

CLAY COUNTY AGREEMENT/CONTRACT # 2020/2021-75 RN1

**FIRST RENEWAL OF FRANCHISE AGREEMENT FOR CONTAINER SERVICE
[Whitener's Tractor Service]**

This First Renewal ("First Renewal") of the Franchise Agreement for Container Service is made and entered into this 14th day of September, 2021, by and between Whitener's Tractor Service, Inc., a Florida Profit Corporation (the "Franchisee"), and Clay County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County").

RECITALS

WHEREAS, Clay County's Solid Waste Franchising and Collection Ordinance 90-24, as amended, and as codified in the Clay County Code, Appendix D, Article III ("Ordinance"), authorizes the franchising of Solid Waste collection services within specified Franchise Districts in the Unincorporated Area of Clay County; and

WHEREAS, on November 24, 2020, the parties entered into a Franchise Agreement for Container Service, Agreement/Contract # 2020/2021-75 ("Franchise Agreement"), a copy of which is attached hereto and incorporated herein as **Attachment A**, whereby the Franchisee agreed to provide Container Service under the terms and conditions of the Franchise Agreement; and

WHEREAS, paragraph 4 of the Franchise Agreement provides for an initial term that ends on September 30, 2021, with the County reserving the right to renew the Franchise Agreement for two (2) additional one-year periods, upon mutual consent of the County and the Franchisee and the execution of a renewal agreement; and

WHEREAS, in accordance with paragraph 4 of the Franchise Agreement, the parties wish to enter into this First Renewal renewing the Franchise Agreement for an additional one (1) year period commencing October 1, 2021 and continuing through September 30, 2022.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged and all objections to the sufficiency and adequacy of which are hereby waived, the parties agree as follows:

1. The Franchise Agreement is hereby renewed for an additional one year period commencing October 1, 2021 and continuing through September 30, 2022.

2. The Franchisee hereby certifies that the Scrutinized Companies Certification that was executed in compliance with Section 287.135(5), Florida Statutes is still valid.

3. Except as expressly provided herein, all other terms and conditions of the Franchise Agreement not affected by this First Renewal are incorporated herein and shall remain

in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Renewal as of the date and year first written above.

Whitener's Tractor Service, Inc.

By: _____

Print Name: _____

Print Title: _____

**Clay County, a political subdivision
of the State of Florida, by and through its
Board of County Commissioners**

By: _____

Mike Cella
Its Chairman

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

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ATTACHMENT A

CLAY COUNTY AGREEMENT/CONTRACT #2020/2021- 75

FRANCHISE AGREEMENT FOR CONTAINER SERVICE

This Franchise Agreement is executed by and between Clay County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "County"), and Whitener's Tractor Service, Inc., a Florida Profit Corporation (the "Franchisee"), this 24th day of November, 2020.

RECITALS

WHEREAS, Clay County Ordinance 90-24, as amended, and as codified in the Clay County Code, Appendix D, Article III, known as the Clay County Solid Waste Franchising and Collection Ordinance ("Ordinance"), a copy of which is attached hereto as **Attachment A** and incorporated herein by reference, authorizes the franchising of Solid Waste collection services within specified Franchise Districts in the Unincorporated Area of Clay County; and

WHEREAS, it shall be unlawful for any person to collect, remove, or dispose of Solid Waste for others in the Unincorporated Area of Clay County without first obtaining a Franchise as authorized by the Ordinance; and

WHEREAS, Franchise means the rights granted under the Ordinance to collect and transport Solid Waste from Residential Units, Commercial Establishments, Industrial Establishments or Institutional Establishments, regardless of the place of origin, within and from a specified Franchise District, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the County as may be required by other County Ordinances and general law; and

WHEREAS, the Franchisee submitted an Application for a Franchise for Container Service, a copy of which is attached hereto as **Attachment B** and incorporated herein by reference, and Application Fee in accordance with the Ordinance; and

WHEREAS, the terms and provisions of the Ordinance are declared to be the minimum with respect to the duties, requirements, and obligations of the Franchisee; and accordingly, any terms and provisions which impose greater or more restrictive duties, requirements, and obligations upon the Franchisee are declared and agreed to prevail over the terms and provisions of the Ordinance; and

WHEREAS, the Franchise shall be conditioned upon the faithful performance of all duties and requirements imposed by the Ordinance, this Franchise Agreement, existing law, and requirements established by the Clay County Department of Environmental Services ("Department"), under the direction of the County's Board of County Commissioners.

NOW THEREFORE, pursuant to the provisions and authority of the Ordinance and in consideration of the foregoing Recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged and all objections to the sufficiency and adequacy of which are hereby waived, the parties agree as follows:

1. Franchise District. The Franchise granted is within Franchise District #IX, as established under Clay County Resolution 89/90-63R.

2. Authorized Collection Service. The collection service authorized under this Franchise Agreement is Container Service which is the collection of Garbage, Rubbish, Yard Trash, and Recyclable Materials stored in Containers as provided and specified under the Ordinance.
3. Non-exclusivity. The Franchise granted is non-exclusive within Franchise District #IX.
4. Term. The Franchise granted shall commence on the date first noted above, and terminate on September 30, 2021, unless sooner terminated hereunder or under the Ordinance. The County reserves the right to renew this Franchise Agreement for two (2) additional one-year periods, upon mutual consent of the County and the Franchisee and the execution of a renewal agreement. In the event of a renewal, within thirty (30) days of the end of term of this Franchise Agreement or any renewal thereof, Franchisee will provide to the County a Certificate of Insurance and a Performance and Payment Bond for the term of the upcoming renewal agreement, as well any additional documents or certifications as requested by the County.
5. Notice. All notices given under this Franchise Agreement shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) two days after having been delivered to Federal Express, UPS, Airborne or another recognized overnight courier or delivery service, or (c) five days after having been deposited into the United States mail, by registered or certified mail, return receipt requested, postage prepaid, to the respective parties at their respective addresses set forth below:

If to Franchisee:

Whitener's Tractor Service, Inc.
866 Washington Ave.
Orange Park, FL 32065
Attention: David Whitener

If to County:

Clay County
3545 Rosemary Hill Road
Green Cove Springs, FL 32043
(904) 284-6374
Attention: Director of Environmental Services

6. Franchise Fee. The Franchisee agrees to pay to the County a Franchise Fee of fourteen percent (14%) of the Franchisee's gross receipts, which includes the Franchise Fee, for Container Service in its Franchised District. Compactor lease and purchase receipts are exempt from Franchise Fee. The Franchisee shall make payments by delivering a check to the Department, payable to the Clay County Environmental Fund, on or before the last day of each month, on the gross receipts of the previous month. The final payment for the last month of the Franchise Agreement shall be due thirty (30) days following the expiration or termination of the Franchise Agreement.
7. Audits and Reports.
 - A. Audit: The Franchisee shall maintain all books, documents, papers, and records related to the Franchise in accordance with generally accepted accounting principles. A customer list showing location, container size, and frequency, along with all books and records, must be made available for inspection by the Department staff upon request and with ten (10) days prior notice. The Franchisee shall retain all records relating to this Franchise Agreement for a

period of at least five (5) years after the Franchise Agreement ends or terminates, which occurs first.

- B. Monthly Report: The Franchisee must deliver to the Department, on or before the last day of each calendar month, a true and correct monthly report of gross receipts generated the previous calendar month from within its Franchise District. The failure of Franchisee to deliver a monthly report within the prescribed time shall be grounds for termination of the Franchise as provided under Section IV. 1. of the Ordinance. In the event of termination of the Franchise, the Franchisee shall remain liable for all Franchise and Disposal fees due up to the date of termination.
 - C. Annual Financial Statement: The Franchisee shall submit a certified financial statement each year to the County on or before the first day of April for the previous calendar year. The certified financial statement shall be prepared by a certified public accountant licensed by the State of Florida. The certified financial statement shall indicate all revenues and expenses of disposal generated from or attributable to Franchise activities within Clay County. These statements shall be prepared in accordance with generally accepted accounting principles. If the Franchisee fails to submit its certified financial statement within the time prescribed herein or to obtain an extension for good cause shown fifteen (15) days prior to the certified financial statement due date, the Franchisee shall pay an additional late charge of ten (10) percent of the average monthly disposal fee incurred by the Franchisee for the preceding twelve (12) month period. The failure of Franchisee to submit the certified financial statement within the prescribed time shall be grounds for termination of the Franchise as provided under Section IV. 1. of the Ordinance. In the event of termination of the Franchise, the Franchisee shall remain liable for all Franchise and Disposal fees due up to the date of termination.
8. Insurance. Throughout the term of the Franchise, Franchisee shall maintain the following insurance in accordance with Section IV 2.C. of the Ordinance:

The Franchisee shall provide and keep in force a comprehensive general public liability and property damage insurance policy. Such public liability coverage shall not be less than five hundred thousand dollars (\$500,000.00) for each person, and not less than five hundred thousand dollars (\$500,000.00) for each accident, with property damage coverage of not less than two hundred fifty thousand dollars (\$250,000.00) insuring by name both the County and the Franchisee, as their interests may appear, against public liability and property damage claims; provided, however, that if the Franchise is for Hand Pickup Service, and the Franchisee serves fewer than two hundred (200) Customers, then the County may reduce the required limits of the public liability coverage to one hundred thousand dollars (\$100,000.00) combined for injury to person or property. The Franchisee shall maintain in full force and effect at all times at least the minimum motor vehicle insurance required under the law of the State of Florida for registration thereof, and shall provide proof of such registration to the County for each motor vehicle used by the Franchisee in the performance of its Franchise obligations. The Franchisee shall furnish the County with an appropriate certificate or certificates from the insurance carrier showing such insurance to be in force at all times along with an agreement from the insurance carrier to notify the Department thirty (30) days prior to any modification, revocation, cancellation or nonrenewal thereof.

9. Bond. Throughout the term of the Franchise, unless modified under the Ordinance, Franchisee shall maintain a performance and payment bond in an amount not to exceed \$25,000.00 (twenty-five thousand dollars) to insure continuity of collection and disposal service in accordance with Section IV 2.B. of the Ordinance.
10. Recycling. Franchisee agrees to actively market recyclable material collection services to all its Customers. The Clay County Recycling Program presently accepts specific recyclable materials at no charge (subject to change with 90-day notice) at the Clay County Recycling Facility. The County Recycling Program will accept the following materials at the Clay County Recycling Facility:
- A. Newspaper; dry, normal inserts accepted
 - B. Junk mail/Telephone books/Magazines/catalogs
 - C. Corrugated cardboard; dry, flattened.
 - D. Office Paper, dry. Will accept copy bond, computer printout, white ledger, and colored ledger. No carbon or carbonless treated paper.
 - E. Steel (Tin) Cans; free of all food or liquids. Labels accepted.
 - F. Aluminum Beverage Cans; unflattened.
 - G. HDPE Plastic Containers; tops removed. One gallon and 2 ½ gallon milk jugs or water bottles only.
 - H. PETE Plastic Containers; tops removed. 1 through 7.
 - I. Glass Containers; clear, brown, and green. Free of all food or liquids. Tops removed. Labels accepted.

The Clay County Recycling Program will accept any of the above-reference materials from the Franchisee that are collected source separated. The Clay County Recycling Facility reserves the right to reject loads of materials collected as recyclable in the event a particular load contains more than 5 percent unacceptable materials or contamination. In the event a load of materials collected by the Franchisee as recyclable is rejected, the County will notify the Franchisee immediately, and reserves the right to have the materials properly disposed. The County will charge the Franchisee's prepaid account for the material rejected, and advise the Franchisee within ten (10) working days of the appropriate charges.

Franchisee further agrees that if the County shall implement a recycling program requiring mandatory participation on the part of Container Service Customers, then Franchisee will cooperate with the implementation thereof, including termination services with non-participating or uncooperative Customers, if required by the County.

11. Application. In the event of any inconsistencies between the terms and provisions of the Application submitted by the Franchisee, attached hereto as **Attachment B**, and those in this Franchise Agreement, the terms and provisions in the Franchise Agreement shall prevail. Any fraudulent or deceptive statements contained therein, or any material misstatements of fact contained therein shall be full and sufficient grounds for the immediate revocation of the Franchise and the termination of this Franchise Agreement by the County.
12. Equipment and Vehicles. The Franchisee shall acquire, employ and utilize all equipment and vehicles necessary to perform its Franchise duties, requirements, and obligations.

Such equipment and vehicles shall be maintained in good condition and repair at all times and shall initially include the equipment and vehicles identified in the Application.

13. Designated Place of Business. The Designated Place of Business for Franchisee shall be:

Whitener's Tractor Service, Inc.
866 Washington Ave.
Orange Park, FL 32065

14. Container Size. In accordance with Section IV 5.B. (5) (a) of the Ordinance, Containers shall be provided for Customers in all available sizes (2 through 50 cubic yards) with suitable lifting connections to enable handling by the Franchisee using its standard equipment.
15. Ordinance Amendments. The Franchisee acknowledges and agrees that the County shall have the right to make amendments to the Ordinance from time to time within the reasonable exercise of its police powers to protect the public health, safety, and welfare. The Franchisee agrees to abide by such amendments as if fully set out herein.
16. Franchise Agreement Amendments. The Franchise Agreement may only be modified or amended upon written agreement of the County and the Franchisee. No oral agreements or representation shall be valid or binding upon either party. No alteration or modification of the Franchise Agreement terms shall be valid or binding against the County. The Franchisee may not unilaterally modify the terms of the Franchise Agreement by affixing additional terms or by incorporating such terms onto the Franchisee's documents forwarded by the Franchisee to the County.
17. Default, Revocation, and Termination. In accordance with Section IV 1. of the Ordinance, if Franchisee violates any of the terms, conditions, or provisions of the Ordinance, the Franchise Agreement or any of the regulations promulgated by the County pursuant thereto, the Department shall notify the Franchisee, in writing, to desist from further violations. If the violation continues for a period of fifteen (15) days thereafter or reoccurs any time thereafter, the Franchisee shall be deemed to have forfeited the Franchise; provided, the Franchisee may, within said fifteen (15) day period, petition the County for a hearing regarding whether grounds for forfeiture exist. A forfeiture of a Franchise shall mean that the Franchisee's rights under a Franchise are revoked and the Franchise Agreement terminated. Forfeiture shall take effect upon the certified mailing by the Department of notice thereof to the Franchisee.
18. Designated Disposal Facility. The Franchisee agrees to cause all solid waste collected by it under the authority of the Franchise to be delivered to the Transfer Station at the County's Rosemary Hill Solid Waste Management Facility, or such other Facility as the County may identify as a Designated Disposal Facility, within the meaning of the Ordinance.
19. Tipping Fee Deposits.
- A. At its sole discretion, the County may authorize the Franchisee to deposit funds with the County to be drawn against by the Franchisee for payment of the tipping fee due on each load of solid waste delivered to the County Facility in lieu of

requiring the Franchisee to tender cash with each such load. If granted, the County may withdraw such authorization at any time in its sole discretion without recourse on the part of the Franchisee.

- B. Should the authorization under subparagraph A be granted by the County, then on any occasion that the County in its sole judgment shall determine that the balance of funds on deposit with the County to the credit of the Franchisee is low, zero or negative, the County may give written notice to the Franchisee by electronic or facsimile transmission to deposit additional funds with the County. The Franchisee shall deposit said additional funds by the second business day immediately following the sending of the written notice ("Deposit Deadline").
- C. If Franchisee fails to make a deposit to cure a negative balance within the Deposit Deadline under subparagraph B, Franchisee shall pay to the County a fee of \$25.00 for each day after the Deposit Deadline until the Franchisee deposits funds sufficient to cover the negative balance, pays all accrued fees under this subparagraph, and produces a positive balance.
- D. For purposes of this paragraph the term "Delinquent Fee" shall mean the fee charged under subparagraph C, and the term "Charged Day" shall mean a calendar day for which a Delinquent Fee has been charged to the Franchisee.
- E. The accrual by the Franchisee of 20 or more Charged Days during any 12 month period shall be grounds for the revocation of the Franchise and the termination of this Franchise Agreement.
- F. The Franchisee at all times shall remain liable to pay to the County the tipping fee charged by the County for each load of solid waste delivered by the Franchisee to the County Facility, and nothing in this paragraph shall be construed to the contrary.

20. Public Records.

- A. The Franchisee acknowledges the County's obligation under Art. 1, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, as from time to time amended (together, the Public Records Laws), to release public records to members of the public upon request. The Franchisee acknowledges that the County is required to comply with the Public Records Laws in the handling of the materials created under the Franchise Agreement and that the Public Records Laws control over any contrary terms in the Franchise Agreement. In accordance with the requirements of Section 119.0701, Florida Statutes, the Franchisee covenants to comply with the Public Records Laws, and in particular to:
 - i. Keep and maintain public records required by the County to perform the services required under the Franchise Agreement;
 - ii. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Franchise Agreement term and following completion of the Franchise Agreement if the Franchisee does not transfer the records to the County; and,
 - iv. Upon completion of the Franchise Agreement, transfer, at no cost, to the County all public records in possession of the Franchisee or keep and maintain public records required by the County to perform the services. If the Franchisee transfers all public records to the County upon completion of the Franchise Agreement, the Franchisee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Franchisee keeps and maintains public records upon completion of the Franchise Agreement, the Franchisee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- B. The Franchisee's failure to comply with the requirements of this paragraph shall be deemed a material breach of this Franchise Agreement, for which the County may terminate the Franchise Agreement immediately upon written notice to the Franchisee.
- C. The Franchisee acknowledges the provisions of Section 119.0701(3)(a), Florida Statutes, which, as applicable to the County and the Franchisee, require as follows:
- i. A request to inspect or copy public records relating to the Franchise Agreement must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Franchisee of the request, and the Franchisee must provide the records to the County or allow the records to be inspected or copied within a reasonable time.
 - ii. If the Franchisee does not comply with the County's request for records, the County shall enforce the Franchise Agreement provisions in accordance with the Franchise Agreement.
 - iii. If the Franchisee fails to provide the public records to the County within a reasonable time, the Franchisee may be subject to penalties under Section 119.10, Florida Statutes.

IF THE FRANCHISEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FRANCHISEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE FRANCHISE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 278-4754, PUBLICRECORDS@CLAYCOUNTYGOV.COM, POST OFFICE BOX 1366, GREEN COVE SPRINGS, FLORIDA 32043.

21. SCRUTINIZED COMPANIES CERTIFICATION. In compliance with Section 287.135(5), Florida Statutes, the undersigned hereby certifies that the Franchisee is not participating in a boycott of Israel as defined in Section 287.135(1), Florida Statutes; is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as referred to in Section 287.135(2), Florida Statutes; and does not have business operations in Cuba or Syria as defined in Section 287.135(1), Florida Statutes. In accordance with Section 287.135(3), Florida Statutes, the County shall have the option of terminating this Franchise Agreement if the Franchisee is found to have submitted a false certification as provided under Section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as defined in Section 287.135(1), Florida Statutes.

22. PUBLIC ENTITY CRIMES CERTIFICATION.

- A. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- B. By signing this Franchise Agreement, the Franchisee certifies that the execution of this Franchise Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes) and further certifies that Franchisee has not been placed on the "Convicted Vendor List." Violation of this paragraph shall result in revocation of the Franchise and termination of this Franchise Agreement and recovery of all monies paid hereto and may result in debarment from the County's competitive procurement activities.
- C. In addition to the foregoing, the Franchisee further certifies that there has been no determination, based on an audit, that it or any subcontractor has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the Franchisee has been placed on the convicted vendor list.
- D. Franchisee will promptly notify the County if it or any subcontractor of the Franchisee is formally charged with an act defined as a "public entity crime" or has been placed on the convicted vendor list.

23. Indemnification. The Franchisee shall promptly defend, indemnify, hold the County harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, attorney's fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Franchisee's performance or

breach of this Franchise Agreement. In light of the County being a governmental entity, nothing in this Franchise Agreement is intended to serve as a waiver of the County's sovereign immunity protections nor does it extend the County's liability beyond the limits established in Section 768.28, Florida Statutes. Notwithstanding anything stated to the contrary in the Franchise Agreement, the County's obligation to compensate or indemnify is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes, as it may be amended from time to time. The provisions of this paragraph shall survive the expiration or termination of this Franchise Agreement.

24. Independent Contractor. Nothing herein shall constitute or be construed to create or suggest any type or kind of employment, partnership, joint venture, or other legal relationship, express or otherwise, between the parties. The Franchisee is an independent contractor and is not an employee, agent, joint-venture, or partner of the County.
25. Remedies. Each party shall have the right to seek the judicial enforcement and interpretation of this Franchise Agreement, and to avail itself of all remedies available to it arising at law or in equity for the breach of this Franchise Agreement. Remedies are mutually available, and include damages and specific performance, as appropriate.
26. Governing Law and Venue. This Franchise Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any litigation, mediation, or other action proceeding between the parties arising out of this Franchise Agreement lies in Clay County, Florida.
27. Attorneys' Fees. In the event either party shall retain an attorney to litigate on its behalf against the other party regarding the enforcement or interpretation of this Franchise Agreement or regarding the rights, remedies, obligations or liabilities of the parties arising under this Franchise Agreement, the party prevailing on the majority of its claims, or which successfully defends against a majority of the other party's claims, shall be entitled to an award of reasonable attorney's fees, costs, and expenses against the other party, including fees, costs, and expenses incurred from the date of referral of the dispute to the prevailing party's attorney through the conclusion of litigation, or incurred in bankruptcy or on appeal. Nothing contained herein is intended to serve as a waiver of sovereign immunity and extend the County's liability beyond the limits established in Section 768.28, Florida Statutes.
28. Severability. If any provisions of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Franchise Agreement, and this Franchise Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.
29. No Assignment. The Franchisee shall not assign any of its rights or duties under this Franchise Agreement to any other party. Any such assignment attempted by the Franchisee shall be null and void. If the Franchisee attempts to assign any such rights or duties, the Franchise may be revoked and the Franchise Agreement may be declared terminated by the County.
30. No Third-Party Beneficiaries. Any other provisions of this Franchise Agreement to the contrary notwithstanding, no third-party beneficiaries are intended or contemplated

under this Franchise Agreement, and no third-party shall be deemed to have rights or remedies arising under this Franchise Agreement or such documents against either party to this Franchise Agreement.

31. Conflict of Interest. Throughout the term of this Franchise Agreement, the Franchisee must not accept nor perform any other employment, assignments of contracts nor obligations that would conflict with the Franchisee's duties and obligations provided under this Franchise Agreement.
32. Further Assurances. Each of the parties shall cooperate with one another, shall do and perform such actions and things, and shall execute and deliver such agreements, documents and instruments, as may be reasonable and necessary to effectuate the purposes and intents of this Franchise Agreement and the Ordinance.
33. Waiver. No waiver by the County of any breach of any provision of this Franchise Agreement by the Franchisee shall constitute a waiver of any other breach of either the same provision or of any other provision by the Franchisee. The failure of the County to enforce at any time, or from time to time, any provision of this Franchise Agreement shall not be construed as a waiver thereof or any other provisions.
34. Headings. The headings contained in this Franchise Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of any or all of the provisions hereof.
35. Counterparts. The Franchise Agreement may be executed in one or more counterparts and by the separate parties in separate counterparts, each of which shall be deemed to constitute an original and all of which shall be deemed to constitute the one and the same agreement.
36. Entire Agreement. This Franchise Agreement represents the entire agreement between the parties for the provision of the Franchise. No understanding, statement, representation, writing, agreement, course of conduct, or course of action by the parties or the authorized representatives of the parties, which is not expressed in this Franchise Agreement, shall be valid.
37. Attachments. All attachments to this Franchise Agreement are incorporated by reference as if set out fully herein.
38. Authority. This Franchise Agreement is executed by the parties under the authority of the Ordinance. Each person signing on behalf of the parties to the Franchise Agreement represents and warrants that he/she has full authority to execute the Franchise Agreement on behalf of such party and that the Franchise Agreement will constitute a legal and binding obligation of such party.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto set forth their hands and seals on the date and year first written above.

Clay County, a political subdivision
of the State of Florida, by and through its
Board of County Commissioners

By: Mike Cella
Mike Cella
Chairman

ATTEST:

Tara S. Green
Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk of the Board

Franchisee: Whitener's Tractor Service, Inc.

By: [Signature]
Name: Whitener's Tractor Service Inc
Title: CEO

ATTEST:

Secretary
(SEAL)
STATE OF FLORIDA
COUNTY OF CLAY

The foregoing Franchise Agreement was acknowledged before me by
DAVID C. WHITENER (name) and _____ (name),
as CEO (title) and _____ (title) on
behalf of the corporation. They are personally known to me or have produced
W356163844430 FDL as identification.

WITNESS my hand and official seal, this 24 day of November, 2020.

Notary Public
State of FLORIDA

My Commission Expires: 8/05/24

[Signature: Maria Bryant]



ARTICLE III. - SOLID WASTE FRANCHISING AND COLLECTION

ORDINANCE 90-24 ^[5]

An Ordinance of the Board of County Commissioners of Clay County, Florida, Entitled the Clay County Solid Waste Franchising and Collection Ordinance; Providing a Short Title; Providing Definitions and Ordinance Subdivisions; Authorizing the Franchising of Solid Waste Collection Services, and Providing for Powers, Procedures, Conditions, Rates, Compensation, Disposal Fees and Regulations, Franchise Fees, Annual Audit Reports and Unlawful Operation Related Thereto; Providing for Franchisee Obligations with Respect to Performance, Bonds, Insurance, Vehicles, Complaints, Franchise Transfers, Special Services, Types of Collection Services and Operations; Providing for Hand Pickup Service, and for Frequency of Waste Collection, Quantity, Type of Waste Collection, Special Services, Solid Waste Receptacles for Garbage, Rubbish, Yard Trash and Recyclable Materials, Collection of Hazardous Waste, Location of Residential Waste for Collection, Customer Restrictions, Nonapproved Receptacles and Residential Services Related Thereto; Providing for Container Service, and for Frequency of Waste Collection, Quantity, Waste Collection, Special Services, Types of Containers, Collection of Hazardous Waste and Customer Restrictions Related Thereto; Providing for Methods of Billing; Providing for Discontinuance and Reinstatement of Service; Providing for Customer Service; Regulating Solid Waste Disposal; Establishing Requirements for Solid Waste Removal with Respect to Accumulation and to Containers and Receptacles and Locations Thereof; Establishing Prohibitions with Respect To the Disposal of Hazardous Waste, Solid Waste and Waste Generated Outside of Clay County; Providing for Repeal of Predecessor Ordinances; Providing an Effective Date; Providing Severability; Providing Penalties for Violations.

Footnotes:

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Editor's note— Section VIII of Ord. No. 90-24, adopted April 24, 1990, specifically repealed Ord. No. 87-34, as amended by Ord. No. 89-35 and all other subsequent amendatory ordinances, which ordinance had been included herein as App. D, Art. III, "Garbage, Rubbish and Trash" Inasmuch as Ord. No. 90-24 did not otherwise specifically amend this Code, codification of Ord. No. 90-24 as a new App. D, Art. III was at the discretion of the editor. The ordinance has been included herein substantially as enacted, except that obvious misspellings have been corrected without notation and a uniform style of capitalization and treatment of numbers has been employed.

Cross reference— Garbage and trash, Ch. 10; hazardous materials, § 11-31 et seq.

Section I. - Short Title.

This ordinance shall be known, and may hereafter be referred [to] as the "Clay County Solid Waste Franchising and Collection Ordinance."

Section II. - Definitions and Subdivisions.

1. **Definitions.** ^[6] The following terms, where used in this ordinance in capitalized form, shall have the meanings ascribed to them in this section, unless different meanings are clearly indicated by the context. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory.
 - A. **Application** means a request for a Franchise, transfer of an existing Franchise, renewal of a Franchise, or transfer/renewal of a Franchise.
 - B. **Board** means the Board of County Commissioners of Clay County, Florida.
 - C. **Biohazardous Waste** means any Solid Waste, liquid waste or Infectious Waste which may present a threat of infection to humans and includes, but is not limited to, nonliquid 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.
 - D. **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.
 - E. **Bundle** means a unit of Solid Waste which by its nature is generally not conducive to placement in a Receptacle and which is bound securely together so as to avoid disintegration or spillage when lifted or moved, and which does not exceed two (2) feet by two (2) feet by four (4) feet in size and fifty (50) pounds in weight.
 - F. **Clean Debris** means any waste which is virtually inert and which is not a pollution threat to ground water or surface waters and is not a fire hazard, and which is likely to retain its physical and chemical structure under expected conditions

of disposal or use, including uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramics, and other wastes designated by the Department.

- G. *Commercial Establishments* means all Commercial Establishments, including, but not being limited to motels, hotels, apartments and trailer parks, stores, office buildings, restaurants, service stations and garages, laundries and cleaning establishments, Industrial Establishments and all other places not classed as residential producing or accumulating Solid Waste, including adjacent unimproved property.
- H. *Composting* means a controlled process of degrading organic matter by micro-organisms which results in a humus material and may include simple exposure resulting in a natural decay or physically turning, windrowing, aerating or other mechanical reduction of the organic matter.
- I. *Composting Facility* means a facility where organic matter is processed by Composting.
- J. *Construction and Demolition Debris* means materials generally considered insoluble in water and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project, and including Land Clearing Debris. Mixing of Construction and Demolition Debris with other types of Solid Waste, including material from a construction or demolition site which is not from the actual construction or destruction of a structure, will cause it to be classified as other than Construction and Demolition Debris.
- K. *Container* means an enclosed Container with a close fitting cover or doors with a capacity in excess of one (1) cubic yard, approved by the Division, which is used to store large volumes of Solid Waste for collection. A Container must be serviced by mechanical equipment.
- L. *Container Service* means collection of Garbage, Rubbish, Yard Trash, and Recyclable Materials stored in Containers.
- M. *County* means Clay County, Florida.
- N. *Customer* means a Person provided or to be provided any type of Solid Waste collection service by a Franchisee.
- O. *Department* means the Department of Environmental Regulation of the State of Florida or any successor agency performing a like function.
- P. *Designated Disposal Facility* means the Rosemary Hill Landfill located on Rosemary Hill Road in the County, any Environmental Convenience Center designated by the Division, or any other Solid Waste Facility or Solid Waste Management Facility designated by the Division in writing, where the burden of proving any such designation and producing any such writing shall be on the Person asserting the same.
- Q. *Designated Hazardous Waste Facility* means any building, site, structure, or equipment at or by which Hazardous Waste is disposed of, stored, or treated in compliance with approval by the Board.
- R. *Designated Place of Business* means the business office address of each Franchisee established by the Franchise Agreement, which office shall be open to the public during normal hours of business and available by telephone for the processing of complaints, payments for services, and normal inquiries and shall be located within the boundaries of the County.
- S. *Division* means the Clay County Department of Environmental Services, Division of Solid Waste Management.
- T. *Environmental Convenience Center* means a site the primary purpose of which is to receive, store or hold Residential Waste for transport to a Designated Disposal Facility.
- U. *Franchise* means the rights granted hereunder to collect and transport Solid Waste from Residential Units, Commercial Establishments, Industrial Establishments or Institutional Establishments, regardless of the place of origin, within and from a specified Franchise District, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the County as may be required by other County ordinances and general law.
- V. *Franchise Agreement* means an agreement entered into voluntarily between the Franchisee and the Board including all terms, conditions, specifications and exhibits, the Franchisee's Franchise Application, and any mutually accepted changes thereto, as necessary to implement the Franchise granted by the Board.
- W. *Franchise District* means specified areas within the Unincorporated Area for which a Franchise is granted under the authority of this ordinance.
- X. *Franchisee* means any Person issued a Franchise by the Board.
- Y. *Garbage* means materials resulting from preparation, cooking, and serving of food, market wastes, trimmings, and other

discarded matter from meat or produce, including packaging materials and containers and other refuse as defined by the rules of the Division.

- Z. *Hand Pickup Service* means collection service in which the subscribing Customer places the properly contained Solid Waste generated by it at the curb for pickup in approved Receptacles or appropriate Bundles.
- AA. *Hazardous Substance* means any substance which is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.
- BB. *Hazardous Waste* means Solid Waste, or a combination of Solid Wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed and including any materials specifically designated by the Department or the Division.
- CC. *Incorporated Area* means the areas of the County lying within incorporated municipalities on June 1, 1990.
- DD. *Industrial Establishments* means business whose primary activities include manufacturing, processing, or assembly.
- EE. *Infectious Wastes* means those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; including waste 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 specimens, hypodermic needles, contaminated clothing, and surgical gloves.
- FF. *Institutional Establishments* means establishments operated by governmental entities, nonprofit organizations, tax exempt hospitals, and public, charitable, philanthropic, or religious institutions conducted for the benefit of the public or a recognized section of the public. Establishments not covered by the foregoing definition shall be considered Commercial Establishments.
- GG. *Open Burning* means the burning of any material under such conditions that the products of combustion are emitted directly into the open atmosphere.
- HH. *Owner* means Person or Persons occupying, exercising control over, or owning property, who shall accumulate or cause to accumulate Solid Waste or cause to be placed Solid Waste for collection.
 - II. *Performance Bond* means each of the forms of security approved by the Board and furnished by the Franchisees as a guarantee that each will perform its work in accordance with the Franchise Agreements and will pay all lawful claims.
 - JJ. *Person* means any and all persons, natural or artificial, including any individual, firm, or association; municipal or private corporation organized or existing under the laws of this state or any other state; county of this state; and any governmental agency of this state or the federal government.
- KK. *Predecessor Ordinance* means collectively Clay County Ordinance 87-34, and all subsequent Clay County Ordinances amending the same, including but not limited to Clay County Ordinance 89-35.
- LL. *Receptacle* means any Container approved by the Division for Hand Pickup Service and may include bags provided by Franchisee and/or the County for use in the storage and collection of specific types of Solid Waste and Recyclable Material.
- MM. *Recovered Materials* means those materials which have known potential for Recycling, can be feasibly recycled, and have been diverted or removed from the Solid Waste stream for sale, use, or reuse, by separation, collection, or processing.
- NN. *Recyclable Material* means those materials which suitable for Recycling, which have undergone source separation, and which would otherwise be processed disposed of as Solid Waste.
- OO. *Recycling* means any process by which Solid Waste, or materials which would otherwise become Solid Waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.
- PP. *Residential Service* means the collection of Garbage Rubbish, Yard Trash, and Recyclable Material from detached single-family residences, duplexes, or triplexes.
- QQ. *Residential Unit* means any structure or shelter or any part thereof used or constructed for use as a residence of one (1) family, the adjacent unimproved property, and accessory improvements.
- RR. *Residential Waste* means a mixture of Garbage, Rubbish and Yard Trash resulting from the normal housekeeping activities of a Residential Unit.
- SS. *Resource Recovery* means the process of recovering materials or energy from Solid Waste, excluding those materials or Solid Waste under control of the Nuclear Regulatory Commission.

- TT. *Rubbish* means waste materials which are characterized as not water soluble, not putrescent, not Garbage, not Hazardous Waste, and likely to retain most physical or chemical structures under conditions of disposal, and is not a threat to ground waters including waste materials specifically designated by the Department or the Division.
- UU. *Sludge* means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.
- VV. *Solid Waste* means Garbage, Rubbish, Yard Trash, Clean Debris, White Goods, Special Waste, Land Clearing Debris, ashes, sludge, Construction and Demolition Debris or other discarded material or refuse, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. For the purposes of this ordinance, all material declared by the Customer's work or deed to be destined for final disposal or requiring alteration or modification before reuse, is deemed to be Solid Waste until otherwise declared by the Department and/or the Division.
- WW. *Solid Waste Disposal Facility* means any Solid Waste Management Facility which is the final resting place for Solid Waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal Solid Waste.
- XX. *Solid Waste Management Facility* means any Solid Waste disposal area, Volume Reduction Plant, Environmental Convenience Center, Compost Facility or other facility, the purpose of which is Recycling, Resource Recovery or the disposal, processing, or storage of Solid Waste, excluding facilities which use or ship Recovered Materials unless such facilities are managing Solid Waste.
- YY. *Source Separation* means the setting aside of separated Recyclable Materials at the point of generation by the generator.
- ZZ. *Special Services* means any Solid Waste collection and disposal services which require a Franchisee to render services beyond the minimum requirements of this ordinance.
- AAA. *Special Wastes* means Solid Wastes that can require special handling and management, including, but not limited to, White Goods, whole tires, used oil, mattresses, furniture, lead-acid batteries, and Biological Wastes.
- BBB. *Surety* means any of the issuers of Performance Bonds guaranteeing the full and proper performance of the Franchises established by the Franchise Agreements issued pursuant to this ordinance.
- CCC. *Unincorporated Area* means the Unincorporated Areas of the County existing as of June 1, 1990.
- DDD. *Volume Reduction Plant* means incinerators, pulverizers, compactors, shredding and baling plants, composting plants, and other plants which accept and process Solid Waste for Recycling or Resource Recovery.
- EEE. *White Goods* means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.
- FFF. *Yard Trash* means vegetative matter including but not limited to grass clippings, leaves, twigs, etc., from lawn maintenance, commercial or residential landscape maintenance, right-of-way or easement maintenance, farming operations or nursery operations. Yard Trash does not include Land Clearing Debris of any sort or from any source.
- GGG. *Designated Biological Waste Facility* means any building, site, structure, or equipment at or by which Biological Waste or Biohazardous Waste is disposed of, stored, or treated in compliance with approval by the Board.
- HHH. *Land Clearing Debris* means rocks, soils, tree remains, trees and other vegetative matter that normally results from land clearing or land development operations for a construction project. Land Clearing Debris does not include Yard Waste or any other vegetative matter from lawn maintenance, from commercial or residential landscape maintenance, from right-of-way or easement maintenance, from farming or nursery operations, or from any other sources not related directly to a construction project.
- III. *Land Clearing Debris Disposal Facility* means any facility exclusively for the disposal of Land Clearing Debris.
2. *Subdivisions.* The hierarchy of subdivisions as used throughout this ordinance, from highest to lowest, with the appropriate designation for each, is as follows:
- A. Sections, by upper case Roman numeral;
 - B. Subsections, by Arabic numeral;
 - C. Paragraphs, by upper case letter;
 - D. Subparagraphs, by Arabic numeral in parentheses;
 - E. Clauses, by lower case letter in parentheses;
 - F. Subclauses, by lower case Roman numeral.

(Ord. No. 91-37, § 1, 6-4-91; Ord. No. 98-23, §§ 1—5, 5-26-98)

Footnotes:

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Editor's note— The definitions which were attached to Ord. No. 90-24 and designated as "Exhibit A" thereto were inserted herein by the publisher.

Section III. - Franchising of Solid Waste Collection Services.

1. *General authority and power:*

- A. For the purpose of promoting the health, safety, and general welfare of the citizens of the County, the Board is hereby authorized and empowered to grant Franchises within such Franchise Districts as it may establish within the Unincorporated Area, all as hereinafter provided. Each Franchise may be limited or plenary with respect to the type of collection service authorized, and may be exclusive or nonexclusive within its Franchise District, all at the sole discretion of the Board.
- B. The Board is hereby authorized and empowered to establish Franchise Districts in such sizes, numbers, shapes, and areas, and for such types of collection services as it may from time to time deem suited to carrying out the purposes hereof. The establishment of Franchise Districts shall be by resolution of the Board.
- C. When an exclusive Franchise has been granted within a specific Franchise District for a particular type of collection service, the Board may grant no other Franchise within said Franchise District for said type of collection service effective during the term of said exclusive Franchise, unless the holder thereof consents, unless the holder thereof cannot continue to provide said service within the entire Franchise District in accordance with the minimum standards hereof, or unless the exclusive Franchise is terminated under the provisions hereof.
- D. No Franchise in effect under the provisions of the Predecessor Ordinance shall be altered, amended, or abrogated hereby, and each such Franchise shall continue in full force and effect for the balance of its term thereunder. No Franchise granted hereunder shall commence prior to June 1, 1990.
- E. The Board in its sole discretion may grant a temporary Franchise hereunder to any person holding, on the effective date hereof, a franchise to collect and dispose of Solid Waste under the Predecessor Ordinance, without regard to the Application requirements of subsection 2 hereof, provided that such temporary Franchise shall not extend beyond September 1, 1990, and shall be evidenced by the execution of a Franchise Agreement.

2. *Procedure for grant of Franchise:*

- A. *Application.* No Franchise shall be granted hereunder prior to the submittal of an Application therefor on a form supplied by the Division.
 - B. *Application fee.* Simultaneously with the submittal of an Application, the applicant must submit payment to the Board a fee therefor in the amount of two hundred fifty dollars (\$250.00). The failure by an applicant to submit payment of the fee shall disqualify the Application from consideration. Any Application fee received shall be nonrefundable and shall be deposited into the Solid Waste Enterprise Fund. The Board hereby reserves the authority to waive the Application fee for any Person who held a Franchise under the Predecessor Ordinance or for any Person designated by a Person who held a Franchise under the Predecessor Ordinance as its transferee prior to June 1, 1990.
 - C. *Solicitation of Application.* No Application except for transfer of Franchise may be submitted to the Board unless the Board has first solicited the same by any process which it may deem suited to carry out the purposes hereof, including, but not limited to, competitive and noncompetitive solicitations.
3. *Franchise term and conditions.* Each Franchise shall be granted for such period of time as may be fixed by the Board, but not in excess of five (5) years. The Franchise shall be conditioned upon the faithful performance of all duties and requirements imposed by existing law, this ordinance, and requirements established by the Division under the direction of the Board. The grant of a Franchise hereunder shall be evidenced by the execution of a binding Franchise Agreement between the Board and the Franchisee.
4. *Statement of costs.* The Franchisee, upon the granting of the Franchise, shall promptly make and file with the Board an affidavit reciting the actual cost of the investment in equipment, land, and other facilities made for the purpose of enabling the Franchisee to discharge the responsibility imposed under the terms and conditions of the Franchise, the Franchise Agreement and this ordinance.
5. *Rates:*

- A. *Initial rates.* The Board reserves the right to establish and regulate rates to be charged Customers under any Franchise. If such rates are established and regulated under any particular Franchise, then the Franchise Agreement for such Franchise shall state the rates to be charged for the service to be rendered or the Receptacles or Containers to be provided to Customers under the Franchise.
 - B. Any initial rates established in the Franchise Agreement shall remain in effect for the duration of the Franchise unless the Board approves a rate change based upon either a change in the compensation system of the Franchisee, a request by the Board or by a Franchisee as provided for in the Franchise Agreement for a rate review and change, a disposal fee change, or such other considerations as may be just and equitable. Any such change shall be incorporated into each Franchise Agreement by written amendment thereto.
 - C. *Rate change audit.* An audit of the Franchisee's books may be conducted by a County appointed certified public accountant (CPA) before a rate change is approved or disapproved. The Franchisee shall pay the cost of all audits, legal fees, etc., incurred by the County in reviewing a proposed rate change, if the request is initiated by the Franchisee.
 - D. *Franchise compensation system.* The Board shall have the right, in its sole discretion, any time during the term of a Franchise, to alter, amend, change, or modify the Franchisee's compensation system, so long as the system results in a reasonable operating ratio between income and prudent expenses equivalent to the operating ratio under the immediately preceding compensation system.
 - E. *Rate increases.* No rate increase may be granted for any Franchise unless the Franchise can demonstrate by competent and substantial evidence to the Board that its reasonable operating ratio has declined by more than twenty (20) percent on average over the immediately preceding twelve-month period. In considering a Franchisee's application for a rate increase, the Board may take into consideration all factors reasonably influencing the Franchisee's cost of doing business, including, but not limited to, the reasonableness and necessity of any expenditure incurred or being incurred by the Franchisee, as well as the quality of the management of the Franchisee. The Board shall fix rates that will give the Franchisee a reasonable operating ratio between income and prudent expenses. The Board shall consider salaries paid for actual services rendered by individual proprietors or partners holding a Franchise as a prudent operating expense.
 - F. *Operating ratio.* A reasonable operating ratio hereunder shall be presumed to be ten (10) percent, after factoring out the fees charged for disposal at the Designated Disposal Facilities.
 - G. *Disposal fee change.* In the event the charges for disposal at the Designated Disposal Facilities are increased or decreased, the County shall cause a corresponding increase or decrease in the rate schedule based upon the average weight of the class of Solid Waste affected per unit of service for the preceding twelve-month period.
6. *Disposal fees and regulations:*
- A. *Authority to charge disposal fees at Designated Disposal Facilities.* The County hereby reserves the exclusive power and authority to charge and collect disposal fees for disposal of Solid Waste at the Designated Disposal Facilities, whether owned, operated and/or managed by the County or not, and to increase or decrease said fees at its sole discretion from time to time.
 - B. *Disposal at Designated Disposal Facilities.* Each Franchisee must dispose of all Solid Waste collected by it at and only at the Designated Disposal Facilities.
 - C. *Duty to pay disposal fee.* The duty and obligation to pay to the Board the applicable disposal fee for any particular load of Solid Waste collected under a Franchise shall arise immediately and instantly at the time the Solid Waste is collected from the Customer.
 - D. *Solid Waste nonreturnable.* No Solid Waste, once collected, may be returned to the Customer without the written approval of the Division, or to any location other than a Designated Disposal Facility.
 - E. *Penalty.* The penalty for disposal at any location other than a Designated Disposal Facility shall be two (2) times the applicable disposal fee, payable to the County.
7. *Franchise fee.* Effective January 1, 1999, each existing Franchisee who holds and operates under a valid, unexpired franchise agreement with Clay County for container service in Clay County shall pay to the Clay County Board of County Commissioners care of the Division, a Franchise fee of fourteen (14) percent of the Franchisee's gross receipts for container service in its franchised area. Compactor lease and purchase receipts are exempt from a franchise fee.
- A. *Payment.* Payment shall be due and payable on or before the last day of each calendar month and shall be computed based on the gross receipts (less compactor lease and purchase receipts) of the previous calendar month. The first payment under this ordinance shall be due February 28, 1999. The final payment for the last month of the Franchise Agreement shall be due thirty (30) days following the expiration or termination of the Franchise Agreement.

- B. *Monthly Report.* The Franchisee shall deliver to the Division, on or before the last day of each calendar month, a true and cc of gross receipts generated the previous calendar month from within its franchise area.
 - C. When a Franchisee fails to deliver a monthly report due under Section III.7B of this Article within the prescribed time, said failure shall be grounds for termination of the Franchise as provided under Section IV.1 of this Article. In the event of termination of the Franchise, the Franchisee shall remain liable for all franchise and disposal fees due up to the date of termination.
8. *Annual Reporting Requirements.*
- A. All Franchisees (both hand pick up and container service) shall maintain all books and records related to the Franchise in accord with generally accepted accounting principles. The Franchisee shall make available a customer list showing location, container size, and frequency for inspection by the Division staff upon request and with ten (10) days' prior notice.
 - B. All Franchisees (both hand pick up and container service) shall submit a certified financial statement each year on or before the first day of July for the previous calendar year. The certified financial statement shall be prepared by a certified public accountant licensed by the State of Florida. The certified financial statement shall indicate all revenues and expenses of disposal generated from or attributable to franchise activities within Clay County and shall be prepared in accordance with generally accepted accounting principles.
 - C. Any Franchisee which fails to submit its certified financial statement within the time prescribed in Section III.8B of this Article or to obtain an extension for good cause shown fifteen (15) days prior to the report due date shall pay an additional late charge of ten (10) percent of the average monthly disposal fee incurred by the Franchisee for the preceding twelve-month period.
 - D. When a certified financial statement under Section III.8B has not been filed within the prescribed time, said failure to file shall be grounds for termination of the Franchise as provided under Section IV.1 of this Article. In the event of termination of the Franchise, the Franchisee shall remain liable for all franchise and disposal fees due up to the date of termination.
9. *Unlawful operation:* It shall be unlawful for any Person to collect, remove, or dispose of Solid Waste for others in the Unincorporated Area of the County without first obtaining a Franchise as authorized by this ordinance. Notwithstanding the foregoing, this ordinance and any exclusivity granted to any Franchisee, shall not be deemed to prohibit the transportation and disposal by any Person of the Solid Waste generated exclusivity [exclusively] by such Person in the pursuit of its lawful conduct and affairs, including any Person engaged in the business of cleanup of sites of construction, demolition or renovation of single family residential structures without the use of Containers, or the collection, transportation and disposal of construction and Demolition Debris from the construction, demolition or renovation of single family residential structures by any Person for hire without the use of Containers, provided that such Solid Waste must nevertheless be transported in a legally prescribed manner and disposal of at only the Designated Disposal Facilities, subject to the rules and regulations therefor of the Division, and provided further, that the Board hereby reserves the authority to regulate such collection, transportation and disposal activities by subsequent amendment hereto or by separate ordinance.
10. *Administrative Fee:*
- A. *Annual Obligation.* Each year each Franchisee shall pay to the Board an administrative fee in accordance with this subsection. All proceeds of administrative fees received under this subsection shall be nonrefundable and shall be deposited into the Solid Waste Enterprise Fund.
 - B. *Due Date-General.* Except as provided in paragraph C., the date each year upon which the administrative fee is due and payable for a Franchise shall be the effective date of the Franchise Agreement applicable thereto or the anniversary thereof.
 - C. *Due Date-Exception.* With regard to each Franchise granted and in effect prior to May 1, 2000, the date upon which the administrative fee is due and payable for the year of said Franchise during which May 1, 2000, falls shall be June 1, 2000.
 - D. *Amount-General.* Except as provided in paragraph E, the administrative fee for a Franchise applicable to a given year shall be determined as follows:
 - (1) The administrative fee for a Franchise with gross receipts not exceeding two hundred thousand dollars (\$200,000.00) during the year immediately preceding the due date therefor shall be one hundred twenty-five dollars (\$125.00) if the Division issued fewer than four (4) notices of violation of this Ordinance during said year to said Franchisee, else the administrative fee shall be two hundred fifty dollars (\$250.00).

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- (2) The administrative fee for a Franchise with gross receipts exceeding two hundred thousand dollars (\$200,000.00) but not exceeding five hundred thousand dollars (\$500,000.00) during the year immediately preceding the due date therefor shall be two hundred fifty dollars (\$250.00) if the Division issued fewer than seven (7) notices of violation of this Ordinance during said year to said Franchisee, else the administrative fee shall be five hundred dollars (\$500.00).
- (3) The administrative fee for a Franchise with gross receipts exceeding five hundred thousand dollars (\$500,000) during the year immediately preceding the due date therefor shall be three hundred seventy-five dollars (\$375.00) if the Division issued fewer than ten (10) notices of violation of this Ordinance during said year to said Franchisee, else the administrative fee shall be seven hundred fifty dollars (\$750.00).

E. *Amount-Exceptions:*

- (1) For the first year of a Franchise initially granted after May 1, 2000, the administrative fee shall be two hundred fifty dollars (\$250.00).
- (2) For the first year of a Franchise granted on or after May 1, 1999, but prior to May 1, 2000, the administrative fee shall be two hundred fifty dollars (\$250.00) times the number of days remaining in said first year from and including the due date for said administrative fee through the day immediately preceding the first anniversary of the effective date of the Franchise Agreement therefor, divided by three hundred sixty-five (365) days.
- (3) For a Franchise granted prior to May 1, 1999, the administrative fee for the year of the Franchise Agreement applicable thereto during which May 1, 2000, falls shall be the amount applicable under paragraph D times the number of days remaining in said year from and including the due date for said administrative fee through the day immediately preceding the next ensuing anniversary of the effective date of the Franchise Agreement therefor, divided by three hundred sixty-five (365) days

- F. *Amount-Credit.* With regard to each Franchise in effect prior to May 1, 2000, the Franchisee therefor shall receive a credit against any and all administrative fees payable under this subsection, which credit shall be calculated by dividing by ten (10) the amount of the Application fee, if any, paid pursuant to paragraph B. of subsection (2) by said Franchisee or its approved assignor, and multiplying the quotient by the whole number that is nearest to the number that is equal to ten (10) minus the number of years that said Franchise has been in effect prior to May 1, 2000, inclusive of all initial and renewal terms.

(Ord. No. 90-33, § 5, 5-30-90; Ord. No. 91-31, § 1, 5-14-91; Ord. No. 91-53, § 1, 9-24-91; Ord. No. 92-20, § 4, 9-14-92; Ord. No. 98-60, §§ 1, 2, 10-13-98; Ord. No. 00-24, §§ 1, 2, 4-11-00; Ord. No. 2002-50, § 1, 10-22-02)

Section IV. - Franchise Obligations.

1. *Franchise performance.* In the event a Franchisee shall violate any of the terms, conditions, or provisions of this ordinance, the Franchise Agreement or any of the regulations promulgated by the Board pursuant thereto, the Division shall notify the Franchise, in writing, to desist from further violations. If the violation continues for a period of fifteen (15) days thereafter or reoccurs any time thereafter, the Franchise shall be deemed to have forfeited the Franchise; provided, the Franchisee may, within said fifteen-day period, petition the Board for a hearing regarding whether grounds for forfeiture exist. A forfeiture of a Franchise shall mean that the Franchisee's rights under a Franchise are revoked and the Franchise Agreement terminated. Forfeiture shall take effect upon the certified mailing by the Division of notice thereof to the Franchisee.
2. *General conditions:*
 - A. (1) To provide a better service and improve Customer goodwill, the Franchisee's personnel shall be instructed to and shall refrain from engaging in any arguments with Customers and from exhibiting or expressing surliness, ill manners or disrespect toward Customers, and shall present a neat appearance at all times.
 - (2) When any action shall be taken by the Franchisee under the authority granted by these rules, and such action shall be objected to by any Customer, either the Franchisee or the Customer may submit the controversy to the Division for mediation, conciliation, or adjudication.
- B. The Board may, in its sole discretion, require the Franchisee to furnish to the Board on an annual basis, a performance and payment bond in the amount not to exceed twenty-five thousand dollars (\$25,000.00) to insure continuity of collection and disposal service. Said bond may be issued by any surety, or may be in the form of a letter of credit or a deposit account irrevocably assigned to the Board, or in any other form which the Board may approve. The bond shall be conditioned upon performance of the Franchise obligations, and it shall be considered a violation of the Franchise and the bond conditions if the Franchisee shall:

- (1) Fail to cure a violation under subsection 1., hereof, after having been given fifteen (15) days' notice of failure to comply
 - (2) Take the benefit of any present or future insolvency statutes, or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, reorganization or readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the 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.
 - (3) By an order or judgment by a court of competent jurisdiction be adjudged bankrupt; provided, however, that if such judgment or order is vacated within sixty (60) days after the entry thereof, any notice of forfeiture of Franchise under subsection 1., hereof, resulting therefrom shall be null, void, and of no effect.
- C. The Franchisee shall provide and keep in force a comprehensive general public liability and property damage insurance policy. Such public liability coverage shall not be less than five hundred thousand dollars (\$500,000.00) for each person, and not less than five hundred thousand dollars (\$500,000.00) for each accident, with property damage coverage of not less than two hundred fifty thousand dollars (\$250,000.00) insuring by name both the County and the Franchisee, as their interests may appear, against public liability and property damage claims; provided, however, that if the Franchise is for Hand Pickup Service, and the Franchisee serves fewer than two hundred (200) Customers, then the Board may reduce the required limits of the public liability coverage to one hundred thousand dollars (\$100,000.00) combined for injury to person or property. The Franchisee shall maintain in full force and effect at all times at least the minimum motor vehicle insurance required under the law of the State of Florida for registration thereof, and shall provide proof of such registration to the Board for each motor vehicle used by the Franchisee in the performance of its Franchise obligations. The Franchisee shall furnish the Board with an appropriate certificate or certificates from the insurance carrier showing such insurance to be in force at all times along with an agreement from the insurance carrier to notify the Division thirty (30) days prior to any modification, revocation, cancellation or nonrenewal thereof. The Franchise Agreement may specify insurance in greater amounts than provided herein, but in no event shall any amounts be less than specified herein.
- D. All vehicles used for Solid Waste collection shall be leakproof, packer body or nonremovable covered body, and shall pass periodic safety and sanitary inspection conducted by the Division. All vehicles used for Solid Waste collection shall be prominently marked with the name of the Franchisee and vehicle number on driver and passenger sides. [The] vehicle number shall also be marked on the front and rear of the vehicle.
- E. The Franchisee shall submit a report by the fifteenth of each month listing all complaints and action of each month listing all complaints and action taken to the Division. The Franchisee shall be available to review this report with the Division if so requested.
- F. The Franchisee shall make a full and prompt investigation of all customer complaints and other service requests. For the purposes of this section, "complaint" shall be construed to mean substantial objections made to the Franchisee by a Customer as to its charges, facilities, or service. A written record of each complaint received shall be kept by the Franchisee. This record shall show the name and address of the complainant, and the result of any investigation, along with the disposition of the complaint and the date of such disposition. Excessive numbers of well founded complaints may be cause for forfeiture of a Franchise.
- G. The Franchisee shall maintain throughout the term of the Franchise a Designated Place of Business, unless the Board, in its sole discretion, specifically approves otherwise, with any conditions it may deem appropriate.
3. *Franchise transfer:*
- A. Any Person to whom a Franchise is transferred, whether for a valid consideration or not, shall be responsible for all fees owed to the County by the original Franchisee even though the obligation is incurred prior to the transfer.
 - B. Any Person desiring to transfer a Franchise or the rights obtained under a Franchise in whole or in part, or any Franchisee desiring to transfer a controlling interest in such Franchisee shall furnish the Board a complete current audit, and shall petition the Board for authority to transfer the Franchise or controlling interest in the Franchisee. The Board may disapprove any transfer if it has reasonable grounds to believe that the transfer will result in a degradation of performance or service provided by the transferee, such grounds to include issues relating to the moral, commercial, or operational character of the transferee or its principals, or defer the transfer until all fees owed the County are paid. As used in this paragraph, the term "controlling interest" means forty (40) percent or more of the ownership or of the voting rights of the Franchisee.
 - C. The Board shall have final approval of any transfer.

- D. Prior to any transfer under paragraph B hereof, the Franchisee must submit to the Board an Application with the applicable
 - E. No transfer shall be approved for any Franchise for Hand Pickup Service if the result is a concentration in a single Franchisee of more than fifty (50) percent of the then existing Customer accounts for Hand Pickup Service within the Unincorporated Area.
4. *Special services:*
- A. Except as otherwise provided herein, each Franchisee shall, upon the request of its Customer, render or cause to be rendered Special Services, and may charge a reasonable fee therefor. Each Franchisee must act reasonably and timely in this regard.
 - B. Rates for particular Special Services may be established or amended by the Board from time to time by resolution.
5. *Collection services and operations:*
- A. *Hand Pickup Service.* The provisions of this paragraph shall apply to any Franchise granted for Hand Pickup Service.
 - (1) *Frequency of waste collection.*
 - (a) Franchisee shall pickup from each Customer location serviced within Hand pickup Service one (1) time each week, all Garbage and Rubbish generated by the Customer serviced with Hand Pickup Service and placed for collection in approved Receptacles. One (1) additional pickup per week shall be offered as an optional service.
 - (b) Franchisee shall pickup from each Customer location in an urban service area serviced with Hand Pickup Service one (1) time each week, Yard Trash generated by said Customer and placed for collection in approved Receptacles or Bundles. Yard Trash generated by each Customer location in a rural service area considering residential densities and economic practicalities serviced with said Hand Pickup Service shall be picked up as a special service at the option of the Customer. The urban and rural service areas will be as established and revised from time to time by the Division.
 - (c) Franchisee shall pickup from each Customer location serviced with Hand Pickup Service one (1) time each week, all Recyclables generated by the Customer serviced with Hand Pickup Service and placed for collection in approved Receptacles or Bundles.
 - (d) Franchisee shall pickup from each Customer location serviced with Hand Pickup Service one (1) time each month, White Goods and other items of solid waste which because of bulk or other attributes cannot readily be placed in a Receptacle or reduced to a Bundle, when scheduled between Franchisee and The Customer.
 - (e) Pickups shall not be reduced by holidays, but pickups normally scheduled to be made on a holiday may be rescheduled upon approval by the Division at least five (5) days prior notification or other means approved by the Division. Any publication shall be at the expense of the Franchisee.
 - (2) *Quantity.* Franchisee shall be required to pick up all Garbage, Yard Trash, and Rubbish and Recyclable Materials generated by the Customer at their customer location serviced with Hand Pickup Service, provided that:
 - (a) i. Garbage has been placed by the Customer for collection separately from Yard Trash, Rubbish and Recyclable Material.
 - ii. All Yard Trash and Rubbish has been placed by the Customer for collection in approved Receptacles or Bundles.
 - iii. All Recyclable Material(s) have been placed by the Customer for collection in approved Receptacles or Bundles.
 - (b) Franchise shall not be required to collect any Garbage, Rubbish, Yard Trash and/or Recyclable Material which does not comply with the requirements in this subparagraph except by special service.
 - (3) *Waste Collection.* Franchisee shall make collections with a minimum of noise and disturbance. Any spillage by the Franchisee during the collection and disposal process shall be picked up and removed by Franchisee.
 - (a) The presence of any Yard Trash or Rubbish on the scheduled day for Garbage pickup shall be due cause not to pick up the Solid Waste in question.
 - (b) The presence of any Garbage on the scheduled day for Rubbish and Yard Trash pickup will be due cause not to pick up the Solid Waste in question.
 - (c) The presence of any Garbage, Rubbish or Yard Trash mixed with Recyclable Materials will be due cause not to pick up the Solid Waste in question.
 - (4) *Special Services.* Services such as backdoor collection, belowground collection, collection from a Customer being

provided Residential Service of Solid Waste other than Residential Waste, or additional pickups shall be provided for at a separate fee based upon terms agreed to by Franchisee and the Customer, unless such fee is otherwise established under the authority of this ordinance. Requests for pickups of Special Waste shall be considered as requests for Special Services. Charges for Special Services shall not be unreasonable nor excessive.

(5) *Solid Waste Receptacles.*

(a) *Garbage.* Garbage shall be placed for collection separately from Yard Trash and Rubbish in approved Receptacles weighing not more than fifty (50) pounds when filled.

(b) *Yard Trash and Rubbish.*

i. Yard Trash and Rubbish conducive to containerization shall be placed for collection in approved Receptacles.

ii. Yard Trash and Rubbish not conducive to containerization may be placed for collection in Bundles.

(c) *Recyclable Materials.*

i. With the exception of bundled newspapers and corrugated paper, all Recyclable Materials shall be placed for collection in approved Receptacles.

ii. Newspaper and corrugated materials shall be placed for collection in Bundles.

(d) *Hazardous Waste.* Franchisee shall not be responsible for the collection of Hazardous Waste.

(e) *Location of Residential Waste for collection.* All Residential Service Customers shall place Residential Waste for collection at the location hereinafter provided for the collection of Receptacles for Hand Pickup Service, unless Franchisee has agreed to provide a Special Service collection at another location.

(6) *Customer restrictions:*

(a) Franchisee shall not be required to collect any Solid Waste which does not conform to the standards set forth herein.

(b) Franchisee shall have the right to terminate service to any Customer violating any provision of this paragraph. Written notice of such termination shall be provided to the Customer enumerating the violation(s), with a copy furnished to the Division.

(7) *Nonapproved Receptacles.* Any Receptacle offered for collection which has not been approved by the Division shall be clearly marked by the Franchisee, specifying the manner in which the Receptacle fails to meet the approval standards.

(8) *Residential Service by Hand Pickup Service:*

(a) No Residential Service is permitted except by Hand Pickup Service, except that the Director of the Division may authorize the use of Container Service for specific Residential Units under any of the following circumstances:

(i) The Residential Units consist of a group of detached single-family residences numbering in excess of three (3) under common ownership and no more than two (2) other detached single-family residences, all of which are served by a common access and utilize a single Container located within reasonable walking distance from each Residential Unit.

(ii) The Residential Unit is located in or immediately adjacent or appurtenant to a Commercial Establishment being served by Container Service; the occupant of the Residential Unit is a proprietor, employee, custodian or security personnel of the Commercial Establishment; and the Residential Unit's Solid Waste is being deposited only into the Commercial Establishment's Container.

(iii) The Residential Units comprise a mobile home park under single ownership within which lots numbering in excess of three (3) are leased for mobile home sites.

(b) The Director of the Division may impose reasonable conditions and requirements with respect to the exceptions allowed under this Subparagraph to prevent fraud and abuse.

B. *Container Service.* The provisions of this paragraph shall apply to any Franchise granted for Container Service.

(1) *Frequency of waste collection.* Franchisee shall pick up from the Containers established by agreement with the Customer at the frequency established by such agreement, but in no case less frequently than once weekly unless otherwise specifically approved by the Division. Pickups shall not be reduced by holidays, but pickups normally scheduled to be made on a holiday may be rescheduled upon approval by the Division after at least five (5) days' prior notification to the affected Customer by publication or other means approved by the Division.

- (2) *Quantity.* Franchisee shall be required to pick up all Solid Waste of a volume not in excess of the capacity of the Containers, and contained therein. Solid Waste stored in the vicinity of Containers, but not inside, may be picked up as a Special Service in accordance with the agreement between the Franchisee and the Customer.
- (3) *Waste collection.* The Franchisee shall make collections with a minimum of noise and disturbance. Collections are prohibited within seven hundred (700) feet of an occupied residence between the hours of 10:00 p.m. and 7:00 a.m. Collections shall be done in a sanitary manner. Any spillage by the Franchisee during the collection and disposal process shall be picked up and removed by the Franchisee.
- (4) *Special Services.* Special Services may be provided for a separate fee upon terms agreed upon by Franchisee and the Customer unless such fee is otherwise established under the authority of this Ordinance. Requests for pickup of Special Waste shall be considered as requests for Special Services. Charges for Special Services shall not be unreasonable nor excessive.
- (5) *Containers:*
 - (a) Unless otherwise provided in the Franchise Agreement, Containers shall be provided for all Customers in all available sizes (two (2) through fifty (50) cubic yards) with suitable lifting connections to enable handling by the Franchisee using its standard equipment.
 - (b) Each Container for Garbage shall be watertight and made of impervious material to protect the contents from flies, insects, rats and other animals, and shall be provided with a tight fitting cover. In addition, each Container, regardless of purpose, shall be:
 - i. Free from jagged and sharp edges;
 - ii. Free from inside structures and bracing, such as inside bands and reinforcing angles, which would prevent free discharge of the contents; and,
 - iii. Equipped with suitable handles, lifting lugs, and equipment to enable the Franchisee to lift, empty, and otherwise handle the Container with its standard equipment.
 - (c) Containers shall be the property of the Franchisee, unless specific arrangements approved by the Division in advance are otherwise made. Any such Container owned by the Franchisee which fails to meet the standards prescribed by this Ordinance shall be clearly marked by the Division, specifying the manner in which said Container fails to meet these requirements. In the event any Container found to be substandard is Customer owned, it shall be clearly marked by the Franchisee, specifying the manner in which said Container fails to meet these requirements. In either case, the substandard Container shall be repaired or removed from service by its owner within seventy-two (72) hours else it shall thereafter be removed and destroyed by the Franchisee.
 - (d) The identification and local telephone number of the Franchisee shall be clearly marked on or permanently and securely affixed to at least two (2) sides of each of its Containers that is lawfully in service within the County. Such identification shall be limited to the Franchisee's actual or fictitious name used within the County, or to the symbol or logo used by the Franchisee in conducting business within the County, or both. The field within which all elements of the identification and telephone number appear on any one (1) side of a Container shall occupy an area not less than one and one-quarter (1¼) feet in size, and not more than thirteen (13) feet in size, such area to be calculated by multiplying the maximum height of the field by the maximum width of the field. Any notice posted under Section VII.6 shall be separate and distinct from the identification and telephone number field, and the area occupied by such notice shall be excluded when computing the area of the identification and telephone number field.
 - (e) The requirements of clause (d) shall not apply to any Container that is lawfully in service within the County as of May 1, 2000; provided, the requirements of clause (d) shall be applicable to:
 - i. Any such Container that is repainted on or after said date; and,
 - ii. Any Container that is initially placed into lawful service within the County on or after said date.
 - (f) With the exception of the identification and telephone number information required under clause (d) and the notice posted under Section VII.6, no signs, images, symbols, logos, advertisements, notices or other information may be temporarily or permanently marked, painted or posted on, or attached or affixed to any Container in service within the County.
- (6) *Hazardous Waste.* Franchisee shall not be responsible for the collection of Hazardous Waste.

(7) *Customer restrictions:*

- (a) Franchisee shall not be required to collect any Solid Waste not generated by the Customer served.
- (b) Franchisee shall have the right to terminate service to any Customer violating provisions of this paragraph or the agreement between the Franchisee and the Customer. Written notice of such termination shall be provided to the Customer enumerating the violation(s) with a copy furnished to the Division.

6. *Methods of billing:*

- A. The Franchisee for Container Service shall bill the Customer on a monthly or bimonthly basis. The Franchisee may collect the first and last months' billing in advance for service to be rendered. If the monthly bill will exceed fifty dollars (\$50.00), the Franchisee must place the monies collected in advance of service being rendered in an escrow account and show proof to the Division thereof upon demand.
 - B. The Franchisee for Hand Pickup Service shall bill the Customer on a quarterly basis in advance for service to be rendered. In the mutually exclusive alternative, and if so required in the Franchise Agreement, such Franchisee, upon Customer request, shall provide such Customer approved Receptacles in quantities sufficient to meet the average Customer needs for Garbage, Rubbish, Yard Trash, and Recyclable Materials exclusive of Special Services, for a period of three (3) months. Payment from the Customer to Franchisee therefor shall be due upon receipt by the Customer of the approved Receptacles.
7. *Discontinuance of service because of nonpayment of fees.* In the event it shall become desirable or necessary for Franchisee to terminate the service required of him by reason of nonpayment of charges by any Customer, such service shall not be discontinued until a written notice has been delivered or mailed to the premises where such services are to be discontinued, and a copy of such notice mailed to the Division at least ten (10) days prior to the discontinuance. Notice on the regular invoice (bill) does not comply with the intent of this subsection. No customer shall be deprived of services for which the Customer has paid in advance.
8. *Reinstatement of discontinued service.* Franchise for Container Services may charge a fee, not in excess of one (1) month's collection fee, or fifty dollars (\$50.00), whichever is less, for reinstating a Customer whose service has been discontinued under subsection 7., hereof.

9. *Customer service.*

- A. Each Franchisee shall provide and make known to the Division a phone service and/or location where the public may request Solid Waste collection service.
- B. Each Franchisee shall provide each Customer a condensed version, approved by the Division, of this ordinance. Said version shall outline rates and obligations of the Customer and Franchisee.
- C. Franchisee shall require its employees to serve the public in a courteous, helpful, and impartial manner. All Franchisee personnel in both the field and the office shall refrain from belligerent behavior and profanity. Correction of any such behavior and language shall be the responsibility of Franchisee. Personnel shall perform collection service with as little noise and little disturbance to the Customer as possible. No employee shall disturb or otherwise handle or move Customer or Board property that is unnecessary to the proper execution of his or her duties. Care shall be taken to prevent damage to property, including shrubs, flowers and other plants. Collection shall be done in a sanitary manner and any spillage by Franchisee shall be immediately picked up and deposited in the collection vehicle. Personnel shall not be required to expose themselves to the danger of being bitten by vicious dogs in order to accomplish collection. In any case where the Owner or tenants have such animals at large, Franchisee shall immediately notify the Division and the County's animal control officer in writing of such condition and of Franchisee's inability to perform collection service because of such condition.

(Ord. No. 90-33, §§ 3, 4, 5-30-90; Ord. No. 92-20, § 3, 9-14-92; Ord. No. 93-29, § 1, 8-24-93; Ord. No. 00-3, § 1, 1-11-00; Ord. No. 00-24, § 3, 4-11-2000; Ord. No. 00-45, § 1, 7-25-2000)

Section V. - Solid Waste Disposal.

- 1. Except as otherwise specifically provided herein, all Solid Waste generated within the Unincorporated Area other than Land Clearing Debris shall be disposed of only at Designated Disposal Facilities, and nowhere else.
- 2. Except as otherwise specifically provided herein, all Solid Waste generated within the Incorporated Area other than Land Clearing Debris shall be disposed of only at Designated Disposal Facilities, and nowhere else, unless disposal elsewhere is specifically authorized by or under the statutory law of the State of Florida.

3. Except as otherwise specifically provided herein, the dumping and disposal of Solid Waste on either public or private property at sites other than Designated Disposal Facilities is hereby prohibited.
4. The Open Burning of Garbage is hereby prohibited within the Incorporated Area and Unincorporated Area.
5. Except as otherwise specifically provided herein, private landfills and other facilities for the disposal of Solid Waste are hereby prohibited within the Incorporated Area and Unincorporated Area.
6. No Solid Waste, Hazardous Waste, Hazardous Substance, Biological Waste or Biohazardous Waste generated outside of the County shall be disposed of anywhere within the County.
7. Any other provisions of this ordinance to the contrary notwithstanding, publicly-owned and privately-owned Land Clearing Debris Disposal Facilities may be located within the County, provided that a valid and unexpired permit has been issued by the Department authorizing the disposal of Land Clearing Debris therein, and, with respect to the site upon which such facility is located, all applicable requirements of the comprehensive plan, land use regulations, and other regulations of the local governmental entity with jurisdiction, as well as the laws, rules and regulations of all other regulatory agencies with jurisdiction have been and continue to be satisfied.
8. Any other provisions of this ordinance to the contrary notwithstanding, Land Clearing Debris, but no other Solid Waste, may be disposed of in any Land Clearing Debris Disposal Facility lawfully in existence under subsection 7, whether publicly-owned or privately-owned. Any other provisions of this ordinance to the contrary notwithstanding, Land Clearing Debris, but no other Solid Waste, may be removed from the County for disposal.

(Ord. No. 91-37, § 3, 6-4-91; Ord. No. 98-23, § 7, 5-26-98)

Section VI. - Requirements for Solid Waste Removal Applicable to Customers and Franchisees.

1. *Accumulation of Solid Waste prohibited.* No Owner or other occupant of improved real property shall permit the accumulation of Solid Waste upon said property for a period in excess of seven (7) consecutive days without providing for its removal and disposal.
2. *Evidence of accumulation:*
 - A. The fact that any Residential Unit, Commercial Establishment, Industrial Establishment or Institutional Establishment is occupied shall be prima facie evidence that Solid Waste is being produced and accumulated upon the premises thereof.
 - B. The Division or the Clay County Codes Enforcement Division, upon finding occupation of a Residential Unit, Commercial Establishment, Industrial Establishment or Institutional Establishment not receiving Solid Waste collection service or for which the Solid Waste generated thereon is not otherwise lawfully being disposed of in accordance with the provisions of this ordinance, shall notify the Owner and/or occupants to cause the removal and disposal of the Solid Waste within twenty-four (24) hours. Such notice shall be issued by:
 - (1) Certified U.S. mail; or,
 - (2) Hand delivery; or,
 - (3) Posting of such notice on the place of such occupation.
 - C. If the violation of this ordinance is not stopped within the time prescribed in said notice, the Division or the codes enforcement officer may turn the violation over to the Clay County Codes Enforcement Board for disposition, which shall have plenary jurisdiction hereby to adjudicate the same.
 - D. The Division may, in order to avoid the creation of a public nuisance, undertake any required correctional procedures, including the removal and disposal of the accumulation, if necessary. The cost or expense of such removal, disposal, or correctional procedures shall be paid by the violator.
 - E. Any monies due and owing the Division for the removal, disposal, or other correctional procedures shall be collected as provided for by law.
3. *Containers, Receptacles and Bundles:*
 - A. All Hand Pickup Service Customers shall use approved Receptacles.
 - B. Containers shall be kept covered at all times and maintained in good condition. Any Container that does not conform with the provisions of this regulation or that may have ragged or sharp edges, or any other defect liable to hamper or injure the person working in, on or around said Container must be promptly repaired or replaced with an approved Container upon receipt of notice to that effect from the Customer or the Division.
 - C. *Location of Receptacles and Bundles:*

- (1) Receptacles and Bundles for Hand Pickup Service shall be placed at ground level, on the property of the Customer and shall not be placed upon County or public property or neighboring property not in the ownership or tenancy of the person by whom the Solid Waste is generated, whether such neighboring property be vacant or improved; provided however, that unless otherwise directed by the Division, Receptacles and Bundles shall be placed upon the portion of the public right-of-way fronting along the Customer's property immediately adjacent to the travelled, graded or paved portion thereof. Such placement of Receptacles and Bundles shall be easily accessible to the Division for inspection and to employees of the Franchisee for disposal.
- (2) At no time shall any Containers, Receptacles, Bundles or Solid Waste be placed on or within the travelled, graded or paved portion of any right-of-way, or on or within any gutters, ditches or sidewalks.
- (3) Receptacles and Bundles for Hand Pickup Service shall be placed prior to 6:00 a.m. of the day of collection, but in no case shall Receptacles or Bundles be placed on public right-of-way more than twelve (12) hours preceding the day of collection. The normal hours of collection are after the hours of 6:00 a.m. on days designated by Franchisee. The Customer shall place Receptacles and Bundle ready for collection at a maximum distance of ten (10) feet from the travelled, graded or paved portion of the right-of-way and adjacent to the Customer's driveway.
- (4) Customers not wishing to place Receptacles or Bundles at the designated location shall contract with the Franchisee for collection and disposal of Solid Waste as a Special Service.

4. *Handling of Yard Trash.*

- A. Yard Trash may be disposed of by mulching and composting, provided that such mulching and composting is undertaken in a prompt and lawful manner and only upon the property where the Yard Trash was generated.
- B. Each Hand Pick-up Service Customer shall separate Yard Trash not mulched and composted under Paragraph A hereof from all other Solid Waste, placing such Yard Trash in approved Receptacles or Bundles for collection.
- C. Each Container Service Customer shall separate Yard Trash not mulched and composted under Paragraph A hereof from all other Solid Waste, placing such Yard Trash in approved Containers for collection.
- D. Each Person delivering Yard Trash to an Environmental Convenience Center shall cause such Yard Trash to be separated from all other Solid Waste, placing such Yard Trash, free of any bags, tinsel or wrappings, into facilities provided for such purpose.
- E. Each Person delivering Yard Trash to a Designated Disposal Facility shall cause such Yard Trash to be separated from all other Solid Waste, placing such Yard Trash into the Designated Disposal Facility in the manner directed by the Division.
- F. Yard Trash may be handled in any other lawful manner approved by the Division in writing in advance.

(Ord. No. 92-9, § 1, 3-24-92)

Section VII. - Prohibitions.

1. *Disposal of Hazardous Waste.* It is unlawful and prohibited for any Person to dispose of or attempt to dispose of any Hazardous Waste or Hazardous Substance at a Designated Disposal Facility or at any place other than a Designated Hazardous Waste Facility.
2. *Disposal of Solid Waste.* It is unlawful and prohibited for any Person to dispose of or attempt to dispose of Solid Waste at any place other than a Designated Disposal Facility.
3. *Disposal of Waste Generated Outside of County.* It is unlawful and prohibited for any Person to dispose of or attempt to dispose of any Solid Waste, Hazardous Waste or Hazardous Substance generated outside of the County at any place within the County. In addition to any other penalty, in the case of such Solid Waste disposed of at a Designated Disposal Facility, the charge for disposal shall be two (2) times the applicable disposal fee. In the case of any load containing any such Solid Waste, Hazardous Waste or Hazardous Substance, no matter how small the quantity thereof, the entire load shall be deemed to be such Solid Waste, Hazardous Waste or Hazardous Substance for purposes of computing the charge.
4. *Collection, Transport and Disposal of Yard Trash.*
 - A. It is unlawful and prohibited for any Person or Franchisee to commingle or attempt to commingle Yard Trash with any other Solid Waste unless such commingling is approved by the Division in writing in advance, or otherwise to dispose of or attempt to dispose of Yard Trash in any manner other than as permitted under Section VI.4 hereof.
 - B. It is unlawful and prohibited for any Person or Franchisee to knowingly collect or transport Yard Trash commingled with any other Solid Waste unless such collection or transport is approved by the Division in writing in advance.

5. *Disposal of Biological Waste and Biohazardous Waste.* It is unlawful and prohibited for any person to dispose of or attempt to dispose of Biological Waste or Biohazardous Waste at any place other than a Designated Biological Waste Facility.
6. *Unauthorized Dumping Prohibited.* It is unlawful and prohibited for any person to dump Solid Waste into or around any Container if the dumping of Solid Waste is not approved by the Franchisee servicing such Container, provided a notice has been posted conspicuously on such Container in at least one-half (½) inch letters reading substantially as follows: "THIS CONTAINER IS SERVICED BY A CLAY COUNTY FRANCHISED HAULER, AND IS RESERVED EXCLUSIVELY FOR THE USE OF ITS CUSTOMER(S). ANY OTHER PERSON WHO SHALL DUMP SOLID WASTE INTO OR AROUND THIS CONTAINER WITHOUT THE EXPRESS APPROVAL OF THE FRANCHISED HAULER IS GUILTY OF A MISDEMEANOR, PURSUANT TO CLAY COUNTY ORDINANCE 90-24, AS AMENDED." In addition to being a violation under subsection 4 of section VIII of this ordinance, punishable as provided therein, the willful, knowing and deliberate violation of this subsection shall constitute the dumping of litter prohibited under section 10-1(b)(3) of the Clay County Code, enforceable by Clay County Code enforcement officers as provided under Section 10-1(c) and (d) of said Code, and punishable as provided under section 10-1(f) of said Code and section 403.413(5), Florida Statutes.

(Ord. No. 91-37, § 2, 6-4-91; Ord. No. 92-1, § 1, 1-14-92; Ord. No. 92-9, § 2, 3-24-92)

Section VIII. - Miscellaneous.

1. *Repealers.* The Predecessor Ordinance is hereby repealed in its entirety effective June 1, 1990.
2. *Effective date.* This ordinance shall become effective on the earliest date provided under general Florida law; provided, that the enforcement of the regulations hereof shall not commence until June 1, 1990.
3. *Severability.* If any section, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions hereby and to this end the provisions of this ordinance are declared severable.
4. *Prohibitions and penalties.* The violation by any Person of any provision of this ordinance is unlawful and prohibited. Any Person who shall willfully, knowingly, and deliberately violate any provision of this ordinance shall be guilty of a second degree misdemeanor, punishable as provided under general Florida law.
5. *Prosecution of certain violations as civil infractions and as misdemeanors; enforcement procedures; penalties.*
 - A. *Civil Infraction.* Supplemental to the provisions of Subsection 4 hereof, the violation of any provision of Sections III.9, IV.2.D, IV.5.B.(3), VI.3, VI.4 or VII.4 hereof by any Person also shall constitute a civil infraction within the meaning of Section 162.21, Florida Statutes, and the provisions of section 15-20 of the Clay County Code may be used to enforce any violation of said Sections III.9, IV.2.D, IV.5.B.(3), VI.3, VI.4 and VII.4 as an nonexclusive alternative to enforcement by any other means authorized by law. The violation of any provision of Section III.9 or Section IV.5.B.(3) hereof shall constitute a civil infraction that, for purposes of said section 15-20 and the civil penalties provided thereunder, is designated as a category 6 civil infraction for an initial violation, as a category 8 civil infraction for a second violation, and as a category 10 civil infraction for a habitual violation. The violation of any provision of Section IV.2.D hereof shall constitute a civil infraction that, for purposes of said section 15-20 and the civil penalties provided thereunder, is designated as a category 2 civil infraction for an initial violation, as a category 4 civil infraction for a second violation, and as a category 6 civil infraction for a habitual violation. The violation of any provision of Section VI.3 hereof shall constitute a civil infraction that, for purposes of said section 15-20 and the civil penalties provided thereunder, is designated as a category 1 civil infraction for an initial violation, as a category 4 civil infraction for a second violation, and as a category 6 civil infraction for a habitual violation. The violation of any provision of Section VI.4.B hereof shall constitute a civil infraction that, for purposes of said section 15-20 and the civil penalties provided thereunder, is designated as a category 1 civil infraction for an initial violation, as a category 2 civil infraction for a second violation, and as a category 4 civil infraction for a habitual violation. With the exception of Section VI.4.B, the violation of any provision of Section VI.4 or Section VII.4 hereof shall constitute a civil infraction that, for purposes of said section 15-20 and the civil penalties provided thereunder, is designated as a category 2 civil infraction for an initial violation, as a category 6 civil infraction for a second violation, and as a category 8 civil infraction for a habitual violation. A person committing a violation of said Section III.9, IV.2.D, IV.5.B.(3), VI.3, VI.4 or VII.4 that would be deemed a habitual violation as defined in said section 15-20 if charged as a civil infraction shall be guilty of an offense that, pursuant to Section 125.69, Florida Statutes, and any successor thereto, shall be prosecuted in the same manner as misdemeanors are prosecuted, and upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail, not to exceed sixty (60) days, or by both such fine and imprisonment, if such violation and the second violation by which such violation would be deemed

Clay County, FL Code of Ordinances

a habitual violation are committed within a period of one hundred eighty (180) days following the commission of the prior violation applicable to such second violation. The provisions of the sentence immediately preceding shall not be deemed in derogation of the provisions of subsection 4., hereof.

- B. *Code Enforcement Officers.* The provisions of subsection (n) of section 15-20 of the Clay County Code to the contrary notwithstanding, for purposes of this subsection and the enforcement of the provisions hereof under said section 15-20, each of the code inspectors duly appointed under Article IV of Chapter 2 of the Clay County Code, the sheriff of the county, each of the sheriff's duly appointed deputies, each director or deputy director of the division, and each employee of the division designated by the director or a deputy director of the division as a division inspector are designated as code enforcement officers within the meaning of said section 15-20, to the exclusion of all others. Such code enforcement officers shall have the power and authority to inspect any container, receptacle, bundle, bag or can, and any facility for the collection, processing, recycling, composting, or disposal of solid waste at any time to determine compliance with this ordinance.

(Ord. No. 92-9, § 3, 3-24-92; Ord. No. 00-45, § 2, 7-25-00; Ord. No. 2003-28, § 1, 3-11-03)

Duly Adopted by the Board of County Commissioners, Clay County, Florida, this 24th day of April, 1990

BOARD OF COUNTY
COMMISSIONERS
CLAY COUNTY, FLORIDA

BY /s/ ____
James B. Jett,
Chairman

ATTEST:

/s/ ____
John Keene
Clerk of the Courts
Ex-officio Clerk to the
Board of County Commissioners

APPROVED AS TO FORM:

/s/ ;hg; ____
Mark H. Scruby
County Attorney

ATTACHMENT B

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

CLAY COUNTY, FLORIDA

Application for Solid Waste Collection, Transportation, and Disposal Franchise

Application Fee \$250.00 (Non-Refundable)

PLEASE TYPE OR PRINT

Each Item in this application must be answered completely. Attach additional sheets where necessary.

Type of Application

NEW ☒

RENEWAL ☐

TRANSFER ☐

If Transfer of existing franchise, name of current franchisee _____

Applicant Information

Business Name (Parent Company and DBA if applicable)

Whitener's Tractor Service Inc.

Principal Business Address (provide both street and mailing addresses)

866 Washington Ave Orange Park, FL 32065

Telephone Number and Email Address

904-838-7826 Whitenerstractor@gmail.com

Business Entity

Corporation ☒

Sole Proprietor ☐

General Partnership ☐

Limited Partnership ☐

LLC ☐

Other ---- (describe ownership) _____

Services offered (check all that apply)

Container Rental ☒

Front-End Load ☐

Roll-Off ☒

Other ____ (describe)

Grapple Services

Contact Information to whom inquiries should be made

Name David Whitener

Title CEO

Phone 904-838-7826

Email Whitenerstractor@gmail.com

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RECEIVED

OCT 12 2020

Environmental Services

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

EXPERIENCE

- I. Does applicant currently hold a license or franchise to collect and transport solid waste within any municipality within, or any other political subdivision adjacent to Clay County?

Yes ____ No ☒

- II. Commercial Franchise Holdings Owned by Applicant – List Florida franchise holdings in which applicant or any principal owns twenty percent (20%) or more equity interest.

Business Name and Community _____

Date Franchise Granted _____

Date First Customers Served _____

Services Provided _____

Name, Address, Telephone and Email of Government Official Responsible for Franchise _____

- III. Former Commercial Franchise Holdings – List Florida franchise holdings where applicant or any principal received, operated, and disposed of its interest in the franchise. Include franchises that expired or were not renewed.

Business Name and Community _____

Date Franchise Granted _____

Services Provided _____

Manner of Disposition _____

Reason for Disposition _____

- IV. Does applicant or principals have any previous or existing enforcement action(s) by Clay County or any environmental regulatory agency for violation of any rule or regulation relating to solid waste handling, transporting, or disposal?

Yes ____ No ☒

If yes, submit a detailed listing of such actions, including date, reason, final adjudication or disposition.

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

MANAGEMENT CAPABILITIES

I. Will the applicant's franchise system include

Local Manager Yes ☒ No ☐ If yes, location _____

Regional Manager Yes ☐ No ☐ If yes, location _____

II. List Name and Title of Management Team responsible for franchise

Name David Whitener Title Owner Operator

Name Katy Whitener Title office manager

Name Gerald Whitener Title Field Supervisor

Name _____ Title _____

III. List the personnel position classifications to be utilized in providing services.

Total Number of Employees Full-Time ☒ Part-Time ☐

Position Drivers No. of staff 3

Position Laborers No. of staff 2

Position Maintenance No. of staff 1

Position _____ No. of staff _____

Position _____ No. of staff _____

Position _____ No. of staff _____

Position _____ No. of staff _____

Position _____ No. of staff _____

IV. Attach Organizational Chart ☒

V. List Name and Title of Parent Company Management Team (if applicable)

N/A

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

EQUIPMENT

- I. Submit a full description of all collection and support vehicles and equipment owned or leased by the applicant which will be used in the collection, transportation or disposal of solid waste.

Type	Size	Make & Model	Year	Owned /Leased
Cranapple	60yrd	Peterbilt	2018	owned
Cranapple	55yrd	Western Star	2020	owned
Tractor/Trailer	70yrd	Western Star / Glob trailer	2018	owned
Roll off		Peterbilt	2007	owned
Dually		Chevy	2011	owned
8 - Open Top	15yrd			owned
14 - Open Top	20yrd			owned
3 - Open Top	30yrd			owned

- II. Describe how applicant will secure additional or replacement equipment if necessary to provide the services under the franchise.

I have been dealing with Ring Power for 14 years
I have a credit line also if need any rentals

Attached is a letter from Ring Power stating
we have an active account with them which
means we can get equipment as needed when needed

Contact for Ring Power To Verify

Todd Mattox 904-219-5497

CUSTOMER SERVICE

Describe procedures for responding to and resolving customer complaints. Attach customer service policy if applicable.

All current customer service issues are directed to owner/operator David Whitner. All customers are given cell phone number to contact. As our company grows, a local Clay County office will be rented, and a permanent customer service representative will be hired.

Our goal is to respond to all customer requests within 24 hours.

SPECIAL SERVICES

Recognizing that it is the County's desire to provide the highest level of service to its residents, describe any special services that the applicant would provide to the community at no additional cost. Also describe any proposed special services which would require additional charges. List any charges for these services.

Whitner's Tractor Service will gladly sponsor two Clay County events per year with hauling services donated, we will donate up to 5 free hauls per event.

Other services that would be charged for would include yard debris removal (storm) at a price of \$1.00 per cubic yard excluding disposal fees.

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

FINANCIAL RESOURCES

Applicant must provide evidence of applicant's financial viability and the availability of sufficient funds to operate a franchise collection system in Clay County. This information may include audited financial statements and letters of commitment from financial institutions, lenders, or guarantors.

Financial information must include, but is not limited to:

- 1- Financials for the past three (3) years
- 2- Evidence of available funds sufficient to maintain franchise system
- 3- Financials of parent corporation for the last three (3) years (if different)

Note: Publicly traded corporations may provide links to published financials to meet the third requirement.

OWNERSHIP AND CONTROL

- I. To be completed by all owners, principals, directors, corporate officers, and beneficial owners of twenty percent (20%) or more of stock or ownership interest in applicant (attach additional sheets if needed).

Name (individual) David Whitener
Name (organization) Whitener's Tractor Service Inc
Address/City/State/Zip 866 Washington Ave Orange Park FL 32065
Nature of Interest Partner ☐ Owner/Stockholder ☒
Officer ☐ Corporate Director ☐
Profession or Occupation Owner / Operator
Name of Employer Whitener's Tractor Service Inc
Address of Employer 866 Washington Ave Orange Park FL 32065

- II. Is the Applicant a publicly held corporation?
Yes ☐ No ☐

- III. Is the Applicant corporation directly or indirectly controlled by another corporation or legal entity?
Yes ☐ No ☒

If yes, explain. _____

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

LEGAL AND CHARACTER QUALIFICATION

- I. Has the applicant (including parent corporation, if applicable) or any principal ever been convicted in a criminal proceeding in which any of the following offences were charged?

	Yes	No		Yes	No
Fraud or Embezzlement	☐	☒	False/misleading advertising	☐	☒
Tax Evasion	☐	☒	Perjury	☐	☒
Bribery or Extortion	☐	☒	Obstruction of justice	☐	☒
Anti-trust violations	☐	☒	Jury tampering	☐	☒

- II. Has the applicant or any principal ever been or is now a party to a civil proceeding in which it was held liable for any of the following proceedings?

	Yes	No		Yes	No
Unfair/anti-competitive business practices	☐	☒	Violations of securities laws (state and federal)	☐	☒
Consumer fraud/misrepresentation	☐	☒	False/misleading advertising	☐	☒
Tax Evasion	☐	☒	Violation of local government ordinances	☐	☒

- III. Has applicant or any principal ever had a business license or franchise revoked, suspended, or the renewal thereof denied or is a party to such a proceeding that may result in same?

Yes ☐ No ☒

- IV. Has applicant ever been warned by Clay County staff for violation(s) of solid waste ordinance?

Yes ☐ No ☒

- V. Has applicant been issued a Notice of Violation pursuant to the solid waste ordinance?

Yes ☐ No ☒

- VI. If "Yes" is the response to any of the questions above, provide a separate sheet with the following information for each "Yes" response: Date, Location, Court, Sentence, Fine, and other specifics.

- VII. Provide five (5) references regarding your business, character, and financial qualifications. For each reference list name, title, telephone number, email, relationship, and years known.

CLAY COUNTY APPLICATION FOR SOLID WASTE FRANCHISE

INSURANCE AND BOND REQUIREMENTS

The Franchise holder shall maintain during the term of the Franchise all auto, liability, and worker compensation insurance as required by the State of Florida, and shall further maintain comprehensive liability insurance in such amounts as required by the State of Florida or by Clay County.

Evidence of such required insurance coverage must be submitted with this application.

A performance and payment bond not to exceed \$25,000 shall be maintained during the term of the Franchise.

ORDINANCE

The applicant shall comply with all provisions of the Clay County Solid Waste Franchising and Collection Ordinance, Ordinance number 90-24, Article III. A copy of the ordinance may be obtained at the Clay County Environmental Services Department or on-line at municode.com,

https://library.municode.com/fl/clay_county/codes/code_of_ordinances?nodeId=CO_APXDFR_ARTIIIISO_WAFRCO.

APPLICANT'S AFFIDAVIT: I, David Whitener, hereby certify that I am an authorized representative of the Applicant, Whitener's Fractor Service Inc, that all of the information provided in this Application is true and correct, that I have read and am familiar with the Clay County Solid Waste Franchising and Collection Ordinance, Ordinance No. 90-24, Article III, and that the Applicant shall comply with the provisions of the Clay County Solid Waste Franchising and Collection Ordinance.

Signed: _____

Date: 10-12-20

Print: David Whitener

Title: CEO

STATE OF Florida

COUNTY OF Clay

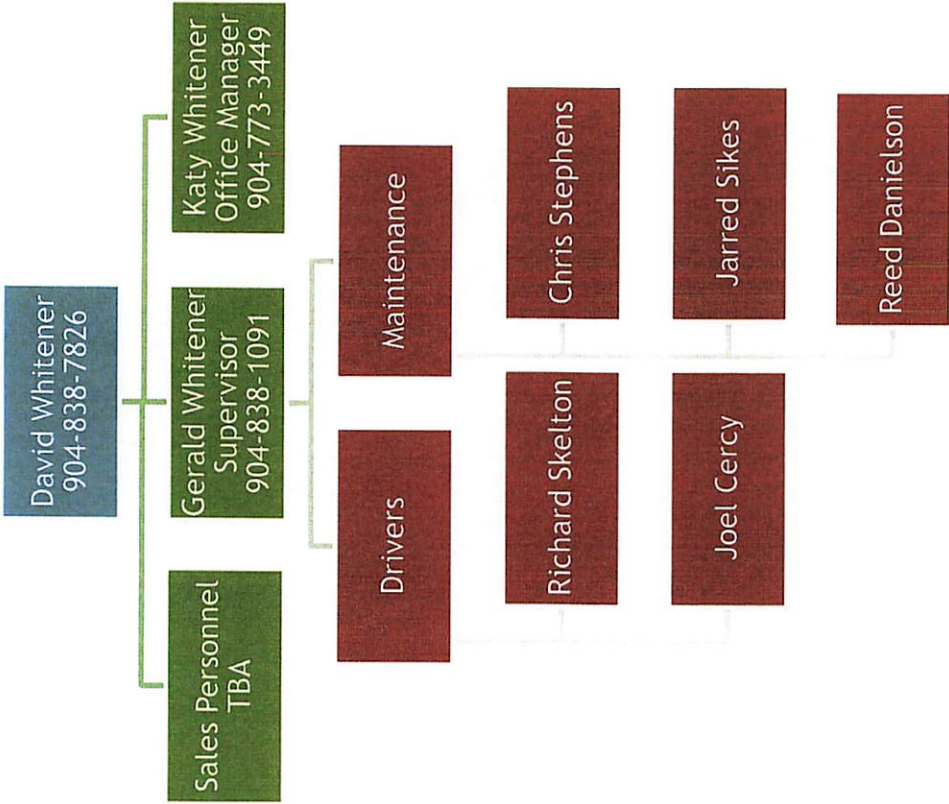
Sworn to and subscribed before met this 12th day of October, 2020, by

David Whitener



Tania P. Jolley
Notary Public
My Commission Expires: Sept 20, 2023

Whiteners Tractor Services, INC



Ring Power



Ring Power Corporation
500 World Commerce Parkway
St. Augustine, Florida 32092
(904) 494-7464

To Whom It May Concern:

10/2/2020

David Whitener of Whiteners Tractor Service Inc, has a active account with Ring Power Corporation.

Thanks in advance

Don Dueling

A handwritten signature in blue ink, appearing to read "DDueling".

Assistant Credit Manager

Ring Power Corporation

500 World Commerce Parkway

St Augustine, Florida 32092

From: David Whitener <whitenerstractor@gmail.com>
Sent: Tuesday, November 3, 2020 11:51 AM
To:
Subject: Whitener reference

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Todd Mattox ring power 904-838-7826

Micheal Delapenta Lennar 904-334-9017

Drew Staley Advanced Disposal 904-314-0109

Johnny Goodspeed Advanced Disposal 601-238-6342

Dan Hunter Lennar construction manager 904-451-3814