

Exhibit "A"

ORDINANCE 2008-25

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE FRANCHISE GRANTED BY ORDINANCE 2002-21 ON OCTOBER 1, 2002 AS AMENDED BY ORDINANCE 2004-23 ON AUGUST 3, 2004 AND ORDINANCE 2006-01 ON FEBRUARY 7, 2006 FOR THE PROVISION OF SOLID WASTE COLLECTION, RECYCLING AND DISPOSAL SERVICES TO FLORIDA REFUSE, INCORPORATED, ITS LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS; IMPOSING CERTAIN CONDITIONS RELATING THERETO; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED, by the City Commission of the City of Lake Wales,

SECTION 1. The City of Lake Wales, a municipal corporation created and existing pursuant to the laws of the State of Florida, its successors and assigns (herein referred to as "the City"), does give and grant to Florida Refuse, Incorporated, its successors and assigns (herein referred to as "the Contractor"), the right, privilege and franchise to provide Solid Waste Collection and Disposal Services as described herein and subject to the conditions imposed herein.

ARTICLE 1. GENERAL PROVISIONS

Sec. 1-1. Definitions.

For the purpose of this ordinance the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. These definitions are supplemental to those included in Chapter 17, Solid Waste, Lakes Wales Code of Ordinance, establishing rules and regulations for solid waste collection and disposal.

1. *Agreement* shall mean the terms and provisions of Ordinance 2002-21 as amended by Ordinance 2004-23, Ordinance 2006-01 and this Ordinance 2008-25 that grants the franchise for provision of solid waste collection, recycling and disposal services within the City of Lake Wales.
2. *City* shall mean the City of Lake Wales.
3. *Complaint* shall mean an expression of customer dissatisfaction with the quality of service provided by the Contractor.
4. *Contractor* shall mean Florida Refuse, Incorporated.
5. *Franchise fee* shall mean the amount of money paid by the Contractor to the City for granting of the franchise.
6. *Monitoring* shall mean the provision of oversight by the City Manager or his designee to ensure that the quality of service performed pursuant to this agreement shall be in accordance with conditions imposed herein.
7. *Performance bond* shall mean the form of security approved by the City and furnished by the Contractor, as a guarantee that the Contractor will execute the work in accordance with the terms of the agreement and will pay all lawful claims.
8. *Refuse* shall mean garbage, trash and yard waste.
9. *Surety* shall mean the party who is bound with and for the Contractor to insure the payment of all

lawful debts pertaining to and for the acceptable performance of the contract.

Sec. 1-2. Term of Agreement.

A. *Initial term*

The initial term of this agreement shall be for a period of seven (7) years and three (3) months, with work commencing July 1, 2001 and terminating on September 30, 2008, unless breached at an earlier date.

B. *Extension of this agreement*

The initial term of this agreement is hereby extended for three (3) years with work commencing on October 1, 2008 and terminating on September 30, 2011, unless breached at an earlier date. This agreement may be extended for two (2) additional three (3) year terms if Contractor notifies the City in writing not later than January 31 in the year of the expiration of the initial term of its intention to renew this agreement and if Contractor and City mutually agree to such renewal and to any modification of the terms herein. The City will grant a sixty (60) day period for the negotiation of mutually acceptable terms for extension of the agreement. If the City and the Contractor cannot successfully negotiate mutually acceptable terms by the end of the sixty (60) day period, the City shall implement the competitive bid process for selection of a contractor for solid waste collection and disposal services.

C. *Commencement of work by contractor*

The Contractor must commence work on the date and year specified in paragraph A. Failure to commence work on the specified date will result in forfeiture of the bid bond, where applicable, and the \$300,000 performance bond.

Sec. 1-3. Contractor as Independent Contractor.

It is expressly agreed and understood that the Contractor is in all respects an Independent Contractor as to the work, notwithstanding that in certain respects the Contractor is bound to follow the direction of designated City officials, and that the Contractor is in no respect an agent, servant, or employee of the City. The agreement specifies the work to be done by the Contractor, but the method to be employed to accomplish this work shall be the responsibility of the Contractor, unless otherwise provided in the contract.

Sec. 1-4. Subletting of Work Specified in Agreement.

The agreement or any portion thereof, shall not be sublet except with the prior written consent of the City Commission which may be withheld for any reason or for no reason. No such consent will be construed as making the City a party of or to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under this agreement, and despite any such subletting, the City shall deal through the Contractor. Subcontractors will be dealt with as workmen and representatives of the general contractor, and as such will be subject to the same requirements as to character and competence as are other employees of the Contractor.

Sec. 1-5. Exclusive Rights.

The City grants to the Contractor the exclusive right and obligation to provide solid waste collection services within the City of Lake Wales with the following exception: contractors engaged in building or remodeling operations shall be permitted to remove the waste accumulated as a result of their operations with their own equipment and labor, but not by using the services of another solid waste contractor. The City of Lake Wales reserves the right to pick up refuse relating to street maintenance, lot clearing and other activities relating to City functions.

Sec. 1-6. Exclusions.

No residential units or institutional, commercial or industrial establishments within the municipal limits shall be excluded from the provisions of this contract. Notwithstanding anything to the contrary contained herein, Contractor shall not be obligated to collect waste, in any amount, which is defined, characterized, or designated as hazardous or infectious by the United States Environmental Protection Agency or appropriate State agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State Law.

Sec. 1-7. Effect of City Ordinances on Performance.

Nothing contained in any ordinance of the City now in effect, hereafter adopted, pertaining to the collection of garbage and trash shall in any way be construed to affect, change or modify or otherwise alter the duties, responsibilities and operation of the Contractor in the performance of the terms of this agreement except as said ordinances are adopted to comply with county, state or federal regulations. It is the intention hereof that the Contractor be required to perform strictly the terms of this agreement, in compliance with all Polk County, State of Florida and Federal regulations pertaining to the collection and disposal of solid waste.

Sec. 1-8. City Not Liable For Delays.

It is expressly agreed that in no event shall the City be liable or responsible to the Contractor or to any other person on account of any stoppage or delay in the work provided for herein, by injunction or other legal or equitable proceedings brought against the Contractor, or from or by or on account of any delay from any cause over which the City has no control.

Sec. 1-9. City Held Harmless.

The Contractor shall hold the City harmless from injuries, damages and certain other acts of the Contractor. The Contractor and his surety hereby expressly bind themselves to indemnify and save the City harmless from all suits or actions of every name and description brought against said City for or on account of any injuries or damages received or sustained by any party or parties from the acts, omissions or negligence of, said Contractor, or his servants or agents, including subcontractors engaged in doing the work herein contracted for or by, or in consequence of any negligence in guarding against same, or in any improper materials or equipment used in its performance, or by or on account of any act or omission of the said Contractor, or on account of any claims or amounts recovered by infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Workmen's Compensation Laws.

If there is any money due to the Contractor, as much of the money due to the said Contractor as the City Manager shall deem necessary to protect the City, may be retained by the City until such suit, or suits, action or actions, claim or claims, injuries, damages as aforesaid, shall have been settled and suitable evidence to that effect has been furnished to the City Manager.

Sec. 1-10. Cancellation or Annulment of Agreement.

The Contractor and the City recognize that it is of paramount importance that the agreement is performed and the individual customers receive service. If the Contractor fails to begin work at the time specified, or fails to perform the work with sufficient number of workmen and sufficient and adequate equipment to ensure the proper and substantial performance of said refuse collection work, or performs the work unsuitably, or discontinues the prosecution of the work or any portion thereof, or for any other cause whatsoever, excepting only acts of God, does not carry on the work as aforesaid, or if the Contractor becomes insolvent or declares bankruptcy or commits any act of bankruptcy or insolvency, or allows any final judgment for the payment of money to stand against him unsatisfied, and if the City through its City Manager gives notice of such default, and the Contractor or his surety fails to cure such default within seven (7) days after giving of such notice by the City, then the City may thereupon, by action of the City Commission, declare the agreement cancelled.

Upon declaration of cancellation, the City may, at no cost to the City or compensation to the Contractor, take over the work and take possession, without further notice to the Contractor and without judicial proceedings, of any and all equipment of the Contractor and operate the same in performance of the work and services described in this agreement for the unexpired term of the agreement, or for a period of three (3) months whichever the City elects, and the Contractor agrees to surrender peacefully said equipment and to assist the City in taking such possession, or the City may enter into agreements with others for the performance of the work and services herein contracted for.

Such cancellation of the agreement shall not relieve the Contractor or the surety of liability for failure to faithfully perform this agreement, and in case the expense incurred by the City in performing or causing to be performed the work and services provided for in this agreement, then the Contractor (and the surety to the extent of its obligation) shall be liable to the City for said amount. Contractor's surety or security will not be released until such time as the term of this agreement would otherwise have expired.

Sec. 1-11. Operation During Dispute.

In the event the City has not cancelled the agreement in accordance with the terms provided in Section 1-10, and there remains a dispute between the Contractor and the City, the Contractor agrees to continue to operate and perform under the terms of this agreement while said dispute is pending, and agrees that in the event a suit is filed for injunction or other relief to continue to operate the system until the final adjudication of the court.

ARTICLE II. ADMINISTRATION OF AGREEMENT BY CITY

Sec. 2-1. Charges for Services Provided by Contractor.

The City Commission shall approve all rates charged to residential or commercial customers for services provided under this agreement. The Contractor may petition the City for rate adjustments at reasonable times on the basis of unusual changes in the cost of doing business, such as revised laws, ordinances, or regulations, changes in location of disposal sites or changes in disposal charges, and no such request shall be unreasonably denied. The City may petition the Contractor for rate adjustments at reasonable times on the basis of unusual changes that decrease the cost of doing business, such as revised laws, ordinances, or regulations, changes in location of disposal sites or changes in disposal charges, and no such request shall be unreasonably denied.

Sec. 2-2. Billing and Payment for Services Provided by Contractor.

The City shall bill residential customers for services rendered by the Contractor and remit a fixed per customer rate to the Contractor as provided in this agreement. The Contractor shall bill commercial and roll-off customers for services rendered and remit franchise fees to the City as provided in this agreement. With each remittance, the City shall provide the number of residential customers at the time of the most recent preceding billing. In June 2008 the City billed 4,348 residential solid waste customers.

Charges for solid waste collection, recycling, and disposal services shall be included on the residential customer's utility bill and shall be billed during the regular utility billing cycles following the close of the month when solid waste services are provided. The City Commission, by ordinance, may change the billing and collection period and method for any service individually or all services collectively.

Accounts to be billed and payments due to the Contractor shall be determined as follows:

A. Residential accounts

A residential unit shall be deemed to be receiving solid waste collection, recycling, and disposal services when utility services are supplied thereto. Accordingly, each residential unit receiving utility service shall be billed for solid waste collection, recycling, and disposal services.

Payments to the Contractor will be made on a monthly basis with the first payment made by the 20th of the month following the monthly billing cycle with the first payment to be made eighty (80) days after the effective term of this agreement. The first billing cycle will be November 2008 for October 2008 services. The first payment due date will be December 20, 2008. Payments will be made in accordance with Section 2-3, hereof.

B. Commercial accounts

A commercial unit shall be deemed to be receiving solid waste collection and disposal services when a business tax receipt has been issued on a permanent or conditional basis. The Contractor shall invoice commercial and roll-off customers accordingly. The contractor shall pay the franchise fees at the end of each quarter by the 20th of the month following the end of each quarter in accordance with Section 2-4, hereof.

Sec. 2-3. Residential Payments

Payments shall be calculated by multiplying the number of City residential solid waste customers times the current year's fixed rate in accordance with the following schedule:

| Service Period | | Billing Period | | SW Rate | Recycl e Rate | Total Rate |
|------------------|--------------------|----------------|--------------|------------|------------------|---------------|
| October 1, 2002 | September 30, 2003 | November 2002 | October 2003 | \$10.82 | N/A | \$10.82 |
| October 1, 2003 | September 30, 2004 | November 2003 | October 2004 | \$10.98 | N/A | \$10.98 |
| October 1, 2004 | September 30, 2005 | November 2004 | October 2005 | \$11.14 | \$0.90 | \$12.04 |
| October 1, 2005 | December 31, 2005 | November 2005 | January 2006 | \$11.31 | \$0.90 | \$12.21 |
| January 1, 2006 | September 30, 2006 | February 2006 | October 2006 | \$13.32 | \$0.90 | \$14.22 |
| October 1, 2006 | September 30, 2007 | November 2006 | October 2007 | \$13.32 | \$0.90 | \$14.22 |
| October 1, 2007 | September 30, 2008 | November 2007 | October 2008 | \$13.32 | \$0.90 | \$14.22 |
| *October 1, 2008 | September 30, 2009 | November 2008 | October 2009 | \$13.99 | \$0.95 | \$14.94** |

N/A – Service Not Available

*Contractor will provide two (2) times per week tote automated or semi-automated solid waste collection service for a rate of \$21.95 per resident per month. This service will be available sixty (60) days after the initial conversion from two (2) times per week hand pick up service to one (1) time per week automated or semi-automated tote service.

**The rates shall be adjusted annually on each anniversary date beginning October 1, 2009 to reflect an increase based on June's annual CPI or two and one-half percent (2.5%), whichever is greater, without further need for Commission action. In addition, should the price of diesel fuel paid by the contractor increase or decrease by an extraordinary rate of ten percent (10%) of the base rate of \$3.60 per gallon, the Contractor or the City may petition and shall be granted a pass through cost increase or decrease based on monthly gallons used and difference in price to be calculated and allocated per customer per month. Should the fuel cost not exceed the ten percent (10%) threshold, the rate would be adjusted via the CPI. Should the fuel cost have to be adjusted upward, that portion will be removed from the CPI calculation. Should the fuel cost fall below \$3.60 per gallon, the CPI calculation will be lowered for the fuel cost portion.

The same formula will apply to the Commercial customers. The fuel cost will be calculated and allocated per cubic yard.

Sec. 2-4. Franchise Fee.

In return for the grant of franchise of provision of solid waste collection and disposal services within the city limits, the Contractor shall pay a franchise fee equal to twelve and one-half (12 ½) percent of commercial and roll-off invoices.

Sec. 2-5. Supervision of Contractor Performance.

The City Manager or his designee shall supervise the Contractor's performance of this agreement, and the Contractor shall be so notified in writing by the City Manager. If at any time during the life of the agreement, performance satisfactory to the City Manager shall not have been made, the Contractor, upon notification by the City Manager, shall increase the force, tools and equipment as needed to properly perform this work under this agreement. The failure of the City Manager to give such notification shall not relieve the Contractor of his obligation to perform the work at the time and the manner specified by this agreement.

Sec. 2-6. Disagreements Between Contractor and City.

To prevent misunderstanding and litigation, the City Manager or his designee shall decide any and all questions which may arise concerning the quality and acceptability of the work and services performed, the sufficiency of performance, the interpretation of the agreement provisions, and the acceptable fulfillment of the agreement on the part of the Contractor.

The City Manager will determine whether or not the amount, quantity, character and quality of the work performed is satisfactory, which determination shall be final, conclusive and binding upon both the City and the Contractor. The City Manager shall make such explanation as may be necessary to complete, explain or make definite the provisions of this contract.

In the event the Contractor does not agree with the City Manager, the Contractor may appeal to the City Commission within thirty (30) days of the City Manager's decision.

It is recognized that disagreements may arise between the City and the Contractor with regard to the collection of certain items due to interpretation of the specific language in the contract.

In the event a disagreement arises and refuse needs to be collected and disposed of, the City Manager or his designee may notify the Contractor of the location of refuse which has not been collected due to disagreement between the City and the Contractor, and it shall be the duty of the Contractor to remove all such refuse within three (3) days of the notice. Should the Contractor fail to remove the refuse, the City will remove the refuse and the cost incurred by the City shall be deducted from the next scheduled payment to the Contractor for services rendered.

ARTICLE III. CONTRACTOR SERVICES & OBLIGATIONS

Sec. 3-1. Scope of Service.

It is the intent of this agreement to provide for the total collection of all refuse in the City of Lake Wales, Florida, with the exception of exclusions which are specifically listed herein. Scope of service to be performed by the Contractor shall be defined as follows:

A. **Residential service** (Single, Duplex, Multi-Family Dwelling Units and Mobile Homes all of which receive automated or semi-automated collection services).

1. **GARBAGE AND TRASH**

(a) **FREQUENCY:** The Contractor shall collect garbage and containerized trash from places of residence by automated or semi-automated service as necessary to collect the solid waste in totes one (1) time per week. If Contractor is notified by 2:00 pm, a missed pick-up will be removed on the same day. In any case, Contractor guarantees missed pick-ups will be removed with twenty four (24) hours. Contractor will provide, maintain and replace 95, 65 and 35 gallon totes as necessary for the residents. Additional totes will be provided when requested by residents at no additional charge. The Contractor will own the totes. The Contractor shall remove bulk items, such as household furniture and appliances, within 24 hours from receipt of request, unless the request is submitted on Friday, in which case the response will occur on the following collection day. Starting time for collection shall not occur before 6:00 a.m. on any day nor continue after 8:00 p.m. unless prior authorization has been obtained from the City Manager or his designee.

(b) **QUANTITY:** The Contractor shall be required to pick up all garbage and trash generated by a residential unit, except when the total pickup exceeds two (2) cubic yards.

(c) **LOCATION:** Complete garbage and trash collection service is hereby provided for in this agreement. Garbage, trash and bulk waste, such as household furniture and appliances shall be placed at the curbside or beside service alley, if available. Back-door pickup of garbage and trash is available for residents with medical or physical conditions.

(d) **METHOD:** The Contractor shall make collections with a minimum of noise and disturbance to the householder. Totes shall be handled carefully by the Contractor and shall be thoroughly emptied and left where they are found. Garbage and trash may be transferred from the householder's containers into tubs, cans, hampers, or other containers used by the Contractor in carrying said garbage and trash to collection trucks. This work shall be done in a sanitary manner. Any garbage or trash spilled by the collector shall be picked up immediately by the Contractor's employees.

2. **YARD WASTE**

(a) **FREQUENCY:** The Contractor shall collect yard waste from places of residence one (1) time per week.

(b) **QUANTITY:** The Contractor shall be required to pickup yard waste generated by a residential unit. The Contractor shall inform the owners of residential units that items such as tree limbs, tree trunks, palm fronds, etc., shall be cut in lengths no greater than four (4) feet long if the item's diameter is less than six (6) inches; and shall be cut in lengths no greater than two (2) feet long if the item's diameter is six (6) inches or greater. Grass cuttings, weeds, leaves, and other yard material must be placed in containers, bags, or bundles. No single item shall exceed fifty (50) pounds in weight. Contractor will collect unlimited amount of routine yard trimmings. Professional tree service companies are responsible for disposing of the resident's debris.

(c) **LOCATION:** Yard waste shall be collected from the front of the premises near the street (curbside) or from service alleys at the rear of the property, where available. On streets where no parkways or lawn areas near the street are available for placement of yard waste, the owner or occupant shall place yard waste adjacent to the driveway, but not further than ten (10) feet from the street nor in the street.

(d) **METHOD:** The Contractor shall make collections with as little disturbance as possible. This work shall be done in a sanitary manner, and any refuse spilled by the collector shall be

picked up immediately by the Contractor's employees.

(e) TWO ANNUAL CLEAN-UPS – The Contractor will provide two annual “clean-ups” each year, once in the Spring and once in the Fall, when all residential waste, without limit as to size, deposited on the curbside shall be collected, except for debris or waste products generated by land clearing, building construction or alteration, and waste or materials that may not be disposed at the Polk County Landfill.

3. RECYCLING

(a) RECYCLING ITEMS:

- 1) Commingled bucket
 - a. Aluminum, steel, and tin cans
 - b. Recyclable plastics – bottles and jugs
 - c. Clear glass – bottles and jugs
 - d. Items not allowed – light bulbs, paint cans, windows, or dishes
- 2) Paper bucket
 - a. Newspapers
 - b. Office papers
 - c. Magazines, phonebooks
 - d. Items not allowed shoeboxes
- 3) Cardboard - laid on the ground by the recycling bins for collection.

(b) FREQUENCY: The Contractor shall collect recycling from places of residence one (1) time per week on a regular scheduled collection day. Recycling will commence with the week following October 1, 2004.

(c) METHOD: The Contractor shall make collections with as little disturbance as possible. This work shall be done in a sanitary manner, and any refuse spilled by the collector shall be picked up immediately by the Contractor's employees.

(d) RECYCLING CHARGES: The charge for recycling may be found in Section 2-3. The contractor, at no cost to the customer or the City, will provide recycling bins for the residential customers. Additional recycling containers will be provided upon request at no additional charge. The City will select the color and logo that will be used on the recycling bins.

(e) BIG BIN CAUGHT YOU PROMOTION: The Contractor will provide this promotion at no additional charge. Once per year, “Big Bin Caught You Recycling” signs will be randomly posted and \$20 gift cards will be given to residents in low participation areas. Contractor will hand out \$500 worth of gift cards. This program is to encourage talk among neighbors and increase recycling participation.

(f) RECYCLING INCENTIVE: The Contractor will provide an annual rebate payment to the City for increasing the recycling tonnage. The Contractor will pay a rebate of \$25 per ton on the annual average tonnage increase year-over-year. For example if the City's average tonnage increased 10 tons in 2009 over 2008's tonnage, the City would receive a \$3,000 recycling rebate (10 tons x 12 months x \$25 per ton = \$3,000).

(g) COMMERCIAL RECYCLING – The Contractor will offer Commercial Recycling to commercial businesses in Lake Wales effective October 1, 2008. The City's commercial customers will be offered a preferred discounted rate for the commercial recycling services. Each commercial customer's recycling needs are unique. As available, the recycling service will be tailored to meet each customer's needs.

- B. ***Service to multiple family units and mobile home parks***, Multi-family dwelling units and mobile home parks may use the following containers for accumulation of garbage and trash:

1. Automated or semi-automated tote services as per RESIDENTIAL SERVICES.
 2. Dumpsters emptied by mechanical means. See COMMERCIAL SERVICE for scope of service.
 3. Recycling services will be provided as per RESIDENTIAL SERVICE.
- C. **Commercial service** (office buildings, stores, filling stations, lodges, motels, laundries, hotels, all public buildings, mall and shopping centers, food service, lodging establishments, service establishments, light industry, schools, churches, clubs, hospitals and nursing homes, industrial establishments, construction sites and any establishment not included in the definition of residential unit)

1. **GARBAGE AND TRASH**

(a) **FREQUENCY:** Garbage and trash shall be collected for customers using cans not less than twice per week and shall be collected at a greater frequency if required to protect the public health. Collection service for customers using containers emptied by mechanical means will be available from one day to six days per week; the frequency of service will be as mutually agreed upon by the customer and the Contractor, and shall be sufficiently frequent to protect the public health from the excessive accumulation of garbage and trash. If garbage and trash is collected more than once per day, the Contractor may charge the customer for the extra collection.

(b) **QUANTITY:** All garbage and trash generated at commercial and industrial establishments shall be collected. Where containers emptied by mechanical means are in use, all materials shall be placed in containers for collection. Commercial establishments provided hand pickup collection (cans) must place all refuse in containers for collection.

(c) **LOCATION:** It is the duty of the owners/operators of such establishments to accumulate refuse in locations mutually agreed upon by the owners/operators and the Contractor, and which are convenient for collection by the Contractor. Where mutual agreement is not reached, the City Manager or his designee shall specify the location.

(d) **METHOD:** The Contractor shall make collections with as little disturbance as possible to business and commercial establishments. This work shall be done in a sanitary manner and any refuse spilled by the collector shall be picked up immediately by the Contractor's employees.

(e) **CONTAINERS:** Commercial and industrial establishments may use any of the following containers for accumulation of refuse:

- (1) The Contractor shall collect garbage and containerized trash by automated or semi-automated service as necessary to collect the solid waste in totes two (2) times or four (4) times per week depending on the commercial customer's service subscription. Contractor will provide, maintain and replace 95-gallon totes as necessary for the customer. Up to one additional tote will be provided when requested by the customer at no additional charge. The Contractor will own the totes.

- (2) Dumpsters emptied by mechanical means.

2. **YARD WASTE**

All yard waste generated at commercial and industrial establishments shall be placed in separate containers for collection and shall not be mixed with garbage and trash or other waste. Commercial establishments provided hand pickup collection (cans) must prepare yard waste for collection as set forth herein under paragraph A.2.(b).

See RESIDENTIAL SERVICE - YARD WASTE for scope of services.

- D. **Municipal service** (Parks, picnic areas, sidewalks, rights-of-way, and other property owned, leased, rented and controlled by the City of Lake Wales)

The Contractor shall empty all refuse containers used by the general public in any of the areas or places named in the above caption. The schedule may be amended during the term of the agreement upon the direction of the City Manager. The City shall have the right to use regular commercial type trash containers or cans with covers. Provision of containers and servicing of these facilities shall be performed at no cost to the City.

The following is a list of City facilities with container sizes and collection frequency. Additional locations may be designated at the sole discretion of the City Manager.

| Facility/Location | Size | Times/Frequency |
|--|----------|-----------------|
| Lake Wales Cemetery - Mulberry Street | 4 | 2 Weekly |
| Lake Wales Public Library - 290 Cypress Gardens Lane | 2 | 1 Weekly |
| Ball Park/Barranco - 300 Lakeshore Blvd N | 4 and 8 | 2 Weekly |
| City of Lake Wales - 409 3 rd Street N | 2 | 1 Weekly |
| Lake Wales Waste Water - 830 Henry Street | 3 | 1 Weekly |
| Willow Lawn Cemetery - US Hwy 27 N | 2 | 1 Weekly |
| Lake Wales Community Center - Walker & Seminole | 3 | 3 Weekly |
| City Hall - Central & Second | 4 | 2 Weekly |
| Recreational Complex - 401 Fourth Street N | 1 | 1 Weekly |
| Lake Wales City Garage - Sessoms & Market | 2 | 1 Weekly |
| Lake Wales Water Plant - 138 Sessoms Avenue E | 2 and 2 | 1 Weekly |
| Lake Wales City Barn - 138 Avenue | 2 | 1 Weekly |
| Depot Museum - 325 Scenic Highway S | 2 | 2 Weekly |
| Ball Park/Senior League - Springer Drive & Edgewater | 8 | 2 Weekly |
| City of Lake Wales - 201 W. Central Avenue | 4 | 1 Weekly |
| City of Lake Wales - 450 Scenic Highway | 4 | 2 Weekly |
| *CSX-450 Scenic Hwy - Roll Off - Yard Waste | 20 yards | 2 Monthly |
| *CSX-450 Scenic Hwy - Roll Off - Tires | 20 yards | 1 Monthly |

| | | |
|--|--------------|-----------|
| *CSX-450 Scenic Hwy - Roll Off - Construction Debris | 20 yards | 1 Monthly |
| *CSX-450 Scenic Hwy - Roll Off - Street Sweeping | 20 yards | 2 Monthly |
| City of Lake Wales - Downtown trash receptacles | 22 Cans est. | 2 Weekly |
| City of Lake Wales – Park receptacles | 22 Cans est. | 2 Weekly |

*Charges for additional pulls of roll off units will be \$120.00 per pull plus tipping charges for extra disposal.

E. *Customer service facilities*

The Contractor shall establish and maintain a customer service office within the City of Lake Wales where such service may be applied for, and complaints can be made. Alternatively, a customer service office may be located outside the city limits, but the telephone number must be local or toll-free. It shall be equipped with sufficient telephones, shall have a responsible person in charge during collection hours, and shall be open during normal business hours.

F. *Scattered refuse*

The Contractor shall not be responsible for scattered refuse unless the same has been caused by his acts or those of any of his employees, in which case all such scattered refuse shall be picked up immediately by the Contractor.

Sec. 3-2. Quality of Service.

A. *Character of workmen and equipment*

The direction and supervision of refuse collection and disposal and salvage operations shall be by competent, qualified and sober personnel, and the Contractor shall devote sufficient personnel, time and attention to the direction of the operation to assure performance satisfactory to the City. All subcontractors, superintendents, foremen and workmen employed by the Contractor shall be careful and competent.

The Contractor shall also provide company uniforms. Any employee of the Contractor who misconducts himself or is incompetent or negligent in the due and proper performance of his duty, or is disorderly, dishonest, drunk or grossly discourteous, shall be discharged upon receipt of a written request of the City Manager by the Contractor such that action can be taken. The City shall specify reasons for the request. The Contractor shall reemploy no such discharged employee during the terms of this agreement without the written consent of the City.

All employees used by the Contractor during the terms of this agreement shall be acceptable to the City in the performance of their duties and of a standing or affiliation that will permit the Contractor's performance herein to be carried on harmoniously and without delay, and in no case, or in any circumstances, will such employees cause any disturbance, interference, or delay to any work or services rendered to the City or by the City. The Contractor shall see to it that his employees serve the public in a courteous, helpful and impartial manner. He shall furnish the City with a current roster of employees every thirty days. Contractor's employees collecting garbage will be required to follow the regular walk for pedestrians while on private property. No employee shall meddle with property that does not concern him. Care shall be taken to prevent damage to property, including shrubs, flowers and other plants. After emptying containers, employees shall return them to the same location from which they were taken, standing upright. Anything spilled shall be picked up immediately by such employee.

B. *Cooperation of contractor required*

The Contractor shall cooperate with authorized representatives of the City in every reasonable way in order to facilitate the progress of the work contemplated under this agreement. He shall have at all times a competent English-speaking representative on the work site authorized to receive orders and to act for him in the case of his absence.

C. *Inspection of work*

The Contractor shall furnish the City Manager or his designee with every reasonable opportunity for ascertaining whether or not the work as performed is in accordance with the requirements of the agreement. The Contractor shall designate, in writing, the person to serve as agent and liaison between his organization and the City. He may designate himself to so serve. The City Manager may appoint qualified persons to inspect the Contractor's operation and equipment at any reasonable time and the Contractor shall admit members of the City Commission and other authorized representatives of the City to make such inspections at any reasonable time and place.

D. *Handling complaints*

The Contractor shall perform a service of high quality and keep the number of legitimate complaints to a minimum. The Contractor shall maintain a telephone listing in the name in which he is doing business as a Contractor and provide answering service for those customers needing to contact him between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon Saturday.

In order that the City may be informed of the quality of service, the Contractor agrees to maintain a record of all complaints for inspection by the City. The Contractor agrees to furnish a monthly report of all complaints, listing the name and address of the person complaining, the nature of the complaint, and disposition of such complaint. All complaints whether received in person, by mail or telephone, shall be recorded in triplicate, one (1) copy to go to the City and two (2) copies to be retained by the Contractor. Complaints received before 12:00 noon, shall be serviced before 6:00 p.m. the same day; and complaints after 12:00 noon shall be serviced by 12:00 noon the following day. For each month in which the number of legitimate complaints which are unsatisfactorily resolved reaches twenty or more, whether for garbage or trash, or any other cause, the City shall be entitled to claim liquidated damages of ten dollars per unsatisfactorily resolved complaint in excess of 20 per month. Each complaint shall be considered unsatisfactorily resolved unless satisfactory disposition of the claim is furnished. The decision of the City Manager shall be final.

E. *Customer information*

The Contractor shall provide each residential customer with a condensed version, approved by the City, of rules and regulations for refuse collection. Said condensed version shall outline rates and obligations of the customer and Contractor, according to the terms of this agreement.

Sec. 3-3. Disposal of Refuse.

The City suggests that refuse collected by the Contractor be hauled to the disposal facility owned and operated by Polk County. The City will assume no charges made by the County or by any other disposal facility for the Contractor to use such facility.

Sec. 3-4.

A. *In general*

The Contractor shall abide by the route and schedules. The City reserves the right to deny the Contractor's vehicles access to certain streets, alleys and public ways, inside the City or outside the City enroute to the disposal facilities, where it is in the best interest of the general public to do so due to conditions of streets or bridges. The Contractor shall not interrupt the regular schedule and quality of service because of such street closures. Any and all route and/or schedule changes shall be approved by the City Manager. The Contractor shall furnish written notices of changes in schedules to the customers at least ten (10) days prior to the actual change in routes or schedules. The City Manager's decision regarding a route and/or schedule change may be appealed to the City Commission. The decision of the City Commission shall be final.

NOTE: The Contractor's attention is directed to the fact that at various times during the year, the quantity of refuse to be disposed of is materially increased by fluctuations in the amount of yard waste. This additional workload will not be considered as adequate justification for failure of the Contractor to maintain the required collection schedules and routes.

B. *Conditions resulting in excessive debris or refuse*

In the event excessive amounts of debris or refuse have accumulated by reason of any storm, freeze, natural disaster, severe disturbance, riot or other calamity, the Contractor shall submit a certified estimate to the City Manager of additional payroll costs, equipment and disposal costs to remove and dispose of the excessive debris or refuse. The Contractor shall submit such estimate for review and approval, prior to performing this additional work.

C. *Holidays*

When any of the following holidays falls on a regularly scheduled collection day, the Contractor shall provide notice of the schedule change to the City no later than three months preceding the holiday. The Contractor shall collect all solid waste on the previous day or the following day.

New Year's Day
Memorial Day
July 4th
Labor Day
Thanksgiving Day
Christmas Day

D. *Animals*

Employees of the Contractor shall not be required to expose themselves to the danger of being attacked or bitten by vicious animals in order to accomplish refuse collection in any case where the owner or tenants have such animals at large, but the Contractor shall immediately notify the customer and City Manager, in writing, of such conditions and of his inability to make collection because of such conditions.

Sec. 3-5. Equipment.

A. *Type to be provided*

The Contractor shall provide packer type trucks, hydraulically operated for loading and unloading of solid waste which is water tight to a depth of not less than eighteen inches.

B. *Quantity*

The Contractor shall provide sufficient equipment, in proper operating condition, so that regular schedules and routes of collection can be maintained.

C. Condition

Equipment shall be maintained in a reasonable, safe, working condition, to be painted uniformly with the company name, telephone number and the number of the vehicle printed in letters of not less than three (3) inches high on each side of the vehicle. Vehicles shall be numbered and a record kept of the vehicle to which each number is assigned. No advertising shall be permitted on vehicles. The Contractor is required to keep collection vehicles and commercial containers emptied by mechanical means cleaned and painted to present a pleasing appearance.

D. Operation

Each non-packer trash vehicle shall be equipped with a cover that may be net with mesh not greater than one and one-half inches, or tarpaulin, or fully enclosed metal top. Such cover shall be kept in good order and used to cover the load going to and from the disposal facility during loading operations or when parked, if the contents are likely to be scattered if not covered. Vehicles shall not be overloaded so as to scatter refuse. However, if refuse is scattered from the Contractor's vehicle for any reason, it shall be picked up immediately. Each vehicle shall have a fork and broom for this purpose. The Contractor's vehicles are not to interfere unduly with vehicular or pedestrian traffic, and vehicles are not to be left standing on streets unattended except as made necessary by loading operations, and shall move with the traffic flow.

Sec. 3-6. Employment and Working Conditions.

The Contractor shall comply with all applicable state and federal laws relating to wages and hours, and all other applicable laws relating to the employment or the protection of employees now or hereafter in effect.

The Contractor is required and hereby agrees by accepting this agreement, to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act as amended and changed from time to time. The Contractor also agrees that upon written request, the Contractor will provide the City all information and policies, whether written or oral, relating to wages or terms and conditions of employment for employees in the service of the Contractor under this agreement. Conditions of employment shall be published and conspicuously posted so that all employees may be informed.

Sec. 3-7. Payment of Taxes.

The Contractor shall pay all federal, state and local taxes, to include sales tax, social security, workmen's compensation, unemployment insurance and other required taxes which may be chargeable against labor, material, equipment, real estate and any other items necessary to and in the performance of work under this agreement.

Sec. 3-8. Compliance with Laws and Regulations.

The Contractor hereby agrees to abide by all applicable federal, state, county and city laws and regulations. The Contractor and his surety indemnify and save harmless the City, all its officers, representatives, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, order or other decree, whether by himself, his employees or his subcontractor. This clause shall apply not only during the term of this agreement but also as to any claim, liability or damages which are based on the Contractor's conduct during the term of this agreement and in the event the City is charged with the responsibility, jointly or severally, for the aforementioned conduct as a successor to the Contractor.

Sec. 3-9. Provision of Insurance.

The Contractor shall not commence work under this agreement until he has obtained all insurance required under this agreement and such insurance coverage has been approved by the City Manager of the City of Lake Wales, nor shall the Contractor allow any subcontractor to commence work on subcontracts until similar insurance of the subcontractor has been obtained and approved.

A. *Compensation Insurance*

The Contractor shall provide and maintain during the life of this agreement Worker ' s Compensation Insurance for all of his employees who are employed in connection with the work. If the work is sublet, the Contractor shall require the subcontractor similarly to provide Worker ' s Compensation Insurance for all the latter ' s employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this agreement is not protected under the Worker ' s Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate insurance coverage for the unemployment compensation protection of his employees not under or otherwise protected.

B. *Public liability and property damage insurance*

The Contractor shall provide and maintain during the life of this agreement, at his own expense, such public liability and property damage insurance as shall protect him and any subcontractor performing work covered by this agreement from claims for property damage which may arise from operations under this agreement, whether such operations be by himself or by a subcontractor, or anyone directly employed by the Contractor or subcontractor. The amount of such insurance shall be as follows:

Comprehensive liability insurance (also known as "Broad Form") covering general and motor vehicle liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for injuries, including accidental death to any one person, and subject to the limit for each person, in an amount not less than One Million Dollars (\$1,000,000.00) each occurrence, and property damage insurance in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) each occurrence. In all such policies, the City shall be named as an additional insured at no cost to the City.

C. *Proof of insurance*

The Contractor shall furnish the City Manager prior to the start of any operations under this agreement satisfactory proof of carriage of the insurance required with an insurance company satisfactory and acceptable to the City. No policy is acceptable to the City that can be cancelled by the insurer in less than thirty (30) days after the insured has received written notice of such cancellation of the policy. To be acceptable to the City, each insurance certificate shall contain a clause substantially as follows:

"The policies referred to herein provide that they cannot be cancelled by the insurer in less than thirty (30) days after the insured has received written notice of such cancellation, and equal notification to the City."

Should the Contractor fail to provide such insurance, the City may secure the same, and the cost of said the Contractor shall reimburse the cost of insurance to the City by the Contractor.

Sec. 3-10. Guarantee of Performance.

The Contractor hereby deposits with the City a performance bond in the amount of \$300,000 as a guarantee to the City of faithful performance under the terms of this agreement. This performance bond shall be written by a company with a Class 9, A or higher financial rating as shown in Best's Key Rating Guide.

Sec. 3-11. Liquidated Damages.

Should the Contractor fail to perform in accordance with the provisions of this agreement and/or refuse to pay liquidated damages upon receipt of invoice from the City, the City shall, in addition to the amounts provided in other provisions of the agreement, be entitled to claim against the performance bond of the Contractor as provided in Section 3-10, or deduct from the next regularly scheduled payment to the Contractor, the following amounts, not as a penalty, but as liquidated damages for such breach of contract:

- | | | |
|-----|---|--|
| (1) | Unsatisfactorily resolved complaints (Section 3-2 D) over 20 per month in the first year and over 15 per month in subsequent years. | \$ 10.00 each case |
| (2) | Failure to clean up spillage promptly from vehicles or after having emptied containers, whether on private or public streets, alley, etc. | \$ 25.00 each case |
| (3) | Failure to clean vehicles or change containers as requested by customer. | \$ 25.00 each vehicle or container |
| (4) | Failure to keep vehicles closed or covered | \$ 25.00 each vehicle |
| (5) | Loaded vehicles left standing on the street unnecessarily | \$ 25.00 each vehicle |
| (6) | Failure to maintain schedules established and given as a requirement of this contract, in writing, to the public and to the City (Section 3-4). | \$250.00 per violation of route schedule |

ARTICLE IV. MISCELLANEOUS.

Sec. 4-1. Notice.

Notices for the purpose of the Contractor as called for under this agreement should be forwarded to Florida Refuse, Inc., 3820 Maine Avenue, Lakeland, Florida 33801-9757.

Notices to the City should be forwarded to the City Manager, City of Lake Wales, 201 West Central Avenue, Lake Wales, Florida 33853.

Sec. 4-2. Amendments to the Agreement.

Amendments which are consistent with the purposes of this agreement may be made with the mutual consent, in writing, of the parties and in accordance with the City Charter and other applicable laws and ordinances.

Sec. 4-3. Separability.

If any article or section of this agreement or of any supplements or riders thereto, should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal pending a final determination as to its validity, the remainder

of this agreement and of any supplements or riders thereto, or the application of such article or section to persons or circumstances other than those to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

SECTION 5. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 6. This ordinance shall become effective immediately upon its passage by the City Commission.

CERTIFIED AS TO PASSAGE this 5th day of August, 2008.



Lee A. Wheeler, III, Mayor/Commissioner
City of Lake Wales, Polk County, Florida

ATTEST:



Clara VanBlargan, City Clerk

FRANCHISE AGREEMENT AMENDMENT

The *City of Lake Wales*, a municipal corporation created and existing pursuant to the laws of the State of Florida, its successors and assigns, does hereby amend the franchise agreement granted to *Republic Services of Florida L.P. Florida Refuse* as described in Ordinance 2002-21 adopted by the City Commission of Lake Wales on October 1, 2002 as amended by Ordinance 2004-23 on August 3, 2004 and Ordinance 2006-01 on February 7, 2006.

Republic Services of Florida L.P. Florida Refuse, approves and accepts the amended conditions and obligations imposed in Ordinance 2008-25.

The parties agree that Ordinance 2002-21 adopted by the City Commission of Lake Wales on October 1, 2002 as amended by Ordinance 2004-23, Ordinance 2006-01 and Ordinance 2008-25, attached hereto as Exhibit AA@, is the entire Agreement of the parties and shall govern the dealings between the parties.

IN WITNESS THEREOF the parties hereto have executed this Agreement on the date below written in two (2) counterparts, each of which shall, without proof or accounting of the other counterparts be deemed an original contract.

THE CITY OF LAKE WALES, FLORIDA

By

Lee A. Wheeler, III, Mayor/Commissioner

8-5-2008
Date

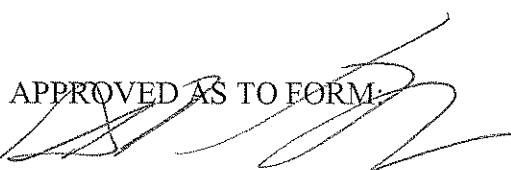
(SEAL)

ATTEST:



Clara VanBlargan
City Clerk

APPROVED AS TO FORM:


Albert C. Galloway, Jr., City Attorney

Republic Services of Florida L.P.
Florida Refuse

By

7/3/08
Date

Witness

Witness

(SEAL)