

CITY OF SANIBEL

ORDINANCE 10-004

AN ORDINANCE GRANTING TO VEOLIA ES SOLID WASTE SOUTHEAST, INC. A FRANCHISE TO OPERATE A SOLID WASTE COLLECTION AND DELIVERY SERVICE WITHIN THE TERRITORIAL LIMITS OF THE CITY OF SANIBEL, FLORIDA FOR A TERM OF 5 YEARS AND CREATING A FRANCHISE AGREEMENT; PROVIDING FOR EXTENSION OF THE FRANCHISE PERIOD; SETTING FORTH OPERATOR'S OBLIGATIONS CONCERNING COLLECTION AND DELIVERY SCHEDULES, INSURANCE, BOND, AND PERFORMANCE; PROVIDING FOR CONFLICT AND SEVERANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is in the best interest of the City of Sanibel to provide for the health and welfare of the citizens of Sanibel by providing for the collection and delivery services for solid waste and recycling and horticultural materials within the territorial limits of the City of Sanibel; and

WHEREAS, it is now in the best interest of the City of Sanibel that the provision for such services within the territorial limits of the City of Sanibel be by franchise grant to a private waste hauler; and

WHEREAS, Veolia ES Solid Waste Southeast, Inc. responded to a Request for Proposals for the Collection and Delivery of Residential and Commercial Solid Waste, Recycling and Horticultural Material which has been determined to be the best overall proposal; and

WHEREAS, Veolia ES Solid Waste Southeast, Inc. has indicated its willingness to perform such services throughout the franchise period, to commit the equipment and resources necessary for performance of a Franchise Agreement, and to provide additional equipment and labor in the event of any natural disaster or emergency; and

WHEREAS, the geographic location of Sanibel, the distance from existing landfills, the inability to locate solid waste disposal facilities within the City, the limitations on the geographical size of the City and the inability to expand the territory, the limitations on numbers of residential units, the finite limitations on the increase in size and numbers of new business, the lack of industrial capability, and similar unique characteristics of the City, all combine to make it essential for the City to be assured of uninterrupted and reasonably regulated garbage, trash and refuse collection and disposal service through a franchise which is exclusive (with qualification); and

WHEREAS, the State of Florida has clearly articulated and affirmatively expressed a state policy to displace competition with local regulation including, but not limited to, those powers and duties set forth in Chapters 166, 180 and 403, Florida Statutes;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Sanibel, Florida:

Section 1. Franchise Agreement.

1. Franchise Description and Franchise Agreement (incorporating Specifications document).

(a) The City of Sanibel (the “City”), a Florida municipal corporation, enters into this Franchise Agreement with Veolia ES Solid Waste Southeast (the “Operator” or “Contractor”), as the franchise operator (hereinafter sometimes referred to as “Franchise Agreement or “Ordinance”). This Franchise Agreement, and the franchise granted, is for the collection within the territorial limits of the City of Sanibel, and

removal from and lawful disposal of, garbage, trash, refuse, horticultural debris and recyclables by the Operator for the Term set forth in Section 3 below.

(b) This Franchise Agreement consists of this Ordinance and the “City of Sanibel Specifications for collection and delivery of residential and horticultural material”, dated November 2009, such document attached hereto and incorporated herein as Exhibit “A” (hereinafter “Specifications”) and all provisions thereof are specifically made part of this Franchise Agreement. By way of example and not limitation, such Specifications set forth the Franchise Agreement provisions for Definitions, Default, Termination, and Performance Specifications for Operation and Collection, all of which (together with the remainder of the Specifications) are specifically made part of and included as provisions and terms of this Franchise Agreement. To the extent that any provision or term of the Specifications is modified or clarified by this Ordinance document, the wording of this Ordinance document shall prevail over the wording of the attached Specifications.

2. Grant.

The City does hereby grant as a franchise the right, privilege, authority and consent to the Operator to continue to use City streets, easements, alleys and parkways for the operation of its business, without the necessity of paying any additional franchise fee, except as provided in this Franchise Agreement.

3. Term.

The term of this Franchise Agreement is for 5 years, commencing October 1, 2010 and ending on September 30, 2015. This Term may be extended for a

maximum of 2 additional one year terms upon the mutual agreement of the City and the Operator in accordance with Section 11 of this Franchise Agreement.

4. Franchise Fees.

a. The Operator shall pay to the City a percentage fee of its gross revenues derived from operations within the City commencing October 1, 2010, and monthly thereafter during the Term of this Franchise Agreement or any extension or renewal thereof. Such Franchise Fee (percentage fee of Gross revenues) shall be established by separate City Council Resolution. Such Franchise Fee shall be in effect for the first year of this Franchise Agreement. In each subsequent fiscal year of this Franchise Agreement a City Resolution shall be adopted setting forth the Franchise Fee for such fiscal year provided, however, each fiscal year Resolution shall remain effective as to such Franchise Fee unless and until a new City Resolution becomes effective. Each such Resolution shall be effective upon adoption or as otherwise provided in such Resolution and upon written acceptance and acknowledgment of the Franchise Fee set forth therein by Operator. Gross revenues is defined as any and all fees collected by the operator within the City. Gross revenues shall include, but not be limited to, disposal charges, surcharges, equipment rentals and charges, billing fees, and all government levied fees such as tipping charges, disposal fees and City surcharges. The monthly franchise fee shall be paid to the City by the end of the month immediately following each and every calendar month during which the gross revenues were accrued.

b. With the remittance of the franchise fee, the Operator shall also furnish to the City a statement showing its itemized gross revenues earned within the limits of the

c. By December 31 of each year, the Operator shall furnish to the City audited financial statements for the prior 12-month period beginning October 1 and ending September 30, in accordance with Section 1.16 of the attached Specifications dated November, 2009.

d. The City may, at any reasonable time, after due notice and during business hours, make examinations at the Operator's office of any and all of its books and records for the purpose of verifying any of the statements of revenue herein provided for.

e. All payments required by the Operator by this ordinance shall be made at the office of the City Manager, City of Sanibel, Sanibel, Florida, or to such other officer or address as may be substituted, in writing, by the City.

5. Franchise Transfer.

The Operator may not, without the written consent of the City, assign, transfer or sublet the franchise granted by this Franchise Agreement. Not less than 60 days prior to any assignment, transfer or sublease, the Operator shall notify the City of the proposed action, and cause to be submitted to City Council information pertaining to the proposed assignee, transferee or sublessee sufficient, in Council's sole discretion, for Council's determination as to whether the proposed new Operator is qualified, and whether the public health and safety will be preserved. Approval will not be unreasonably withheld by the City.

6. Acceptance by Operator.

a. The terms of this Franchise Agreement shall be accepted in writing by the Operator prior to adoption of this ordinance.

b. In accepting this Ordinance and Franchise Agreement, the Operator hereby agrees to abide by all provisions and terms thereof and by all rules and regulations of the health department(s) of the State of Florida, County of Lee, and the City of Sanibel which may be in force at this time, or which may be promulgated and adopted from time to time, unless and during such pendency of administrative action challenging that regulation or as ordered by a court. Rules and regulations concerning definitions of material to be collected and delivered may be promulgated by the Operator subject to City Council approval. Such rules and regulations must not be inconsistent with definitions and regulations as may be established by state law or by City Council.

c. The Operator shall provide services to the City in accordance with the provisions, definitions, standards and specifications as outlined in the Specifications dated November, 2009 attached hereto and incorporated herein, including but not limited to the scheduled days of collection which are Monday through Saturday between the hours of 6:30 A.M. and 5:00 P.M. for residential services and Monday through Saturday between the hours of 7:00A.M. and 5:00 P.M. for commercial services. The City Council hereby finds, and both the City and the Operator hereby acknowledge, that such City of Sanibel Specifications for Collection and Delivery of Residential and Commercial Solid Waste, Recycling and Horticultural Materials as set forth above are an integral part of this Franchise Agreement and by reference are hereby incorporated herein. The City reserves the right to renegotiate the provisions,

definitions, standards and specifications as outlined in those documents with the Operator during the term of this Franchise Agreement.

7. Rates; Charges.

a. The Operator's initial rates and charges under this Franchise Agreement will be adopted by separate City Resolution. These rates and charges shall be in effect for the first year of this Franchise Agreement. In each subsequent fiscal year of this Franchise Agreement a City Resolution shall be adopted setting forth rates and charges. Each fiscal year Resolution shall remain effective as to rates and charges unless and until a new City Resolution becomes effective.

b. Future rate adjustments may be granted by Council by resolution, for good cause, upon application by either party at least 30 days prior to adoption. Council shall provide the opportunity for public input prior to adoption of the resolution.

8. The Operator shall, at its own expense, indemnify and save harmless the City from any and all damages, judgments, costs and expenses of every kind, including reasonable attorney's fees, which may arise or result by reason of or in consequence of the acts or neglect of the Operator, its agents or servants, to fully comply with the provisions of this ordinance and will save and keep harmless the City from any and all damages, judgments, costs and expenses caused by, or incident to, or in any manner resulting from, the conduct of the Operator's business as provided herein, provided prompt notice in writing of all claims for such damages, costs and expenses, and reasonable opportunity to defend against the same, are given the Operator by the City, together with all information thereon in its possession. The first \$10 received by Operator for Operator's services pursuant to this Franchise Agreement shall serve

as separate consideration for Operator's agreement and obligations set forth in this provision, such consideration acknowledged by Operator to be sufficient.

9. Exclusivity; Conditions.

This franchise grant shall be deemed exclusive. However, the City reserves the right at any time to grant an additional franchise or franchises to qualified applicants if and when the City Council shall determine that the public health and welfare would be best served by such additional franchise or franchises.

In making such determination the City Council will take into consideration, at a minimum, the following:

- (a) Whether the public health, safety and welfare are adequately protected and served by the current Operator;
- (b) Whether the granting of an additional franchise will be in the City's net-term best interest;
- (c) Whether the applicant is qualified, and is willing and able to certify that it will meet the standards under which the Operator is then providing service.

Any additional franchise or franchises granted shall be on terms no more favorable than those enjoyed by the Operator.

10. Extension of Term.

The City reserves the right and option to extend this Franchise Agreement for 2 additional 1-year periods under substantially the same conditions, rights, obligations and other terms of this Franchise Agreement (incorporating the Specifications

referenced in Section 1b), with the mutual agreement of the Operator to such extended term, or allow it to terminate on the termination date specified above. An intent to extend or terminate this Franchise Agreement shall be communicated in writing by the City not less than 12 months but not more than 18 months prior to the expiration of the Franchise Agreement. The City is under no obligation to extend this Franchise Agreement.

11. Insurance.

The Operator shall provide and keep in force insurance coverage as defined in the Specifications including a comprehensive general public liability and property damage insurance policy to include independent contractors in such company as approved by the City. Such public liability coverage shall indemnify the City and the Operator, as their interests may appear, against public liability and property damage claims, and to furnish the City with an appropriate certificate from the insurance carrier showing such insurance to be in force at all times.

The policies or certificates representing said insurance shall be delivered by the Operator to the City and each policy or certificate delivered shall bear the endorsement of or be accompanied by evidence of payment of the premium thereon and also an endorsement obligating the insurance company to furnish the City 10 days' notice in advance of the cancellation of the insurance evidenced by said policy or certificate. Renewal policies or certificates shall be delivered at least 10 days before the expiration of the insurance, which such policies are to renew.

When such policies or certificates have been delivered and at any time or times thereafter, the City may notify the Operator in writing that, in the option of the City,

the insurance represented thereby does not conform to the provisions of this section, either because of the amount or because of the insurance company or for any other reason, and the Operator shall have 30 days in which to cure the alleged defect. If such notice is not given to the Operator within 30 days following the receipt of any such policy or certificate, then the insurance represented thereby shall be deemed to be in accordance with the provisions of this section until such notice is actually given.

12. Emergency.

It is the intention of the Operator to cooperate in every manner with the City with respect to the use of its equipment, personnel and facilities where required because of any emergency arising out of storms, hurricanes or local disaster or catastrophe. In the event public health problems, emergencies or catastrophes occur due to causes beyond the control of the Operator, the City shall provide, without expense to the Operator, such technical assistance as is in the employ of the City.

13. Rules.

The Operator shall have the right to adopt and enforce such reasonable rules and regulations as may be reasonably required to protect its rights hereunder, which rules and regulations shall be subject to the approval of the City, and to furnish an efficient service to residents of Sanibel, Florida, provided that the same shall be consistent with and not in violation of any terms and provisions or spirit of this Franchise Agreement and in accordance with the laws of the State of Florida. Any such rules or regulations shall not, in any manner, change, amend, alter or modify the terms and provisions of this Franchise Ordinance and Agreement or any part thereof.

14. The Operator agrees to cooperate with the City and the county in operating and coordinating the solid waste management program and the recyclable materials recycling program required by state law (Section 403.706, F.S.) The Operator also agrees to assist the City (or the County) in applying for grants or other financial assistance.

15. Violations; Subordination.

a. The Operator agrees to notify the City Manager of any known violation of Chapter 54, Article II, Sanibel Code as it may from time to time be amended.

b. Upon request of the City Manager, the Operator shall annually include in its billing statement informational notices to customers pertaining to the collection and delivery program and the recycling program. Such informational notices will be provided by either the City or the Operator, each party in cooperation with the other.

Section 2. Repeal.

Ordinance No. 05-016 is hereby repealed effective October 1, 2010. .

Section 3. Conflict.

All ordinances and parts of ordinances in conflict herewith shall be and the same are hereby repealed effective October 1, 2010. If any part of this ordinance conflicts with any other part, it shall be severed and the remainder shall have full force and effect and be liberally construed.

Section 4. Severance.

If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or

unconstitutional by any Court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion or application hereof, provided the remaining provisions accomplish all of the primary purposes of this ordinance including efficient solid waste collection and the City's receipt of the Franchise Fee set forth herein.

Section 5. Effective Date.

This ordinance shall be effective immediately but the Grant of Franchise, the Franchise Agreement and all rights, responsibilities, duties and obligations set forth herein shall become effective and operational on October 1, 2010, pursuant to Section 3, Term.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida,
this 4th day of May, 2010.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: _____
Kenneth B. Cuyler, City Attorney

Date

April 20, 2010 _____ First Reading

April 22, 2010 _____ Publication Date

May 4, 2010 _____ Second Reading

Vote of Council Members:

Ruane yea
Denham yea
Harrity yea
Jennings excused
Pappas yea

Date filed with City Clerk: May 04, 2010

THIS ORDINANCE AND FRANCHISE AGREEMENT, INCORPORATING SPECIFICATIONS, IS ACCEPTED, APPROVED AND AGREED TO THIS ____ DAY OF _____, 2010 BY:

BY: _____

PRINTED NAME: _____

PRINTED TITLE: _____