance:

(1) The council may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the council or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

(2) The hearing shall afford franchisee rudimentary due process. The council may by resolution establish other procedural matters in connection with the hearing.

(o) Acceptance. Upon adoption of this ordinance, franchisee agrees to be bound by all the terms and conditions contained herein, as evidenced by filing with the city secretary, in writing, within 30 days after the date the council approves this ordinance, an unconditional acceptance of the ordinance and promise to comply with and abide by all its provisions, terms, and conditions. The form of unconditional acceptance and promise, attached to and made a part of this ordinance as Exhibit B, shall be sworn to, by, or on behalf of franchisee before a notary public. If the acceptance required by this ordinance is not properly executed and filed within 30 days after the date the council approves this ordinance, then this ordinance and the rights, permissions, and privileges granted under this ordinance shall considered be null and void and shall have no force or effect, unless franchisee evidences such failure was due to clerical error by someone other than franchisee or its affiliates and then acts promptly to remedy the third party's clerical error. The director may prevent franchisee from operating a solid waste collection

service under this franchise or reapplying for a new franchise until the acceptance required by this subsection is filed as provided herein.

(p) Time is of the essence. Whenever this ordinance shall set forth any time for an act to be performed by or on behalf of franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within time allotted shall always be sufficient grounds for city to invoke an appropriate remedy, including possible revocation of the ordinance.

(q) Force majeure. The time within which franchisee shall be required to perform any act under this ordinance shall be extended by a period of time equal to the number of days due to a force majeure. The term “force majeure” shall mean delays due to acts of God, inability to obtain governmental approvals, governmental restrictions, war, act of terrorism, civil disturbances, fire, unavoidable casualty, or other similar causes beyond the control of franchisee. Notwithstanding anything contained anywhere else in this ordinance, franchisee shall not be excused from performance of any of its obligations under this ordinance by the negligence or malfeasance of its directors, officers, or employees or by mere economic hardship.

(r) Recognition of rights. Franchisee agrees that by adopting this ordinance, neither city nor franchisee have waived any rights, claims, or defenses they may have with respect to city's rights to impose the requirements contained in this ordinance in whole or in part upon franchisee.

(s) Police powers.

(1) In accepting this ordinance, franchisee acknowledges that its rights under this ordinance are subject to the police power of city to adopt and enforce general ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by city pursuant to such powers. Any conflict

between the provisions of this ordinance and any other present or future lawful exercise of city's police powers shall be resolved in favor of the latter.

(2) Franchisee recognizes the right of city to make reasonable amendments to this ordinance; except that city shall not make amendments materially adversely affecting franchisee except under a proper exercise of city's police powers, with notice to franchisee and an opportunity to be heard.

(3) Franchisee also recognizes city's right to impose such other regulations of general applicability as shall be determined by city to be conducive to the safety, welfare, and accommodation of the public.

(t) No presumption of renewal. This ordinance and the grant contained herein do not imply, grant, or infer any renewal rights in favor of franchisee or its affiliates.

(u) Recognition of city charter. Franchisee recognizes, accepts and agrees that the terms, conditions and provisions of this ordinance are subject to the applicable provisions of Chapter XIV of the Dallas City Charter. Any request by franchisee for an amendment to this ordinance shall be subject to review by the city attorney for compliance with the applicable provisions of the city charter.

SECTION 13. Outstanding license fees. This ordinance shall not take effect until all fees still owed to city from the existing license previously issued to franchisee for solid waste collection, hauling, and disposal service under provisions of the city code applicable to solid waste collection, hauling, and disposal licenses are paid in full. If the previous license fees owed to city are not paid by franchisee within 30 days after the date the council approves this ordinance, then this ordinance shall be considered null and void and shall have no force or effect.

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The director may prevent franchisee from operating a solid waste collection service under this franchise or reapplying for a new franchise until the previous license fees have been paid in full.

SECTION 14. Ordinance effective date. Subject to the provisions of Subsection 5(e), Subsection 12(o), and Section 13, this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas (the "effective date"), and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

BY


Assistant City Attorney

Passed SEP 23 2009

RECEIVED

INSURANCE COVERAGE REQUIRED

2009 SEP 24 PM 1:42

Subject to FRANCHISEE'S right to maintain reasonable deductibles, FRANCHISEE shall obtain and maintain full force and effect for the duration of this franchise and any extension hereof, at FRANCHISEE'S expense, insurance coverage in the following type(s) and amounts:

1. **Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

REQUIRED PROVISIONS

FRANCHISEE agrees that with respect to the above required insurance, all insurance contracts and insurance policies will contain and state, in writing, the following required provisions:

1. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
2. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to:
 - (a) Sanitation Services, Attention: Ron Smith, Assistant Director, 3112 Canton, Suite 200, Dallas, Texas 75226 and
 - (c) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.
3. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
4. Provide that the FRANCHISEE'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
5. Provide that all provisions of this franchise concerning liability, duty and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

CITY NOT LIABLE

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the FRANCHISEE or its subcontractors shall not relieve the FRANCHISEE of full responsibility or liability for damages and accidents as set forth in the franchise documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the FRANCHISEE from liability.

From: ERIKA ZUBIA To: VANESSA

Date: 09/22/2009 Time: 09:54

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)

09/22/2009

PRODUCER

ARROW INSURANCE

PO Box 870188

Mesquite, TX 75187

(972) 686-6868

INSURED

S. BENITEZ ENTERPRISES, INC

2800 FULGHUM RD

HUTCHINS, TX 75141

972-225-3990

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC#

INSURER A: **REPUBLIC VANGUARD**INSURER B: **PROGRESSIVE**

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ADDL INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/>	GENERAL LIABILITY	RGL380845	10/29/08	10/29/09	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$ 1,000,000
<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY	06678952-0	12/5/08	12/5/09	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS					
<input type="checkbox"/>	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY EA ACC \$
					AGG \$
<input type="checkbox"/>	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
	<input type="checkbox"/> DEDUCTIBLE				\$
	<input type="checkbox"/> RETENTION \$				\$
<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				OTHER \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
<input type="checkbox"/>	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER**CITY OF DALLAS****720 E JEFFERSON BLVD, 3118****DALLAS, TX 75203****FAX#214.243.2081****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION

DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL

30

DAYS WRITTEN

NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL

IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR

REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

27663

092327

X.W. Egan

27663

092327

Exhibit B

Acceptance

S. Benitez Enterprises, Inc., a Texas corporation, unconditionally accepts and agrees to be bound by all the terms, covenants, and conditions contained in the Solid Waste Collection Service franchise ordinance, Ordinance No. _____, passed on September 23, 2009.

Dated: ____ day of _____, 20__.

FRANCHISEE:

S. BENITEZ ENTERPRISES, INC.,
a Texas corporation

By: _____
Sebastian Benitez, President

27663

File/I.D. No: _____

STATE OF Texas §
COUNTY OF DALLAS §

AFFIDAVIT OF OWNERSHIP OR CONTROL

BEFORE ME, the undersigned authority, on this day personally appeared

_____[FULL NAME] (hereafter
"Affiant"),
President [STATE TITLE/CAPACITY WITH CONTRACTING ENTITY] of
SBenitez Enterprises, Inc. [CONTRACTING ENTITY'S
CORPORATE/LEGAL NAME] ("Contracting Entity"). Who being by me duly sworn on oath stated
as follows:

1. Affiant is authorized to give this affidavit and has personal knowledge of the facts and matters herein stated.

2. Contracting Entity seeks to do business with the City in connection with _____

[DESCRIBE PROJECT OR MATTER] which is expected to be in an amount that exceeds \$25,000.

3. The following information is submitted in connection with the proposal, submission, or bid of Contracting Entity in connection with the above described project or matter.

4. Contracting Entity is organized as a business entity as noted below (check box as applicable)

FOR PROFIT ENTITY:

- ☐ SOLE PROPRIETORSHIP
☒ CORPORATION
☐ PARTNERSHIP
☐ LIMITED PARTNERSHIP
☐ JOINT VENTURE
☐ LIMITED LIABILITY COMPANY
☐ OTHER (Specify type in space below)

NON-PROFIT ENTITY:

- ☐ NON-PROFIT CORPORATION
☐ UNINCORPORATED ASSOCIATION

27663

092327

File/I.D. No.: _____

5. The information shown below is true and correct for the Contracting Entity and all owners of 5% or more of the Contracting Entity and, where the Contracting Entity is a non-profit entity, the required information has been shown for each officer. [NOTE: IN ALL CASES USE FULL NAMES, LOCAL BUSINESS AND RESIDENCE ADDRESSES AND TELEPHONE NUMBERS. DO NOT USE POST OFFICE BOXES FOR ANY ADDRESS. INCLUSION OF E-MAIL ADDRESSES IS OPTIONAL, BUT RECOMMENDED. ATTACH ADDITIONAL SHEETS AS NEEDED.]

Name: S. Benitez Enterprises, Inc.

Business Address [NO/STREET] 2800 Fulghum Rd.

[CITY/STATE/ZIP CODE] Hutchins Tx. 75141

Telephone Number 214 597-1772

E-mail Address (optional) sbenitezent@aol.com

Residence Address [NO/STREET] 1628 Summer Place Cr.

[CITY/STATE/ZIP CODE] Irving Tx. 75062

Telephone Number ()

E-mail Address (optional) _____

Name: _____

Business Address [NO/STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number ()

E-mail Address (optional) _____

Residence Address [NO/STREET] _____

[CITY/STATE/ZIP CODE] _____

Telephone Number ()

E-mail Address (optional) _____

6. Optional Information

Contracting Entity and/or _____ [NAME OF OWNER OR NON-PROFIT OFFICER] is actively protesting, challenging or appealing the accuracy and/or amount of taxes levied against _____ [CONTRACTING ENTITY, OWNER OR NON-PROFIT OFFICER] as follows:

27663

092327

File/I.D. No.: _____

Name of Debtor _____

Tax Account Nos. _____

Case or File Nos. _____


Attorney/Agent Name: _____

Attorney/Agent Phone No. _____

Tax Years _____

Status of Appeal [DESCRIBE] _____

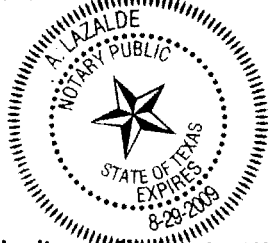
Affiant certifies that he or she is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein, and that the information provided herein is true and correct to the best of Affiant's knowledge and belief.




 Affiant

SWORN TO AND SUBSCRIBED TO before me this 27th day of July 2009.

(Seal)





 Notary Public

NOTE:

This Affidavit constitutes a government record as defined by Section 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in Section 37.10 of the Texas Penal Code. Attach additional pages if needed to supply the required names and addresses.

EXHIBIT C



CITY OF DALLAS

27663

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APPLICATION FOR FRANCHISE RELATED TO COMMERCIAL SOLID WASTE OPERATORS

(Pursuant to Chapter 18-32 of Code of Ordinances)

INSTRUCTIONS: Complete form and mail to: City of Dallas, Franchise Administration, 3112 Canton Street, Room 200, Dallas, Texas 75226.

If you are exempt from the Franchise Ordinance please complete the form through Section 1, sign and return.

Name of Company	Physical Address
S Benitez Enterprises, Inc.	2800 Fulghum Rd Hutchins Tx 75141
Contact Name	Contact Title
Sebastian Benitez	President
Mailing Address	Telephone Number
PO Box 227416 Dallas Tx 75222	214-597-1772
Fax Number	E-mail Address
972-225-9677	sbenitezent@aol.com

1. Do you collect, haul or transport solid waste or industrial waste from residential, commercial or industrial properties located within the city limits of Dallas, Texas for disposal at any permitted solid waste disposal facility?

YES ☒ NO ☐

2. Form of business of the applicant, and, if the business is a corporation or association, a copy of the documents establishing the business. Please ensure documents show date of formation.

Corporation

3. Applicant has attached Certificates of Liability insurance as required in Section 3 (e) of the Franchise Agreement (commercial auto liability coverage in no less than the minimum coverage amounts specified in the Texas Motor Vehicle Safety Responsibility Act, issued by an insurance company listed as an authorized auto liability lines carrier on the Texas Department of Insurance's List of Authorized Liability Companies). Proof of Insurance shall be maintained at all times and shall be accepted only in the authorized form that has been promulgated by the City and adopted by the Texas Automobile Insurance Plan Association.

YES ☒ NO ☐

4. Signature of the person authorized by the Company to sign this Application

Signature

President

Title

07/10/09

Date