

ORDINANCE NO. O-2024-044

AN ORDINANCE GRANTING A FRANCHISE TO VIKING ROLL OFFS, LLC TO ENGAGE IN THE COLLECTION AND DISPOSAL OF SOLID WASTE FOR TEMPORARY SERVICES AS DEFINED HEREIN WITHIN THE CITY OF ROUND ROCK, TEXAS; ESTABLISHING FRANCHISE FEES; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; AND REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

I.

**FRANCHISE AGREEMENT FOR
COLLECTION AND DISPOSAL OF SOLID WASTE FOR TEMPORARY SERVICES
BETWEEN THE CITY OF ROUND ROCK, TEXAS AND
VIKING ROLL OFFS, LLC**

This “*Franchise Agreement for Collection and Disposal of Solid Waste for Temporary Services between the City of Round Rock, Texas and Viking Roll Offs, LLC*” (“Franchise Agreement”) is made by and between the CITY OF ROUND ROCK, TEXAS (the “City”) and VIKING ROLL OFFS, LLC (the “Grantee”) for temporary solid waste and collection services as defined herein within the City of Round Rock, Texas.

RECITALS

WHEREAS, the public welfare of the residents of the service area requires that adequate provisions be made for the regulated collection, removal and disposal of refuse; and

WHEREAS, pursuant to, Chapter 32, Section 32-19 et seq., Code of Ordinances (2018 Edition) of the City of Round Rock, Texas, the City is authorized to enter into contracts or franchise agreements for the right to collect and remove refuse; and

WHEREAS, the City and Grantee desire to enter into a Franchise Agreement for Temporary Services subject to the terms and conditions as set forth herein; and

NOW, THEREFORE, for and in consideration of the mutual covenants and provisions hereof, it is agreed as follows:

SECTION 1.
DEFINITIONS

1.01 For the purposes of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words

used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory, and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- (A) **City** means the City of Round Rock, Texas, a home-rule municipality.
- (B) **City Council** means the governing body of the City of Round Rock, Texas.
- (C) **Grantee** means Viking Roll Offs, LLC, its legal representatives, successors, lessees and assigns.
- (D) **Gross Receipts/Gross Revenues** means all receipts and revenues received or derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parent company, and any other person or entity in which the Grantee has a financial interest, from or in connection with the collection and removal of garbage, yard waste, and solid (non-hazardous) waste for Temporary Services located within the City; and/or the operation of a waste hauling service for Temporary Services within the City, all pursuant to this Franchise Agreement. Gross receipts/revenues include franchise fees passed through to the Grantee’s customers. Gross receipts/revenues do not include any surcharges imposed directly upon any Service Recipient by the state, city or other governmental unit and collected by the Grantee on behalf of such governmental unit.
- (E) **Sanitation Supervisor** means the person designated from time to time by the Director of Utilities.
- (F) **Service Rates** means the rates charged to the Service Recipient.
- (G) **Service Recipient** means any person or organization within the City limits of the City that contracts with Grantee for Temporary Services.
- (H) **Sidewalk** means that portion of a street which is not improved and maintained for vehicular travel.
- (I) **Street** means a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel. The term “street” shall also include alleyways.
- (J) **Temporary Services** means temporary solid waste collection and disposal services from a construction site, a remodeling or repair project, or to facilitate removal or junk, surplus goods and equipment, or debris through a roll-off container or other commercial container used to transport such solid waste to a facility for disposal or recycling for temporary or single occurrence projects. Temporary Services do not include services that are required as part of normal business operations of commercial and industrial businesses, institutional and governmental entities, and multi-unit residential complexes. Temporary Services also does not include solid waste and refuse collection and disposal

services for which are contracted for under the Amended and Restated Refuse Collection Contract with Central Texas Refuse, Inc. dated November 4, 2021, and as subsequently amended.

SECTION 2.
FRANCHISE REQUIRED; PENALTIES ESTABLISHED

2.01 No person or company providing the services herein described shall be allowed to occupy or use the streets of the City or be allowed to operate within the City without a franchise.

2.02 In accordance with Chapter 32, Section 32-25(a), Code of Ordinances (2018 Edition) of the City of Round Rock, Texas: "It shall be unlawful for any person to engage in the business of collecting refuse from commercial establishments within the city unless he either has a contractual relationship with the city or has been issued a franchise therefor which is in force and effect. If a franchise is issued, the franchise fee shall be ten percent of gross revenues payable quarterly."

2.03 In addition to any other penalties herein provided, any person or company operating unauthorized without a franchise agreement, or who shall in anywise violate the provisions of this ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined as provided for in Chapter 1, Section 1-9, Code of Ordinances (2018 Edition) of the City of Round Rock, Texas, that being a fine not exceeding Two Thousand and No/100 Dollars (\$2,000.00), and each day any violation of this ordinance or the referenced Code provisions is allowed to continue shall constitute a separate offense.

SECTION 3.
GRANT OF FRANCHISE

3.01 The Grantee shall have a non-exclusive franchise solely for the collection and disposal of solid waste for Temporary Services.

3.02 The Grantee shall have the right, privilege, and franchise to have, use and operate in the entire area of the City its waste hauling service; and to have, use and operate its vehicles and equipment in, over, under, along, and across the present and future streets and alleyways of the City to the extent necessary to perform the Temporary Services specified herein.

3.03 This Grant of Franchise is non-exclusive and does not establish priority for use over other franchise holders, permit holders, and/or the City's or the public's use of public property. The Grantee's use of the City's streets and alleyways shall be subject to and in accordance with the City's policies and procedures governing same, as they currently exist or as they may be hereafter amended.

SECTION 4.
ACCEPTANCE OF FRANCHISE

4.01 Within thirty (30) days following adoption of the ordinance enacting the Franchise Agreement, and simultaneous with proper execution by the Grantee of this Franchise Agreement, the Grantee agrees to unconditionally accept and continue to be bound by all of the terms and conditions

contained herein, thereby promising to comply with and abide by all of the provisions, terms, and conditions contained in this Franchise Agreement.

4.02 In accepting this Franchise Agreement, the Grantee acknowledges that its rights hereunder are subject to the police power of the City to adopt, enact and enforce Charter provisions, ordinances and resolutions necessary for the health, safety and welfare of the public.

SECTION 5.
TERM

5.01 The term of this Franchise Agreement shall commence upon execution by the City and Grantee and expire on September 30, 2027 at 11:59 p.m.

5.02 This Franchise Agreement supersedes and replaces any previous franchise agreements and any express or implied renewal or extension of any previous franchise agreements between the City and the Grantee.

SECTION 6.
RENEWALS

This Franchise Agreement may be renewed by the City upon application of the Grantee pursuant to procedures established in this Section 6, and in accordance with then applicable laws:

- (A) At least twelve (12) months prior to the expiration of the term of this Franchise Agreement, the Grantee shall inform the City in writing of its intent to seek a renewal of the franchise.
- (B) After giving appropriate public notice, the City Council shall proceed to determine whether the Grantee has satisfactorily performed its obligations under this Franchise Agreement.
- (C) If the City Council finds that a renewal of the franchise with the Grantee is in the public interest and finds that the Grantee has satisfactorily performed its obligations under this Franchise Agreement, then the City may at its sole option enter into a renewal of the Franchise Agreement with the Grantee under appropriate terms and conditions, and such renewal may be for any period from one (1) to five (5) years.
- (D) Additional renewals may be applied for by the Grantee under the provisions of this Section 6.
- (E) The Grantee shall never have any express or implied right of renewal of this franchise. Any such renewal determination shall rest solely with the City Council, and its decision thereon shall be final.

SECTION 7.
FRANCHISE FEES

7.01 The parties acknowledge that the streets and public easements to be used by the Grantee in the operation of its services hereunder are valuable public properties acquired and maintained by the City at substantial expense to its taxpayers, and further acknowledge that the Grant of Franchise to the Grantee for the use of said streets and alleyways is a valuable right without which the Grantee would be required to invest substantial capital in costs and acquisitions, and further acknowledge that the City will incur costs in regulating and administering this Franchise Agreement.

7.02 Therefore, the Grantee shall pay quarterly to the City a franchise fee calculated as a percentage of the Gross Receipts derived during the preceding quarter by the Grantee from or in connection with the operation of its services within the City of Round Rock, Texas. As of the commencement date of this Franchise Agreement, the franchise fee established by the City is ten percent (10%) of Gross Receipts so derived.

7.03 The City reserves the right to review and modify the franchise fee percentage on an annual basis. The Grantee shall be given thirty (30) days' written notice prior to any increase in the franchise fee. Any change in the franchise fee must be established by resolution or ordinance of the City Council of the City of Round Rock, Texas, and by amendment to this Franchise Agreement.

7.04 The franchise fee and any other costs or penalties assessed shall be paid quarterly to the City on or before the last day of the month following the end of the quarterly period for which said payment is due. The quarterly payment shall include a list of locations serviced by the Grantee during the quarter. The franchise fee payment and list of locations serviced during the quarter shall be delivered to the City's Director of Finance, along with a City-approved form entitled "Temporary Services Collection Franchise Fee Quarterly Statement" showing the calculations of the amount of such quarterly payment, and such form shall be certified by an officer of the Grantee.

7.05 Franchise fee payments not received on a timely basis, that being within thirty (30) days of the due date, are subject to a ten percent (10%) late penalty. Commencing thirty (30) days from the original due date, an additional one percent (1%) penalty will be added for every month or portion thereof that said payment is late.

7.06 Annually, not later than four (4) months after the end of the Grantee's fiscal year (September 30), the Grantee shall file with the City's Director of Finance either an audited statement or a sworn statement signed by an officer of the Grantee, and such audited or sworn statement shall show the revenues attributable to the operations of its services within the City pursuant to this Franchise Agreement. Such statement shall present, in a form approved by the City's Finance Director, a detailed breakdown of Gross Receipts/Gross Revenues as herein defined. If the Grantee elects to provide an audited statement, such statement shall have been audited by an independent Certified Public Accountant whose report shall accompany the statement.

7.07 The City shall have the right at any time to review or audit the Grantee's franchise fee statements and statements of revenues and other books and records directly relating to such matters, and to recompute any amounts determined to be payable under this Franchise Agreement, and the Grantee

shall be under the continuing obligation to make all such records available to the City; provided, however, that any such review or audit shall take place within thirty-six (36) months following the close of the fiscal year covered by such statements. Any additional amount due to the City as a result of the City's review or audit shall be paid within thirty (30) days following written notice to the Grantee by the City. In addition to the right to review such records, the City shall have the right at any time to select an independent accounting firm to audit such books and records of the Grantee to determine compliance with this Franchise Agreement and any related ordinances. If such audit is requested by the City, then the costs of the audit shall be paid by the City unless the audit reveals an error in the Grantee's reporting of Gross Receipts/Gross Revenues by a margin of greater than three percent (3%), in which case the cost of the audit shall be paid by the Grantee.

SECTION 8. **REQUIREMENTS OF GRANTEE**

The Grantee shall comply with each of the following requirements:

8.01 Performance. The collection and disposal of solid waste for Temporary Services by the Grantee shall at all times during the term of this Franchise Agreement be performed to the reasonable satisfaction of the Sanitation Supervisor. The collection and removal of materials hereunder will be done in a prompt, thorough, lawful and workmanlike manner.

8.02 Authority of Sanitation Supervisor. The Grantee will at all times during the term of this Franchise Agreement operate under the acknowledgment that the Sanitation Supervisor has the right to issue orders, directions and instructions to the Grantee with respect to the collection and removal of materials hereunder, the performance of Grantee's services hereunder, and Grantee's compliance with the provisions of City ordinances and resolutions as they now exist or may from time to time be amended. The Grantee agrees to comply therewith; provided, however, that the orders, directions and instructions of the Sanitation Supervisor shall be reasonably related to carrying out the purposes and intent of this Franchise Agreement.

8.03 Illegal Dumping. The Grantee will require its drivers to write down locations where seemingly illegal dumping has occurred. Information on such locations shall be conveyed to the Sanitation Supervisor within forty-eight (48) hours of observation.

8.04 Collection Equipment. The Grantee shall at its sole expense purchase, operate and maintain collection equipment. Dumpsters and any of the Grantee's other collection equipment shall be clearly labeled with the name of the Grantee. The Grantee at its sole expense shall replace or repair any collection equipment that fails to operate properly or is damaged beyond normal wear and tear.

8.05 Litter Control. The Grantee will not litter any premises or public property in making collections pursuant to this Franchise Agreement, nor will any materials be allowed to leak, blow or fall from collection vehicles. Any materials dropped or spilled in collection, transfer or transportation will be immediately cleaned up by the Grantee.

8.06 Vehicle Inventory. The Grantee will furnish the Sanitation Supervisor with an inventory of collection vehicles used by the Grantee under this Franchise Agreement and shall keep such inventory

current. The inventory shall indicate the type, make, capacity, vehicle identification number and license number of each vehicle.

SECTION 9.
REPORTS

9.01 Operations Reports. The Grantee must maintain at its place of business current, accurate and complete tonnage records relating to services provided under this Franchise Agreement. Such reports shall contain information summarized by month and shall contain data on the tonnage of waste collected. Upon written notice to the Grantee by the City, and not more frequently than once per quarter, the City has the right to inspect all such operations reports. The City may at any time review any other records of the Grantee reasonably and directly necessary for the City's review, approval or enforcement of this Franchise Agreement.

9.02 Operations reports required by the City will be made available for inspection by the Grantee at no expense to the City and will be prepared in the manner and form reasonably prescribed by the City.

SECTION 10.
ACCOUNTING PROVISIONS

10.01 The Grantee must maintain current, accurate and complete financial and accounting records relating to services provided under this Franchise Agreement. All records will be maintained in accordance with generally accepted accounting principles. The City's Director of Finance or his/her designee has the right to audit and inspect all financial records pertaining to the City's Agreement-related account and may at any time review any other records of the Grantee reasonably and directly necessary for the City's review, approval or enforcement of this Franchise Agreement.

10.02 Financial reports and operating data required by the City for the purpose of any service rate review will be furnished by the Grantee at no expense to the City and will be prepared in the manner and the form reasonably prescribed by the City.

SECTION 11.
INDEMNITY AND INSURANCE REQUIREMENTS

11.01 Indemnity. The Grantee shall indemnify, defend, and hold harmless the City, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Franchise Agreement by the Grantee and/or its agents, employees or subcontractors to the extent caused by the negligent acts or omissions of the Grantee. It is the intent of the parties to this Franchise Agreement to provide the broadest possible coverage for the City. The Grantee shall reimburse the City for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Grantee is obligated to indemnify, defend and hold harmless the City under this Franchise Agreement.

11.02 Insurance. Without limiting the Grantee's indemnification of the City, the Grantee shall provide and maintain at its own expense during the term of this Franchise Agreement, or as may be further required herein, the following insurance coverage and provisions:

- (A) Extended coverage and general liability insurance with an insurance company licensed to do business in the state of Texas, acceptable to the City, and such insurance shall insure against claims for liability and damages. Extended coverage insurance under this Section 11 shall be for a minimum of One Million and No/100 Dollars for the protection of the public in connection with:
 - (1) Liability to persons or damages to property, in any way arising out of or through the acts or omissions of the Grantee, its servants, agents, or employees or to which the Grantee's negligence shall in any way contribute; and
 - (2) Arising out of the Grantee's operations and relationships with any independent contractor or subcontractor.
- (B) The insurance policy obtained by the Grantee in compliance with this Section 11 shall be approved by the City Attorney, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City during the entire term of this Franchise Agreement and any renewal periods, and shall be changed from time to time to reflect changing liability limits as reasonably required by the City. The Grantee shall immediately advise the City Attorney of any significant litigation, actual or potential, that may develop which would affect this insurance.
- (C) All insurance policies maintained pursuant to this Franchise Agreement shall contain the following conditions by endorsement:
 - (1) The City of Round Rock shall be named as an additional insured and the term "Owner" or "City" shall include all authorities, boards, bureaus, commissions, division, departments, and offices of the City and the individual members, employees, and agents thereof in their official capacities and/or while acting on behalf of the City.
 - (2) Each policy shall require that written notice shall be given to the City by certified mail or via national carrier at least thirty (30) days prior to the cancellation of or the making of any material change in the policies.
 - (3) Insurers shall have no right of recovery against the City; it being the intention that the insurance policies shall protect the Grantee and the City and shall be primary coverage for all losses covered by the policies.
 - (4) The policy clause "Other Insurance" shall not apply to the City of Round Rock where the City is an additional insured on the policy.

- (5) Companies issuing the insurance policies shall not have recourse against the City for payment of any premiums or assessments, which all are set at the sole risk of the Grantee.
- (D) A Certificate of Insurance on the City's form shall be filed with the City as acceptable evidence of insurance coverage.

SECTION 12.
COMPLIANCE WITH LAWS

12.01 The Grantee shall comply with all laws and regulations of applicable federal, state and local governments. The Grantee and the City agree to be bound by all ordinance provisions or any amendments thereto, or other legal requirements that might affect the collection or disposal of the materials delineated hereunder. It is understood and agreed by and between the parties that ordinances are intended to be minimum standards and that higher standards and regulations may be required under this Franchise Agreement.

SECTION 13.
ASSIGNMENT

13.01 For purposes hereof, the term "assignment" includes but is not limited to:

- (A) A sale, exchange or other transfer to a third party of substantially all of the Grantee's assets dedicated to service under this Franchise Agreement; and/or
- (B) The issuance of new stock to or the sale, exchange, or other transfer of thirty percent (30%) or more of the then outstanding common stock of the Grantee to a person other than the shareholders owning said stock at the date of this Agreement.

13.02 The Grantee shall not assign this Agreement, or any interest, privilege or right granted herein, without the express written consent of the City, and then only to a person or persons approved by the City on such terms and conditions as the City may require. Consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without such consent is null and void and shall terminate this Franchise Agreement.

SECTION 14.
SUBCONTRACTING

14.01 The Grantee shall not subcontract all or any portion of the work or business of this Franchise Agreement without the express written consent of the City.

SECTION 15.
INDEPENDENT CONTRACTOR

15.01 The Grantee shall perform all work and services described hereunder as an independent contractor and not as an officer, agent, servant, or employee of the City. The Grantee is solely responsible for acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the City and the Grantee. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant, or employee of the City, nor will any such person be entitled to any benefits available or granted to employees of the City.

SECTION 16.
TERMINATION

16.01 The City may terminate this Franchise Agreement for substantive default by the Grantee in its performance under this Agreement.

16.02 Prior to terminating this Franchise Agreement, the City shall give the Grantee thirty (30) days' written notice with the opportunity to correct the default to the satisfaction of the City within the said thirty (30) days. In the event the Grantee fails to correct the default to the satisfaction of the City within the thirty (30) day period, then the City may terminate this Franchise Agreement without further notice.

16.03 It is not the intention of the parties hereto to authorize repeated violations of this Franchise Agreement. Continued violations in the areas specifically described in the notice shall be grounds for termination without opportunity to correct default.

SECTION 17.
CANCELLATION FOR RECEIVERSHIP OR BANKRUPTCY

17.01 The City shall have the right to cancel this Franchise Agreement immediately should the Grantee come under the appointment of a receiver, liquidate, become insolvent, bankrupt, make a transfer for the benefit of creditors, reorganize and enter into an arrangement for the benefit of creditors, or file a voluntary petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States; or should an involuntary petition in bankruptcy be filed against the Grantee and not be dismissed within one hundred twenty (120) days after the date of first filing.

SECTION 18.
NOTICE

18.01 Any notices required hereunder must be in writing and must be given personally or by certified mail, return receipt requested, addressed to the respective parties as follows:

GRANTEE: Viking Roll Offs, LLC
6405 Cedro Cove
Austin, TX 78731

CITY: City Manager and to: City Attorney
221 East Main Street 309 East Main Street
Round Rock, TX 78664 Round Rock, TX 78664

or to such other addresses as either party may from time to time designate in writing.

SECTION 19.
AMENDMENT

19.01 Amendment to or modification of the terms and conditions of this Franchise Agreement shall be effective only upon the mutual agreement in writing of both parties hereto.

SECTION 20.
CONTROLLING LAW

20.01 This Franchise Agreement is governed and construed in accordance with the laws of the State of Texas, and venue for any legal action shall lie exclusively in Williamson County, Texas.

SECTION 21.
ENTIRE AGREEMENT

21.01 This document embodies the entire and integrated agreement between the parties with respect to the subject matter hereof. All prior negotiations, written agreements, and oral agreements between the parties with respect to the subject matter of this Agreement are merged into this document.

SECTION 22.
SEVERABILITY

22.01 Should any portion or part of this Franchise Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

SECTION 23.
FRANCHISE AGREEMENT DULY EXECUTED

23.01 The person signing this Franchise Agreement on behalf of the Grantee has been authorized by the Grantee to do so, and this Agreement has been duly executed and delivered by the Grantee in accordance with the authorization of its governing body, and constitutes a legal, valid and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms.

II.

- A.** All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.
- B.** The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.
- C.** The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

READ and APPROVED on first reading this the ____ of _____, 2024.

READ, APPROVED and ADOPTED on second reading this the ___ day of _____, 2024.

Craig Morgan, Mayor
City of Round Rock

ATTEST:

MEAGAN SPINKS, City Clerk

ACCEPTANCE BY GRANTEE

The Grantee accepts and hereby agrees to be bound by all of the terms and conditions of this Franchise Agreement and Ordinance.

GRANTEE:

By: [Signature]

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF Williamson §

BEFORE ME, the undersigned authority, on this day personally appeared Brandon Ferguson (name), CEO (title) of Viking Roll Offs, LLC known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said entity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 7 day of the month of February, 2024.

[Signature]
Notary Public in and for the State of Texas

