

MAYOR
Joel T. Williams, III

MAYOR PRO TEM
Bob Carter

COUNCIL MEMBERS
David Dowler
Eric Gambrell
Margo Goodwin
John McKnight

TOWN ATTORNEY
Matthew C.G. Boyle

TOWN JUDGE
Albert D. Hammack

THE TOWN OF

Highland Park
TEXAS

4700 DREXEL DRIVE, HIGHLAND PARK, TEXAS 75205
Telephone 214-521-4161

TOWN ADMINISTRATOR
Bill Lindley

DIRECTOR OF PUBLIC SAFETY
Rick Pyle

DIRECTOR OF ADMINISTRATIVE SERVICES
&
CHIEF FINANCIAL OFFICER
Steven J. Alexander, CPA

DIRECTOR OF TOWN SERVICES
Ronnie Brown

DIRECTOR OF ENGINEERING
Lori Chapin, P.E.

TOWN SECRETARY
Gayle Kirby

November 21, 2017

Potential Town Franchisee

Dear Decision Maker:

The Town of Highland Park is updating their Service Provider Franchise Program for granting franchises to companies wanting to engage in business in the Town. The franchise agreement is a five-year agreement (January 2018 – December 2022). This agreement establishes a franchise fee of ten percent (10%) of gross revenues for business generated within the Town of Highland Park. Such business shall include servicing dumpsters, roll-off containers, portable toilets, and grit and grease trap service providers.

Please find with this letter the application and the proposed agreement for your review. An application fee of \$300.00 must be returned with the application and signed agreement before processing can begin. The attached agreement is for your review only. After we receive your application and the appropriate fees, the Town will prepare a formal agreement in the format required by the Town for your signature.

All applications, and applicable fees, must be submitted January 31, 2018, for Town consideration. Those who do not submit the proper application and fees within the allotted time frame will not be permitted to operate within the Town of Highland Park. Please contact me with any questions you may have regarding the process at tbrunson@hptx.org or 214-559-9308.

Sincerely,

Tempest

Tempest Brunson
Town Services Coordinator



Service Provider Franchise Application

Company Name: _____

Contact Person: _____ Email: _____

Phone Number: _____ Fax No.: _____

Mailing Address: _____ Physical Address: _____

Provide a brief description of any past business experience of the applicant including roll-off containers, portable toilets, and grit and grease trap service providers within the Town.

Equipment/ Vehicle Summary: *(vehicle/equipment itemization on attached sheet)*

No. of Trucks: ___ **No. of Dumpsters:** ___ **No. of Roll-Offs:** ___ **No. of Portable Toilets** ___

Provide a description of the proposed service:

Any Additional
Information

Applicant must attach the following information:

- 1) A copy of the documents establishing business.
- 2) Documentary evidence of insurance company indicating willingness to provide the liability insurance as stated in the agreement.
- 3) Documentary evidence of payment of ad valorem taxes owed on real and personal property to be used in connection with the operation if the business establishment is located in the Town.

I have read and agree to comply with all conditions and provisions of the Service Provider Franchise Agreement. I understand there will be a 10% Commercial Franchise Fee per year on gross receipts (payable quarterly) and a financial accounting report (provided quarterly).

Authorized (Owner/Officer) Representative (print) Telephone #

Signature of Authorized Representative Date

CORPORATE ACKNOWLEDGMENT

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared:

(Print Name) (Print Title)

of the corporation known as _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said corporation, that he or she was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that she or he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2____.

Notary Public In and For
_____ County, _____

My Commission expires:

SINGLE ACKNOWLEDGMENT

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared _____ 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2_____

Notary Public In and For
_____ County, _____

My Commission expires:

PARTNERSHIP ACKNOWLEDGMENT

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day appeared:

(Print Name)

(Print Title)

of _____ a partnership, known to me to be the person and partner whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said partnership, and that she or he was duly authorized as a partner of such partnership to perform same for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2_____.

Notary Public In and For

County, _____

My Commission expires:

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter referred to as “Agreement”) is made and entered by and between the Town of Highland Park, Texas (“Town”), and **COMPANY** a Texas Corporation (“Franchisee”).

WITNESSETH

1. **FRANCHISE:** A non-exclusive franchise is hereby granted to use the public streets, alleys and thoroughfares within the corporate limits of the Town of Highland Park for the purpose of engaging in the business of solid waste collection, portable toilets, and/or grit and grease trap services.
2. **TERM:** The term of this Agreement shall be for a period of no more than five (5) years, beginning on the effective date of execution of the Agreement, unless notice of termination is provided by one party to the other at least thirty (30) days prior to the anniversary date of the Agreement. Prior to each Anniversary date, the franchise shall provide: (1) documentation that all lawful franchise fees, permit fees, sales, use and ad valorem taxes, and other such levies and assessments, if any, have been paid to the Town; (2) proof of continuing indemnity insurance coverage as required under Section 14 of the Agreement; (3) documentation that all reports required within the Town of Highland Park’s Service Provider Franchise Agreement (if any) have been completed; (4) demonstrate financial ability to maintain a business; (5) an equipment and vehicle summary; and (6) a rate sheet for the use of the Franchisee’s equipment in the event of a disaster either natural or man-made affecting the Town of Highland Park.
3. **ORDINANCES OF THE TOWN OF HIGHLAND PARK:** Franchisee shall abide by the ordinances of the Town of Highland Park, in particular, but not limited to, the requirements of the Town of Highland Park’s Solid Waste Collection Franchise Ordinance.
4. **SCOPE AND NATURE OF OPERATION:** It is expressly understood and agreed that the Franchisee may collect and deliver for disposal all solid waste, including recyclable materials, service and maintain portable toilets accumulated on premises and/or service grit and grease traps within the corporate limits of the Town, excluding residential solid waste collection service other than apartment complexes, where the services are contracted for by individuals or companies with the Franchisee. Franchisee will, at its own expense, furnish personnel and equipment to collect solid waste, portable toilets, and/ or grit and grease traps and will establish and maintain in an efficient and businesslike manner the services that may be contracted for. Franchisee will furthermore comply with all pertinent rules, regulations, laws and ordinances as directed by responsible governmental agencies having jurisdiction thereupon.
5. **REGULATION OF VEHICLES:** All vehicles used by the Franchisee for the collection and transportation of solid waste, portable toilets, and/ or grit and grease trap services shall be covered at all times while loaded and in transit to prevent the spillage of any waste onto the public streets or properties adjacent thereto. Any spillage will be promptly recovered by the Franchisee, and all vehicles owned by the Franchisee shall be clearly marked with the Franchisee’s name in letters not less than four (4) inches in height. All such vehicles shall be cleaned and maintained by Franchisee so as to be in good repair and of good appearance

and, when idle, free of any waste residue as may cause odor or provide a breeding place for vectors.

6. REGULATION OF LEASED CONTAINERS AND PORTABLE TOILETS: It is specifically understood and agreed that the Town of Highland Park shall permit the Franchisee to rent or lease containers and portable toilets for collection purposes to the owner or occupant of any premises within the corporate limits of the Town, excluding residential solid waste customers other than apartment complexes, for collection purposes subject to the following requirements:

ALL such containers and/or portable toilets shall be constructed according to good industry practice in the trade;

ALL such containers and/or portable toilets shall be equipped with suitable covers to prevent blowing or scattering of any waste while being transported for disposal of their contents;

ALL such containers and/or portable toilets shall be cleaned and maintained by Franchisee so as to be in good repair, of a good appearance and free from any waste residues as may cause odor and provide a breeding place for vectors;

ALL such containers used for the disposal of food waste or other putrescible material shall be serviced no less than two times per week; and

ALL such containers and/or portable toilets shall be clearly marked with the Franchisee's current name and telephone number in letters not less than four (4) inches in height. Franchisee shall be responsible for making certain that the information reflected on the containers and/or portable toilets is current, and shall cause any changes necessary to reflect the current information to be made within thirty (30) days after the event, giving rise to the need for the change.

Franchisee shall notify the Town in writing within thirty (30) days of any change of name, address or telephone number of the Franchisee.

7. DAMAGE TO PUBLIC PROPERTY: Franchisee expressly agrees to assume liability for all costs of repair of public streets, bridges, rights-of-way, and other facilities that it damages in connection with the operation of its business with the exception of normal wear and tear.
8. DISPOSAL OF WASTE: It is specifically understood and agreed that Franchisee will comply with all rules, regulations, laws and ordinances. Disposal of any waste collected by the Franchisee from premises within the corporate limits of the Town of Highland Park must be made at a lawfully permitted sanitary landfill and/or wastewater treatment plant. Franchisee's violation of this provision shall be cause for immediate revocation of this Agreement.
9. WASTE COLLECTION: The collection of any waste between the hours of 11:00 p.m. and 6:00 a.m. the following day in any area zoned residential, or within three hundred (300) feet of any area zoned residential is prohibited, unless a permit of variance is first obtained from the Town.

10. **FRANCHISE FEE:** For and in consideration of the covenants and Agreements herein contained, Franchisee hereby agrees to pay to the Town of Highland Park a franchise fee of ten percent (10%) of the gross revenues generated from Franchisee's operations within the Town.

Calculation: The calculation of gross revenues generated from operation within the Town shall include all revenue, as determined in accordance with generally accepted accounting principles, which is derived, directly or indirectly, by the Franchisee from or in connection with its operation within the Town. Gross revenues shall include, but are not limited to revenues received from the collection and disposal of any waste, whether by a company bearing Franchisee's name or a company owned or controlled by Franchisee but operating under a different name.

Fee Payment: The franchise fee shall be paid on a quarterly basis no later than thirty (30) days after the end of each calendar quarter. The payment shall be made to the Town of Highland Park Financial Services Department.

Delinquent Payments: Fee payments received after the due date shall be subject to interest at the rate of twelve percent (12%) per annum until the fees are paid in full.

11. **REPORTS:** Each quarterly payment shall be accompanied by a financial accounting report satisfactory to the Town. The purpose of the report is to show the basis for the computation of the quarterly payment. The report shall include the sources and amounts of revenues upon which the payment was calculated. At a minimum, the report shall include a list of all active accounts during the quarter, the fee structure for each account, the revenue generated by the account, and tonnage collected within Town. If Franchisee also provides recycling services within Town, Franchisee is to report tonnage of recycling collected within Town. The report shall also include a list of all accounts no longer serviced and all new business for the reporting quarter. In these reports, the identification of customers by account number is sufficient for compliance with this section. If Franchisee collects no revenue in a particular quarter, it shall file a report with the Town indicating that no revenue has been collected.
12. **AUDITING BOOKS AND RECORDS:** The Town shall have the authority to require an audit of the books and records of the Franchisee to determine the accuracy of Franchisee's franchise fee payments. If the Town determines that an audit under this paragraph is necessary.

The Town shall notify Franchisee when it wishes to require an audit under this section. The auditor shall be chosen by the Town. The Franchisee shall promptly make available to the selected auditor, all books and records necessary to determine whether all franchise fees due the Town have been paid. Failure to provide requested records within two business days of the request to the auditor shall be grounds for forfeiture.

Upon completion of the audit, any demonstrated variance in the fees paid and the fees owed will be rectified. If Franchisee has underpaid, Franchisee will pay the difference to the Town with interest and penalties provided for late payments. If Franchisee has overpaid, the Town will refund the difference to Franchisee. If the variance is five percent (5%) or greater in favor of the Town, Franchisee will pay the cost of the audit, otherwise the Town and Franchisee will each pay fifty percent (50%) of the cost of the audit.

An initial audit to determine baseline revenues shall be conducted, at the expense of the Franchisee, within one (1) year from the date of the execution of this Agreement. The Franchisee shall deliver the results of the audit to the Town within thirty (30) days of receipt of the audit report.

13. **FORFEITURE:** The failure or refusal of a Franchisee to: (1) pay any quarterly installment of the annual fee when due; (2) submit any quarterly financial accounting report or; (3) permit the Town to conduct any audit described in Section 12, shall be deemed good cause for revocation of the Franchisee’s permit under the provisions of the Town of Highland Park’s Solid Waste Collection Franchise Ordinance(s). No new permit shall be issued, and the Franchisee is prohibited from conducting any commercial waste collection activities within the Town until, where applicable, all fees are paid in full, any required financial accounting reports submitted, or an audit of the Franchisee’s books and records is permitted. The failure or refusal of the Franchisee to comply with any of the provisions of this Agreement within ten (10) days after receiving written notice to do so from the Town shall be deemed a breach of this Agreement. The Town Council, after giving notice and the opportunity for a hearing to the Franchisee, may declare the franchise forfeited and may restrict or exclude the Franchisee from further commercial operations within the Town and that necessarily use the streets of the Town for said commercial operations. The Franchisee shall thereupon immediately surrender all rights in and under the franchise and the franchise shall be null and void.

14. **INDEMNITY INSURANCE: FRANCHISEE ASSUMES ALL RISK OF LOSS OR INJURY TO PROPERTY OR PERSONS ARISING FROM ANY OF ITS OPERATIONS (INCLUDING THOSE COMPANIES OWNED OR CONTROLLED BY FRANCHISEE BUT OPERATING IN THE TOWN UNDER A DIFFERENT NAME) UNDER THIS AGREEMENT, AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE TOWN OF HIGHLAND PARK FROM ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS OR EXPENSES, INCLUDING ATTORNEY’S FEES, ARISING FROM ANY SUCH LOSS OR INJURY.** It is expressly understood that the foregoing provisions shall not in any way limit the liability of the Franchisee. Franchisee agrees to carry the types of insurance (which insurance policies shall cover and name all companies owned or controlled by Franchisee but operating with the Town operating under a different name) in minimum limits as follows:

A. Insurance and Amount: The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Worker's Compensation	Statutory Limit as set forth in the Worker's Compensation Act.
Employers’ Liability Insurance	
Minimum Limits	\$500,000 Per Each Accident
	\$500,000 Occupational Disease Limit
	\$500,000 Occupational Disease per Employee

Commercial General Liability	\$1,000,000 Per Occurrence \$2,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate
Business Auto Liability Insurance	\$500,000 Combined Single Limits for Bodily Injury and Property Damage
Umbrella Liability:	Not less than \$1,000,000.00 per occurrence combined limit for bodily injury and property damage

B. Additional Insured: The Town of Highland Park shall be an additional insured on the Commercial General Liability (Public) Insurance Policy furnished by the Contractor.

15. **RETENTION OF RIGHTS BY TOWN:** The Town of Highland Park, in granting this franchise, fully retains and reserves all the rights, privileges, and immunities that it now has under the law to fully patrol and police the streets, alleys and public ways within the Town and the granting of this franchise shall in no way interfere with the improvements or maintenance of any streets, alleys or public ways, and the rights of the Franchisee herein to use the streets shall at all times be subservient to the right of the governing body of the Town of Highland Park to fully exercise its rights or control over streets, alleys and public ways.
16. **TAXES:** The Franchisee shall promptly pay all lawful sales, use and ad valorem taxes and other such levies and assessments, if any, that may lawfully be imposed upon it or its operations. Failure to pay any of these charges shall be deemed a breach of this Agreement.
17. **AMENDMENTS:** The Town of Highland Park expressly reserves the right, after due notice to Franchisee, to modify, amend, alter, change, or eliminate any of the provisions of this franchise and to impose such additional conditions upon the Franchisee as may be just and reasonable as determined by the Town Council, the conditions to be those deemed necessary for the purpose of insuring adequate service to the public.
18. **ASSIGNMENT OF AGREEMENT:** This Agreement and any and all rights and obligations hereunder may be assigned by the Franchisee only with the prior written consent of the Town Council, which the Town Council will not unreasonably withhold. All provisions of this Agreement shall apply to the Franchisee, its successors or assigns.
19. **SEVERABILITY:** If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions herein, which other portions shall continue in full force and effect.
20. **MAILING OF NOTICES:** Every notice to be served upon the Town or the Franchisee shall be hand delivered or sent by certified mail, return receipt requested. Every such notice to the Franchisee shall be delivered or sent to:

Name:
Title:
Waste Connections
Address:
City, State, Zip:

Every such communication to the Town shall be delivered or sent to the following Address:

Town of Highland Park
Town Administrator
4700 Drexel Drive
Highland Park, TX 75205

The mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given when received. Either party may, upon written notice to the other party, change the address specified in this section.

21. APPLICABLE LAW: This Agreement shall be deemed to be executed in the Town of Highland Park, State of Texas, regardless of the domicile of the Company, and shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action or proceeding arising under or relating to this Agreement shall be in Dallas County, Texas.
22. HEADINGS: The headings contained in this Agreement are to facilitate reference only, and do not form a part of this Agreement, and shall not in any way affect the construction or interpretation herein.

EXECUTED this _____ day of _____, 20_____.

THE TOWN OF HIGHLAND PARK,
TEXAS:

FRANCHISEE:

Margo Goodwin
Mayor

Print Name:
Title:

ATTEST:

ATTEST:

Gayle Kirby
Town Secretary

Print Name:
Title:

APPROVED AS TO FORM:

Matthew C. G. Boyle
Town Attorney