

STATE OF GEORGIA

GWINNETT COUNTY

AGREEMENT

THIS AGREEMENT (this “Agreement”) is made effective _____ 20__ by and between **City of Dacula**, with offices located at 442 Harbins Road, Dacula, Georgia (hereinafter the City) and _____, with a location at _____ Dacula, Georgia 30019. (hereinafter the Customer)

RECITALS

WHEREAS the parties hereto desire to enter into an agreement for the City to collect the Customer’s commercial non-hazardous solid waste; and

WHEREAS, the parties wish to enter into this Agreement to outline the terms for such Service;

NOW THEREFORE, in consideration of the payments and mutual promises and benefits outlined herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SERVICES, PRICING & PERFORMANCE REPRESENTATIONS. Customer grants to the City of Dacula, Georgia, hereafter (City), the exclusive right to collect, transport, dispose of and/or recycle the Customer’s non-hazardous solid waste materials including Recyclable materials (collectively, “Waste Materials”).

PAYMENT. Customer shall pay City for the services and equipment furnished by City, or its contractor at the rates set forth in this Agreement. The initial annual rate shall be \$_____ per year. The initial prorated annual payment shall be due and payable upon the execution of this Agreement. For each subsequent year, Customer shall pay the annual fees due as shown on Customer’s tax bill. Customer shall pay such fees as the City may impose from time to time by notice to Customer, including by way of example only, late payment fees, fuel recovery fee, administrative fees and environmental fees, with City to determine the amounts of such fees in its discretion up to the maximum amount allowed by applicable law. City shall, at its sole discretion, be allowed by Customer to charge a convenience fee for certain credit card payments. Customer shall pay to City a fee of \$10 for each check submitted by Customer that is an insufficient funds check or is returned or dishonored. Customer further agrees that if a merchant processor dispute is initiated, a \$50.00 fee will be imposed by City, in addition to the subject charge. At any time after City becomes concerned about Customer’s creditworthiness or after Customer has made any late payment, City may request, and if requested, Customer shall pay a deposit in an amount equal to one month’s charges under as determined by the City. Customer shall pay interest on any past due invoices equal to the greater of 1 1/2% per month or the maximum lawful rate, until paid in full. If Customer cancels an order after the order has been processed, Customer may be assessed a cancellation fee by City at City’s current rate. **CUSTOMER AUTHORIZES CITY TO COLLECT CHARGES BY ELECTRONIC MEANS, INCLUDING BUT NOT LIMITED TO CREDIT CARD OR ACH PAYMENTS FOR ANY AND ALL CHARGES INCURRED BY CUSTOMER.** Customer hereby accepts City’s policy of no refunds being issued.

WASTE MATERIALS. The Waste Materials shall not contain any hazardous materials, wastes or substances; toxic substances, wastes and pollutants; contaminants; infectious waste; medical wastes; or radioactive wastes (collectively, "Excluded Waste"), each as defined by applicable federal, state and local laws or regulations (collectively, "Applicable Laws").

RATE AND ADJUSTMENTS. City may, from time to time by notice to Customer, increase the rates provided in this Agreement to adjust for any increase due to; (a) a change in location of Customer or the disposal facility used by City or its contractor; (b) Disposal costs; (c) City's actual costs due to changes in Applicable Governmental fees or taxes; (d) The average weight per cubic yard of Customer's Waste Materials; (e) The Consumer's Price Index; (f) City or its contractor's change in costs due to changes in applicable laws and overhead. Customer also acknowledges that the City is managing the listed services on the Customer's behalf to reduce the Customer's overall cost for these services and that on certain occasions, a cost reduction either cannot be obtained, or may be delayed or limited due to reasons which are beyond the City's control. These could include but are not limited to; a) Municipal Franchised Areas; b) Existing contracts between the customer and the current services provider, and/or c) special operational circumstances. Customer acknowledges that the City may be required, other than as set forth above, to maintain or increase its rates accordingly, with Customer's consent, which may be evidenced verbally, in writing, electronically, or by the parties' actions and practices.

SERVICE CHANGES. The parties may change the type, size or amount of equipment, the type or frequency of service, and correspondingly the rates by agreement of the parties, which may be evidenced verbally, in writing, electronically, or by the parties' actions and practices. This Agreement shall apply to any change of location of Customer within the area in which City provides its services. Customer expressly waives their right to utilize any third party waste management or waste broker to manage any aspect of Customer's waste and or recycling services during the term of this Agreement. City may substitute similar, yet equivalent services and/or containers at \$55.00 per trash container and at no additional cost for recycling containers.

RESPONSIBILITY FOR EQUIPMENT; ACCESS. All recycling containers shall be owned by the City and shall remain the City's property. Customer shall be liable for all loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from City or its contractor's handling of the equipment). Customer shall use the equipment only for its proper and intended purpose and shall not overload the equipment (by weight or volume), move, or alter the equipment without the express written consent of City. Contractor reserves the right to remove (e.g. dump out) materials from its equipment in instances where Contractor determines, in its sole discretion, that its equipment is overloaded, by either weight or volume, or in instances of Customer's nonpayment. Customer is solely and exclusively liable for any and all fees, fines, property damage clean-up costs and/or other costs associated with such removal of materials. Customer shall indemnify, defend and hold harmless City from and against all losses arising from any injury or death to persons or loss or damage to property (including the equipment) arising out of Customer's use, operation or possession of the equipment. Customer shall provide safe, unobstructed access to the equipment at all times. City may charge an additional fee for any additional collection service required by Customer's failure to provide access. If City cannot access the equipment at the time of service (for example, locked gate, blocked access, overloaded) Customer shall pay a two-hundred dollar per hour demurrage fee, prorated every fifteen minutes. Should the City be charged a dig out fee by a landfill, transfer station or other recipient of waste, due to the contents being frozen or otherwise lodged in a container, Customer shall be responsible for paying City a \$150.00 fee.

DAMAGES. Customer agrees that excluding any damage caused intentionally or due to gross negligence, City, or the City's contractor shall not be responsible for any damages to Customer's pavement, curbing or other driving surfaces, overhead and/or side objects such as electrical wire, phone lines, overhanging roof lines, walls, corrals, etc., whether such objects are within the Customer's lot line or a neighboring property, resulting from City or its contractor providing service(s) at Customer's location. Customer agrees to defend, indemnify, save and hold harmless, City, officers, employees and agents, to the fullest extent permitted by law, of and from all claims, loss, damage, injury, suits of whatever nature, for personal injury and property damage alleged to arise out of, or any conditions, of the work performed under this contract, that are or may be brought by parties not subject to the terms of this agreement, specifically neighboring real or personal property owners, who allege to have suffered a loss as a result of performing the duties enunciated herein.

SUSPENSION. If any amount due from Customer is not paid within 30 days after the date of City's invoice, City may, without notice and without terminating this Agreement, suspend collecting and disposing of Waste Materials until Customer has paid such amount to City. If City service is suspended, Customer shall pay City a temporary service interruption fee in the amount of \$75.00 plus any deposits City deems appropriate in addition to any other amounts due to City under this Agreement. If Customer's service is suspended due to non-payment all past due balances must be paid in full and the Customer must agree to pay future invoices via automatic electronic payments as condition precedents to removal of the suspension.

TERM. IF CUSTOMER DOES NOT HAVE AN EXISTING WRITTEN CONTRACT WITH CITY, THEN THE INITIAL TERM OF THIS AGREEMENT SHALL BE EFFECTIVE UPON THE PAYMENT BY CUSTOMER TO CITY OF THE PRORATED ANNUAL SUM DUE AND SHALL CONTINUE FOR TWELVE MONTHS. THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE TWELVE MONTH TERMS UNLESS EITHER PARTY GIVES NOTICE OF TERMINATION TO THE OTHER AT LEAST THIRTY DAYS BEFORE THE END OF THE THEN CURRENT TERM BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. CITY MAY TERMINATE THIS AGREEMENT AT ANY TIME WITH 7 DAYS NOTICE TO CUSTOMER. IF CUSTOMER IS PARTY TO A WRITTEN SERVICE AGREEMENT WITH CITY THE TERMS IF THAT AGREEMENT SHALL GOVERN THE TRANSACTION UNLESS THE TERMS ARE MODIFIED AND NOTICE OF SUCH CHANGES PROVIDED BY THE CITY.

TERMINATION. In addition to its above suspension rights, City may terminate this Agreement immediately by written notice to Customer if (a) any of the information contained in any application submitted to City in connection with this Agreement is untrue or (b) Customer breaches this Agreement and fails to cure such breach within 10 days after City gives Customer written notice of the breach. City may terminate this agreement at any time with 30 day written notice to Customer. City's failure to suspend service or terminate this Agreement when Customer fails to timely pay or otherwise breaches this Agreement shall not constitute a waiver of City's right to suspend service or terminate this Agreement for any future failure to pay or other breach.

PAYMENT UPON TERMINATION. If Customer terminates this Agreement before its expiration other than as a result of an uncured, documented breach by City, or if City terminates this Agreement as a result of a breach by Customer (including nonpayment), the City shall retain the Customer's annual payment. Customer acknowledges that in the event of such a termination, actual damages to City would be uncertain and difficult to ascertain, such amount is the best, reasonable and objective estimate of the actual damages to City, such amount does not constitute a penalty, and such amount is reasonable under the circumstances. Any amount payable under this paragraph shall be in addition to amounts already owing under this Agreement.

ATTORNEYS' FEES. If any litigation is commenced to enforce any part of this Agreement, the City shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses: and court or other costs incurred in such litigation or proceeding.

EXCUSED PERFORMANCE & CURE PERIOD. Except for Customer's obligation to pay amounts due to City, any failure or delay in performance due to contingencies beyond a party's reasonable control, including strikes, riots, terrorist acts, mechanical failures, compliance with Applicable Laws or governmental orders, fires and other acts of God, shall not constitute a breach of this Agreement. City shall be allowed a reasonable cure period for any performance failures alleged by Customer.

TITLE. City and or its contractors shall acquire title to Waste Materials when they are loaded into the City's or City's contractor's truck. Title to and liability for any Excluded Waste and any Waste Materials removed by City due to overloaded equipment shall remain with Customer and shall at no time pass to City or its contractors.

ASSIGNMENT. City may assign this Agreement at any time. Customer may assign this Agreement to a successor upon the consent of City, which shall not be unreasonably withheld. By agreeing to Companies "Terms and Conditions" Customer agrees that successors in ownership and or assigns are bound by this agreement.

MISCELLANEOUS. This Agreement sets forth the entire agreement of the parties and supersedes all prior agreements, whether written or oral, that may exist between the parties regarding the subject matter of this Agreement. City shall have no confidentiality obligation with respect to any Waste Materials. All calls to and from City are recorded and monitored for record-keeping, training, and quality assurance purposes. This Agreement shall be binding upon and inure solely to the benefit of the parties and their permitted assigns. Customer agrees that it shall not engage in any business activity with any other waste/recycling City that employs a former employee of City for a period of two years after the termination of this Agreement. If any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall be modified to be valid, legal, and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia. Customer consents to personal jurisdiction and venue in the courts in Gwinnett County, Georgia. Customer and City agree that electronic signatures are valid and effective, and then an electronically stored copy of this Agreement constitutes proof of the signature and contents of this Agreement, as though it were an original. By signing this agreement Customer agrees to all City Terms and Conditions contained in this agreement and all Terms and Conditions which may be updated and set forth at the City's website.

OTHER TERMS AND CONDITIONS

Up to 6 cans (at \$55.00 each) are available plus 2 recycling cans (at no additional charge).

Cans should be out before 7:00 a.m. on their scheduled pick up day and returned to the appropriate storage area on the same day

Cans are to be placed on the private sidewalk on collection day

Recycling is only offered with commercial trash service

No illegal dumping is allowed in any decorative cans on streets or sidewalks Anyone dumping will receive a citation.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the date first above written.

CITY OF DACULA GEORGIA

By: _____

Name: _____

Title: _____

Date: _____, 20____

By: _____

Name: Hugh D. King, III

Title: Mayor

Date: _____, 20____