

RESOLUTION NO. 41-09-10

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA ESTABLISHING AN APPLICATION PROCESS FOR AUTHORIZING NON-EXCLUSIVE FRANCHISES FOR ROLL-OFF CONTAINER COLLECTION SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has determined that the residents and businesses of the Town would benefit if a process for granting non-exclusive franchises for roll-off collection services is created; and

WHEREAS, upon the adoption of this Resolution any person, firm, company or corporation may apply for a franchise; and

WHEREAS, in order to be granted a franchise an applicant must comply with the process and criteria set forth herein.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

SECTION 1. - Engaging in business of roll-off collection services.

(a) No person, company, firm or corporation shall engage in the business of roll-off collection services over the streets or public rights-of-way of the Town, for hire or salvage, without first applying for and receiving a nonexclusive franchise from the Town to carry on such a business issued in the name of the corporation or company which will perform the services. This provision shall not apply to roofing contractors who remove roofing debris when replacing a roof pursuant to a permit, provided the removal of roofing debris is not accomplished by use of a roll-off container, trailer or other container whose transport has been removed. The nonexclusive franchise required by this section shall be in addition to any business tax receipts and other licenses which otherwise may be required by law. No franchise granted pursuant to this resolution shall be deemed the property of the holder thereof. The Town may grant a franchise subject to specific terms and conditions necessary to ensure that the terms of this resolution are met.

- (b) The nonexclusive franchise authorized by this resolution may be used only by the firm, company or corporation issued the franchise, and its direct employees, but not related or affiliated firms. The firm, company or corporation granted a franchise may not subcontract with any other individual, firm, company or corporation to provide services under this franchise. Roll-off collection services may only be provided by the firm, company or corporation which has been granted a franchise by the Lake Park Town Commission.
- (c) All franchisees shall maintain an office in Palm Beach County where complaints can be received and processed. Each franchisee shall be responsible for providing the Town copies of any complaints received. The failure to provide the Town with copies of complaints may subject the franchisee to revocation of its franchise.
- (d) All equipment utilized for roll-off collection services in the Town shall be conspicuously marked on both sides of the container with the name of the franchised hauler, container number, tare weight and cubic yard capacity. Identification information shall also be marked on all trailer and container units. All markings shall be in letters and numerals at least two inches in height. In addition, all vehicles utilized in the provision of services within the Town shall comply with federal and state department of transportation regulations pertaining to the operation of roll-off vehicles. All drivers shall be appropriately licensed.
- (e) The franchisee shall perform collection services with as little disturbance as possible. Franchisees shall not litter or cause any spillage to occur upon the premises or the rights-of-way wherein the collection occurs. During transportation, all waste shall be contained, tied or enclosed so that spillage and litter is prevented. In the event of any spillage or litter caused by the franchisee, the franchisee shall promptly clean up all spillage or litter. The cost of cleaning up shall be borne by the franchisee and shall not be billed to the Town or the franchisee's customer.
- (f) The franchisee shall hold the Town harmless from any and all liabilities, claims, losses or damages the Town may suffer as a result of claims, demands, costs or judgments against the Town arising out of the wrongful acts or omission of the franchisee or its employees, in the performance of roll-off collection services within the Town.
- (g) The Town reserves unto itself, in its sole discretion, the power to modify the roll-off collection franchise program established in this resolution; including but not limited to the right to revoke all franchises granted, to change or limit the rights granted, or to otherwise modify the franchise program. Any such revision, modification or revocation of this franchise program shall be by resolution duly enacted by the Lake Park Town Commission.
- (h) Each franchisee shall obtain and maintain, at its own expense, all licenses and permits required by law or regulation to conduct roll-off collection services.
- (i) The grant of a franchise does not relieve any corporation, firm or company from complying with the requirements of Chapter 403, Florida Statutes, and the Department of Environmental Protection's Rules, OSHA rules and regulations, Department of Transportation Rules, and any other applicable federal, state and local laws.

SECTION 2. - Nonexclusive franchise fee requirement; monthly fees; reporting requirements.

- (a) All franchised roll-off collection service operators shall pay to the Town a nonexclusive franchise fee of \$1,500.00 per year, payable the next business day following the Town Commission's approval of the franchise and annually thereafter on the same date during the

second and third years of the franchise term. This fee shall be in addition to the quarterly franchise fee and the business tax charged by the Town.

(b) All franchised roll-off collection service operators shall pay to the Town a roll-off collection fee of 15% of all revenues, net of disposal costs, charged, arising out of any services or operations conducted within the corporate limits of the Town.

(c) The franchisee shall, each quarter, within 30 days of the last day of each calendar quarter, deliver to the Finance Director or designee:

(1) A true and correct statement of the net revenues collected per account during the previous quarter within the Town, certified correct and signed by an individual of the franchisee who has the authority to legally bind the company, firm, or corporation.

(2) Payment of roll-off collection fees, in the amount of 15% of all revenues, net of disposal costs.

(3) A listing, as of the reporting date, of the customer names and address of each location served, the number of containers and size, the collection frequency and the rates charged each account by the franchisee for roll-off collection services.

(d) No property owner may share a roll-off collection account with another property owner.

(e) Any company, firm or corporation seeking to renew its annual business tax receipt pursuant to the provisions of Chapter 28 of the Lake Park Code of Ordinances shall, in addition to the requirements set forth therein, provide the Town with evidence of payment of all franchise fees and quarterly roll-off collection fees imposed by the provisions of this resolution as a condition of the renewal of its business tax receipt.

(f) Each franchisee agrees to permit the Town's auditors, during regular business hours, and after reasonable notice, to audit, inspect and examine the franchisee's fiscal books, records and tax returns, insofar as they relate to Town accounts, to confirm the franchisees' compliance with this section. If the franchisee does not pay any portion of its quarterly roll-off collection fees, the unpaid fees shall bear interest at the rate of one percent and one half (1.5%) per month on the outstanding balance until fully paid, and the franchisee shall be liable to the Town for its expenses of collection, including reasonable attorneys' fees and costs, whether the Town commences legal proceedings, or not. Failure to pay any portion of the quarterly roll-off collection fees assessed may be cause for revocation of the franchise, as provided in this resolution and allowed by law.

SECTION 3. - Rates for roll-off collection services.

(a) Rates and charges for roll-off collection services shall be determined by agreement between the franchisee and its customer. The franchisee is responsible for billing and collecting all fees and charges for its services directly from its customers. The franchisee shall identify and disclose the roll-off collection fee payable to the Town as a line item on each customer invoice.

(b) The franchisee shall directly pay the county solid waste authority and/or any other authorized disposal facility for the franchisee's costs of disposal at facilities in accordance with Section 4.

SECTION 4. - Disposal required at Town- and/or county-approved facilities.

Any and all solid waste material collected by a franchisee within the Town shall be disposed of only at facilities designated or approved by the Florida Department of Environmental Protection

and/or the Solid Waste Authority and at no other location or facility. A franchisee may not improperly dispose of any collected waste if its customer does not pay for services. The improper disposal of any collected waste may be cause for the revocation of the franchise.

SECTION 5. - Application.

Franchises shall be granted only after the applicant for the franchise has filed an application with the Town on such form(s) as established by the Town. All applications must be received by the Town no later than 5:00 PM October 29, 2010. As part of its application, the applicant shall demonstrate that it has at least three years of roll-off collection and disposal experience; that the applicant is a corporation, firm or company duly authorized to conduct such business within the State of Florida; submit at least three references; its business history; an inventory of its equipment; and financial records for the Town's evaluation. The Town may require that the applicant submit additional information as part of the application to enable the Town to determine that the applicant meets all of the requirements delineated in this resolution.

SECTION 6. - Insurance/ Workers Compensation.

(a) The franchisee shall maintain and provide to the Town proof of its general liability insurance and automobile liability insurance policies which shall demonstrate that the policies are written in the franchisee's name and that said policies provide coverage incident to the franchisee's operations under the franchise. The amount of liability coverage shall not be less than a combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for bodily injury and property damage liability. The Town shall be listed as an additional insured. The policy shall contain an endorsement requiring that the Town be furnished with 30 days' notice by registered mail prior to cancellation or material changes in the policies. Certificates of insurance evidencing such insurance coverage shall be provided to the Town by franchisee prior to providing any franchise services.

(b) Workers' compensation coverage must be maintained in accordance with statutory requirements.

SECTION 7. - Authorization to provide services.

If approved, a franchisee shall be authorized to provide roll-off collection services only upon payment of the annual franchise fee, submission of proof of required insurance, and evidence of compliance with any other terms and conditions.

SECTION 8. - Term of franchise.

The term of the franchises shall be for a period of three (3) years commencing January 1, 2011 and terminating December 31, 2013.

SECTION 9. - Transfer of nonexclusive franchise.

Upon the sale or legal transfer of a franchisee company or corporation, the new owner must apply for a transfer of the franchise, in writing, within 30 days of the transfer, to the Town and

shall provide the requisite evidence of required insurance and financial responsibility. A franchise may not be transferred to a new operational location. Transfer of a franchise to a successor entity is not final until approved by the Town. Once transferred, the franchise shall remain in effect until the original expiration date.

SECTION 10. - Revocation of nonexclusive franchise.

- (a) In the event the franchisee fails to comply with any of the terms specified in any of these sections, the Town reserves the right to revoke any nonexclusive franchise previously granted for a franchisee's failure to comply with any section of this resolution.
- (b) The violation of any of the terms and conditions of this Resolution which endanger the public health, safety and welfare, or the violation of any other applicable federal, state or local law or rule may subject a franchisee to revocation of its franchise.
- (c) The submission of false or inaccurate information in an application or required operational reports, the failure to submit operational reports or to make payment of fees, or to submit to a lawful inspection of the franchisee's location or operation, may subject a franchisee to revocation of a franchise.
- (d) In the event the Town proposes to revoke a franchise for any violation of this resolution, it shall provide the franchisee with notice of such revocation and the reasons therefore, by hand delivery, facsimile or certified mail, addressed to the franchisee or its registered agent at the address provided by the franchisee in its application to the Town, or if changed at the location of its Palm Beach County office as required herein..

SECTION 11. - Demolition debris; debris hauling fee; volume determination for debris.

- (a) *Debris hauling equipment.* Contractors appropriately licensed and contracted to perform demolition services may haul their own demolition debris utilizing the contractor's own equipment, provided that all equipment utilized for debris hauling services in the Town must be conspicuously marked on both sides of the automotive unit with the name of the contractor, vehicle number, tare weight and cubic yard capacity. Identification information must also be marked on all trailer and container units. All markings must be in letters and numerals at least two inches in height. In addition, all vehicles utilized in the provision of such services within the Town must comply with federal and state department of transportation regulations pertaining to the operation of roll-off vehicles. All drivers must be appropriately licensed.
- (b) *Debris hauling fee.* A demolition debris hauling fee shall be paid at the time a demolition permit application is made and the owner or contractor intends to haul its own debris. The demolition debris hauling fee will be established by resolution of the Town Commission.
- (c) *Demolition debris.* The cubic yards of debris hauled from a demolition project shall be determined by multiplying the length times the width times the height in feet of the structure to be demolished, times a conversion constant which provides the volume of debris contained is the structure in cubic yards. The conversion constant for a wood or metal frame structure is 0.009. The conversion constant for a CBS or masonry structure is 0.011.

The foregoing Resolution was offered by Commissioner Rumsey, who moved its adoption. The motion was seconded by Vice-Mayor Osterman and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	___
VICE-MAYOR PATRICIA OSTERMAN	<u>/</u>	___
COMMISSIONER STEVEN HOCKMAN	<u>/</u>	___
COMMISSIONER JEANINE LONGTIN	<u>/</u>	___
COMMISSIONER KENDALL RUMSEY	<u>/</u>	___

The Town Commission thereupon declared the foregoing Resolution NO. 41-09-10 duly passed and adopted this 15 day of September, 2010.

TOWN OF LAKE PARK, FLORIDA

BY: Desca Dubois
DESCA DUBOIS
MAYOR

ATTEST:

Vivian M. Lemley
VIVIAN M. LEMLEY
TOWN CLERK

TOWN OF LAKE PARK
TOWN SEAL

FLORIDA

Approved as to form and legal
sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY