

- b. The monthly rates for Solid Waste collection and disposal services to commercial Businesses and/or establishments are in accordance with the following table:

<u>Container Size</u>	<u>Once Per Week Pickup</u>	<u>Twice Per Week Pickup</u>	<u>Three Times Per week/pickup</u>
Two (2) Yd. Rented	\$60.00	\$120.00	\$180.00
Two (2) Yd. Owned	\$45.00	\$90.00	\$135.00
Four (4) Yd. Rented	\$80.00	\$160.00	\$240.00
Four (4) Yd. Owned	\$65.00	\$130.00	\$195.00
Six (6) Yd. Rented	\$100.00	\$200.00	\$300.00
Six (6) Yd. Owned	\$85.00	\$170.00	\$255.00

- c. The Franchisee bears all costs associated with performing the services described in this Agreement which include, but are not limited to, the collection, transport, and disposal of or arranging for the disposal of Residential and Commercial Solid Waste collected under this Agreement and the billing and collection of all fees and charges for said Solid Waste Collection, including delinquent accounts, and disposal service from the individual Residences and Businesses served by the Franchisee. Franchisee is also responsible for keeping records of ownership and occupancy of all residences served.

## 2) Fee Increase Mechanism

The bid price will be fixed for the life of this Agreement. There will be no increases from ~~July 1, 2018~~ July 1, 2023 until ~~June 30, 2022~~ June 30, 2027. After June, 30, ~~2022~~ 2027, the price will be subject to annual adjustments based on the Consumer Price Index-Urban for the Southeast. ACPI-U increases of up to three percent annually shall be made a part of the record of Meade County Fiscal Court through Notice in writing served to the Meade County Fiscal Court Clerk. Conditions requiring any need for an increase above a three (3) percent must be made in writing and are subject to approval of Meade County Fiscal Court.

## 3) Franchise Fees

- a. ~~Every quarter Franchisee~~ ~~Each month Waste Transport Service~~ must remit to Meade County Solid Waste ~~eight (8) percent (%)~~ ten (10) percent (%) of the gross income amount billed by ~~Waste Transport Service~~ Franchisee attributable to Solid Waste collection and disposal services in the Meade County Franchise Area.
- b. The Franchisee hereby agrees to bear the cost of an annual audit of its records regarding the remitting of the Franchise fee if the Court, in its discretion, deems an audit necessary. Such audit is to be performed by a mutually agreed upon auditor.
4. ~~Waste Transport Service~~ Franchisee shall be responsible for the billing and collection of all fees and charges, including delinquent fees, for said Solid Waste collection and disposal service from the individual Residences and Businesses served by said company.

## SECTION X: REPORTING REQUIREMENTS

1. ~~Monthly~~ Franchisee shall provide quarterly reports to Meade County Fiscal Court's and to the ~~appointed~~ Solid Waste Coordinator.
  - a. The Franchisee shall maintain records and report quarterly ~~monthly~~ to the Court the volume and source of all Solid Waste collected by the Franchisee under this Agreement during the previous quarter ~~monthly~~ and the ultimate disposal location of the waste collected.
  - b. The Franchisee shall maintain a summary of customer service calls and the Franchisee's response.
  - c. The Court shall have the authority to request the Franchisee to report to the Fiscal Court on any aspect of services provided under this agreement.
  - d. The Franchisee shall retain all records required to be maintained under this Agreement for five years.
  
2. Right of Inspection/Audit
  - a. The Court reserves the right to inspect the Franchisee's operations at any time in such a way as to not unreasonably interfere with the Franchisee's operations. The Franchisee hereby grants the Court right-of-entry as necessary to exercise this right.
  - b. The Court reserves the right to require the Franchisee's records relating to the Franchisee's operations under this Agreement to be audited at any time by a mutually agreed upon auditor. The Franchisee shall bear the cost of any audit required by the Court. Should the audit reveal inconsistencies or any other problems, the Franchisee must provide the Court with a written explanation including the Franchisee's plans to remedy any problem identified.

**SECTION XI: LIABILITY INSURANCE REQUIRED**

The Franchisee shall carry and pay the costs of the following liability insurance in support of its undertaking by the Court and County on account of the negligence of the Franchisee in at least the amount indicated below for injury to or death of persons and injury to or destruction of property:

<u>Coverage</u>	<u>Limits of Liability</u>
1. Worker's Compensation	Statutory Requirements
2. Employer's Liability	\$500,000.00
3. Bodily Injury Liability (except automobile)	\$1,000,000.00 each person \$1,000,000.00 each occurrence \$2,000,000.00 each aggregate
4. Property Damage Liability (except automobile)	\$500,000.00 each occurrence \$1,000,000.00 each aggregate
5. Automobile Bodily Injury Liability	\$1,000,000.00 each person \$2,000,000.00 each occurrence
6. Automobile Property Damage Liability	\$500,000.00 each occurrence
7. Excess Umbrella Liability	\$500,000.00 each occurrence

\$1,000,000.00 each occurrence

In addition, the Franchisee agrees to hold the Court and County harmless and to protect the Court and County, bearing all expenses including reasonable attorney's fees and all other costs, whether or not such claims, damages or costs are covered by said insurance. Furthermore, the Franchisee shall furnish to the Court a certificate of insurance as evidence of coverage.

All insurance policies maintained pursuant to the Franchisee shall contain the following endorsement:

It is hereby understood and agreed that this insurance policy may not be cancelled by the surety nor the intention not to renew by the surety until thirty (30) days after receipt by the Court, by registered mail, of a written notice of such intention to cancel or not to renew.

Court as Additional Insured/Loss Payee – All insurance required under the terms of the Agreement shall name the Court as additional insured and shall provide a thirty-day notice to the Court in the event of a material alteration or cancellation of any coverage prior to the effective date of said alteration or cancellation. Copies of all policies required under this Agreement shall be furnished to and filed with the Meade County Solid Waste Coordinator and the Meade County Fiscal Court Clerk.

#### SECTION XII: PERFORMANCE BOND

1. Upon the effective date of the Agreement, the Franchisee shall furnish proof of the posting of a faithful performance bond for \$250,000.00 running to the Court with good and sufficient surety approved by the Court.
2. The bond shall be conditioned that the Franchisee shall observe, fulfill and perform the terms and conditions of this Agreement and that in the case of any breach of condition of the bond, the amount thereof shall be recoverable from principal and surety, jointly and severally, for all damages resulting from the failure of Franchisee to observe and perform its obligations under this Agreement. The bond shall be maintained by the Franchisee throughout the term of this Agreement.
3. The Court hereby reserves the power to require the Franchisee to increase the amount of the performance bond, in its sole discretion, at any time upon making a determination the amount of the bond is insufficient.
4. The Franchisee shall give thirty (30) days' notice to the Court of any changes or alteration on the performance bond.

#### SECTION XIII: INDEMNIFICATION, DUTY TO DEFEND, RELEASE AND WAIVER

1. The Franchisee hereby agrees to indemnify and hold harmless the Court, its officials, officers, employees, agents and representatives for all claims, losses, damages, costs and expenses, including costs of defense and reasonable attorney's fees which arise from the award of this Franchise and this Agreement and the activities of the Franchisee under the terms of this Agreement. The Franchisee specifically agrees that it will pay all damages and penalties which the Court, its officials, officers, employees, agents and representatives are legally required to pay as a result of the award of this Franchise and this Agreement and the activities of the Franchisee under the terms of this Agreement. Such damages and

penalties shall include but not be limited to, damages arising out of liability suits, regulatory enforcement actions and other damages arising out of collection, transport and processing of Solid Waste under the terms of this Agreement. The Franchisee's obligations shall continue beyond the term of this Agreement should losses, damages, costs and expenses be incurred after the termination of this Agreement.

2. If a claim is asserted or a lawsuit is filed against the Court or County, either independently or jointly with the Franchisee which relate to the award of this Franchise or the Franchisee's activities under the terms of this Agreement, the Franchisee shall, upon notice to it, defend the Court, its officials, officers, employees, agents and representatives against the action. This duty to defend shall continue beyond the term of this Agreement should a claim or lawsuit be asserted or continue beyond the term of this Agreement. In the event of a final judgement being obtained against the Court or County, either independently or jointly with the Franchisee, the Franchisee shall pay said judgement and all costs, including reasonable attorney fees and hold the Court, its officials, officers, employees and representative harmless there from.
3. The Franchisee hereby releases the Court, its officials, officers, employees, agents and representatives and waive any and all claims, losses, damages, costs and expenses arising from the Franchise process including the selection of the Franchisee, negotiation of this Agreement or any other Agreement pertaining to Solid Waste and enactment of any and all ordinances associated with the Franchise process and this Agreement.
4. Should any court or regulatory agency, state or federal, ever seek to establish liability against the Court, its officials, officers, employees, agents and representatives for the cost of an environmental cleanup, recovery or other corrective action, or criminal or civil penalty provided by applicable law, the Franchisee hereby agrees to defend the Court or County upon notice and indemnify the Court of County for any and all fines, losses, costs or expenses, including attorney's fees.

#### SECTION XIV: TERM, RENEWAL, MODIFICATIONS AND TRANSFERS

1. This Agreement and rights granted hereunder shall take effect for a period of five (5) years from July 1, ~~2018~~2023. Options shall be exercised if mutually agreed upon by both Meade County Fiscal Court and the Franchisee.

2. Renewal

Extension of this Agreement through June 30, ~~2027~~2032 is permissible through one five-year option. Options shall be exercised if mutually agreed upon by both Meade County Fiscal Court and the Franchisee. If the Franchisee wishes to renew this Agreement, it must give the Court written notice of its desire to renew no earlier than September 1, ~~2021~~2026 and no later than January 1, ~~2022~~2027.

3. Modification

- a. Either party may seek a modification of this Agreement.
- b. All requests for modifications shall be made in writing to each party's designated representative.

- c. The Franchisee shall furnish, upon the Court's request, information, documents, data and other applicable items pertaining to its request.

#### 4. Transfers

- a. The Franchisee shall not assign, transfer or convey this Agreement, or its rights, duties or obligations hereunder, without prior written consent of the Court. Any attempt to assign, transfer, or convey any part of this Agreement without the approval of the Court shall render this Agreement void.
- b. Any change in ownership of the Franchisee which differs significantly from that described by the Franchisee in its proposal shall be considered an assignment, transfer or conveyance of this Agreement requiring approval from the Court.
- c. The Franchisee may not subcontract with a separate entity to perform any service encompassed by this Agreement without the approval of the Court. Any attempt to subcontract with a separate entity to perform service encompassed by this Agreement without Court approval shall render this Agreement void.
- d. When seeking the Court's approval for a transfer, assignment or conveyance of this Agreement or approval of a subcontract, the Franchisee must provide, upon the Court's request, information relating to the contemplated transfer, assignment, conveyance or subcontract.

#### SECTION XV: TERMINATION

The Court may terminate this Agreement at any time by giving the Franchisee notice should the Court determine that the continuation of this Agreement is contrary to the public interest pursuant to the terms listed in Section XVII (1).

#### SECTION XVI: COSTS

The Court reserves the right to charge the Franchisee for any cost incidental to the awarding, renewing, transferring, modifying and enforcement of the terms of this Agreement including but not limited to consultant fees and reasonable attorney's fees. If at any time, the Court determines that consultations by third parties are necessary for evaluation of the Franchisee's performance under this Agreement, the Franchisee shall bear all costs.

#### SECTION XVII: REMEDIES

##### 1. Breach

- a. As used in this Agreement, "breach" shall mean:
  1. Failure to perform or observe any term, provision or requirement of this Agreement.
  2. Failure to comply with any state, federal or local permit under which the Franchisee operates or performs services under this Agreement.
  3. Failure to comply with any state or federal statute or regulation or any local ordinances.

4. Acceptance or handling of unacceptable waste by the Franchisee.
5. Making an untrue representation to the Court, County or the public.
6. Failure to pay Franchise fees, or
7. The occurrence of any act of insolvency by the Franchisee.

## 2. Cure

In the event of a breach, the Court may, in its discretion, give the Franchisee notice of the breach and opportunity to cure. The Court may place a time limit or other conditions upon the Franchisee's opportunity to cure

## 3. Remedies

- a. In the event of a breach, the Court shall have the right to take such action as is necessary to safeguard its rights and interests as set forth in this Agreement, at the Court's opinion, all such remedies being cumulative.
- b. The remedies available to the Court or County include, but are not limited to:
  1. Termination of this Agreement.
  2. Immediate closure of all facilities operated by the Franchisee under this Agreement and the cessation of all activities by the Franchisee relating to this Agreement.
  3. The right of possession of all equipment and vehicles of the Franchisee utilized by the Franchisee under this Agreement as well as all accounts receivable or sums due the Franchisee under this Agreement.
  4. The right to bring any legal proceeding in the nature of injunction, specific performance or other equitable remedy. The Franchisee hereby acknowledges that any breach of this Agreement will cause irreparable harm to the Court or County and that damages any law are an inadequate remedy for a breach of this Agreement.
  5. Prosecution of criminal violations of applicable federal, state and local laws.
  6. Any other remedy provided by this Agreement.
  7. Any other remedy allowed by applicable law.
- c. Remedies Cumulative: Each right, power and remedy provided in this Agreement or now or hereafter existed at law, in equity, any statute, or otherwise shall be cumulative and concurrent and shall be in addition to every other such right, power or remedy. The exercise or the beginning of the exercise or the forbearance of the exercise by the Court of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Court of any one or more of such rights, powers or remedies.
- d. Failure to insist upon strict performance of any covenant, obligation, term or requirement of this Agreement shall not be a waiver of a right to demand strict performance in the future.
- e. The rights of the Franchisee and all other lien holders or other persons having any interest in any piece of equipment, machinery, vehicle or facility are subordinate to the interest held by the Court or County in the event of a breach of this Agreement. The Franchisee hereby agrees to give notice of the Court's or County's superior

interest to all other lien holders or other person's having any interest in any piece of equipment, machinery, vehicles or facility.

**SECTION XVIII: INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT:**

**1. Complete Agreement**

This Agreement constitutes the entire agreement and understanding between the parties hereto and replaces, cancels and supersedes any prior agreements and understandings relating to the subject matter hereof. The Franchisee and the Court agree and warrant that there is no agreement, representation of other inducement for the execution of this Agreement other than the consideration recited herein.

**2. Governing Law**

This Agreement is executed in the Commonwealth of Kentucky and all matters pertaining to the validity, construction, interpretation and effect of this Agreement shall be governed by the laws of the Commonwealth of Kentucky.

**3. Construction**

Should any provision of this Agreement require interpretation or construction, it is agreed by the parties hereto that the Court, administrative body or other entity interpreting or constructing this Agreement shall not apply a presumption that the provisions hereof shall be more strictly construed against one party than another by reason of the rule of construction that a document is to be more strictly construed against the party who itself or through its agent prepared the same. The headings or sections and subsections are for convenience only and shall not affect or control the meaning or construction of any of the provisions of this Agreement.

**4. Notices**

- a. All notices, requests, demands or other communications required under this Agreement shall be made in writing and shall be served by hand delivery or by placing such in the United States Mail, certified mail, return receipt requested and bearing adequate postage. Each notice shall be effective upon receipt. Rejection, refusal to accept or the inability to deliver because of changed address or status shall be deemed to be receipt of the notice sent.
- b. The Franchisee shall notify the Meade County Solid Waste Coordinator of any change of address or change of personnel to whom all notices, requests, demands or other communications should be directed.

**5. Severability**

In the event that any term, provision or covenant hereunder shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable by any party and the invalid or unenforceable covenant shall automatically be deemed, modified and amended to provide for the maximum rights

available under applicable law to the party who is the beneficiary of the covenant in question.

#### 6. Third Parties

Nothing in this Agreement, express or implied is intended to confer any right or remedies on any person other than the parties expressly named herein and their respective permanent successors, assigns and legal representatives.

#### 7. Authority of parties

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this agreement.

### XIX: PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

The Franchisee shall not, as to the service it renders under the terms of this ordinance, or in any other respect make or grant any undue preference or advantage to any person nor subject any person to prejudice or disadvantage unless such treatment is specifically authorized herein.

### XX: ACCEPTANCE BY FRANCHISEE

This agreements and the rights, privileges and authority hereby granted shall take effect and be in force from and after ~~April 1, 2008~~ \_\_\_\_\_ and shall continue in force and effect from the term herein stated, provided however that within thirty (30) days after the date of the lawful passage and publication of this ordinance, the Franchisee shall file with the county clerk its unconditional acceptance of this Agreement and promise to comply with and abide by all of its terms, provisions and conditions.; Such acceptance and promise shall be in writing duly executed and sworn to by and on behalf of the Franchisee before a notary or other officer authorized by law to administer oaths. The bid package submitted by Waste Transport Service shall be incorporated by reference as to the terms of their offer.

### XXI: PENALTIES

This Franchise herein granted to the Franchisee is exclusive and a person, persons, corporation, association, partnership or any other entity operating a Solid Waste collection and disposal service in the Franchise area after the effective date herein, other than the Franchisee named herein, shall be violation of this ordinance and shall be punishable upon conviction by a fine of not less than \$100 nor more than \$250 and/or confined in the county jail up to 90 days. Each day that the violation occurs shall be considered a separate offense.

### XXII: SEVERABILITY

If any section of this ordinance, or if any policy or order thereunder, or the application of such section to any persons or circumstances shall be held invalid, the remainder of this ordinance and the application of such section of this ordinance or of such section or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby.



The amended first reading of Ordinance No. \_\_\_\_\_ occurred on \_\_\_\_\_, at an open meeting at the Meade County Fiscal Court and thereafter published in the Meade County Messenger on \_\_\_\_\_. It was read for a second time on \_\_\_\_\_ at an open meeting of the Meade County Fiscal Court and immediately passed and adopted. This ordinance shall become effective \_\_\_\_\_ following publication as required by law.

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Leslie Stith  
Meade County Judge Executive

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Tammy Graham  
Meade County Fiscal Court