

RESOLUTION NO. R-103-21

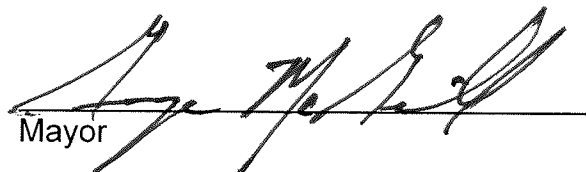
RESOLUTION AUTHORIZING THE EXECUTION OF A NON-RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL PERMIT AND AGREEMENT WITH GROUND WORKS LAWN LANDSCAPING & ROLL OFF SERVICE, LLC

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

The Mayor, his signature attested by the City Clerk, is hereby authorized to execute the attached Non-Residential Solid Waste Collection and Disposal Permit and Agreement with Ground Works Lawn Landscaping & Roll Off Service, LLC, for the period of July 1, 2021 through June 30, 2023.

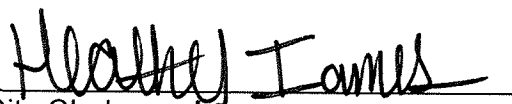
This Resolution adopted this 20 day of July, 2021.

APPROVED:



Mayor

ATTEST:



City Clerk, acting

Approved as to form:



NPR

R-103-21

NON-RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL PERMIT AND AGREEMENT

THIS AGREEMENT, made and entered on the date set forth below by and between the City of Fort Smith, Arkansas (hereinafter referred to as the "City"), and Ground Works Lawn Landscaping & Roll Off Service, LLC.

WITNESSETH:

WHEREAS, the City is a municipal corporation of the first class of the State of Arkansas and, in its government capacity, owns and operates the City of Fort Smith Solid Waste Disposal Facility (the "Facility"), which is currently operated as a Class I landfill; and

WHEREAS, the City currently provides solid waste collection and disposal service to residential and non-residential customers within the City; and

WHEREAS, Ground Works Lawn Landscaping & Roll Off Service, LLC has the consent of the City to collect and dispose of solid waste for non-residential customers within the corporate limits of the City; and

WHEREAS, the City has evaluated the possibility of exercising its governmental option of providing solid waste collection and disposal services to non-residential customers; and

WHEREAS, Ground Works Lawn Landscaping & Roll Off Service, LLC desires to provide non-residential solid waste collection and disposal services for customers located in Sebastian County within and without the corporate limits of the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. **Definitions**

- a. **"Solid Waste,"** when used in this Agreement, shall have the meaning given to it in Section 25-261 of the Fort Smith Code of Ordinances.
- b. **"Residential Customers,"** when used in this Agreement, shall have the meaning given in Section 25-261 of the Fort Smith Code of Ordinances.
- c. **"Non-residential Customers,"** when used in this Agreement, shall refer to all solid waste customers who are not residential customers as defined by Section 25-261 of the Fort Smith Code of Ordinances.

2. **Disposal of Waste Generated Within the City**

- a. **Solid Waste Disposal:** Ground Works Lawn Landscaping & Roll Off Service, LLC agrees that all solid waste generated within the City and which is collected by Ground Works Lawn Landscaping & Roll Off Service, LLC for disposal shall be hauled by Ground Works Lawn Landscaping & Roll Off Service, LLC to the Facility, except as otherwise provided herein. Excepted from this requirement are: (i) any categories of solid waste that the City does not accept for disposal at the Facility; (ii) any customers to which the City may consent in writing executed by the Fort Smith City Administrator to allow to use alternative disposal facilities; and (iii) any recyclables as defined in Section 25-261 of the Fort Smith Code of Ordinances and any other recycling program identified in

writing and approved as an exception by the Fort Smith City Administrator. The City will use reasonable efforts to enforce the designation of the Facility against all waste haulers.

- b. Rates for Disposal: The rates for disposal of solid waste generated within the City and disposed of at the Facility shall be those rates, established from time to time, by the City for the customers of the Facility (the "Fort Smith Published Rates"). The City agrees that all waste haulers servicing Non-Residential customers within the City and delivering solid waste to the Facility shall be charged the same disposal rates.
- c. Franchise Fee: An annual fee shall be five (5) percent of gross revenues for service provided by the franchisee inside the City of Fort Smith city limits. This includes, servicing dumpsters, roll-off containers, compactor containers, collection in refuse vehicles or collecting and hauling refuse in open top trucks, owned or not owned by the franchisee, that is serviced by the franchisee used in the City of Fort Smith.
 - i. The calculation of gross revenues generated from operation within the city 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 city. Gross revenues shall include, but are not limited to revenues received from the collection and disposal of all solid waste, whether by a company bearing franchisee's name or a company owned or controlled by franchisee but operating under a different name.
 - ii. That portion of the annual fee attributable to subsection C above must be paid in a manner and on a schedule approved by the Solid Waste Services Director.
 - iii. The annual fee shall be paid quarterly, no later than thirty (30) days after the end of each calendar quarter. The payment shall be made to the City of Fort Smith Finance Department. No refund of a fee will be made.
 - iv. Fee payments received after the due date shall be subject to interest at the rate of 10% until the fees are paid in full.
 - v. This agreement will be subject to non-renewal by the City should the franchise fee NOT be paid by the franchisee when renewal is due. Non-renewal of agreement will mean that franchisee/hauler will NOT be able to collect and dispose of solid waste for non-residential customers within the corporate limits of the City.
- d. RFID Tags: The city has recently installed RFID readers for quicker entrance and exit to the Landfill. These are available to haulers, however, it is not mandatory. The cost is \$20/tag/year. Haulers must submit a list of equipment to the city for our records.
 - i. The total for all RFID tags will be billed annually to the haulers account. Invoice will be Net 30 days from time of billing. Subject to a late fee of ten (10%) of amount owed should the invoice not be paid by the due date.
 - ii. One free replacement RFID tag, per tagged vehicle, annually. If more RFID tags are needed for same vehicle there will be an additional \$20 per tag. Billed at the next billing cycle to the haulers account.

3. **Disposal of Waste Generated Outside the City**
 - a. **Rates for Disposal:** The base rates charged for solid waste generated outside the City "External Rate" and delivered to the Facility by Ground Works Lawn Landscaping & Roll Off Service, LLC shall be the Fort Smith published rates.
 - b. The rates may be adjusted on the anniversary of each year of the term provided for in this paragraph. On each anniversary date, the rates set forth in the Fort Smith Published Rates may be adjusted by the percentage that the Consumer Pricing Index for All Urban Areas ("CPI-U") for the first calendar month of the preceding contract year was exceeded by the CPI-U at the beginning of the next contract year. (The CPI-U is based on the U.S. Department of Labor, Bureau of Labor and Statistics, Consumer Price Index for all urban customers in the U.S. city average, with all items having been computed based on 1982- 84 = 100.0)
 - c. The rates provided for in this paragraph 3 shall be subject to adjustment by the governing body of the City of Fort Smith upon determination of the governing body that federal or state regulatory agencies have adopted and implemented regulations which have a significant, adverse effect on the rates charged for waste disposal at the Facility (the percentage in change in the rates provided for in paragraph 3 of the Agreement shall not exceed the percentage of rate change published by the City of Fort Smith for waste generated within the City of Fort Smith).
4. **Permit:** This Agreement shall constitute a permit issued by the City to Ground Works Lawn Landscaping & Roll Off Service, LLC, pursuant to Section 25-321 of the Fort Smith Code of Ordinances.
5. **Billing and Payment:** Ground Works Lawn Landscaping & Roll Off Service, LLC shall be subject to the City's standard billing and payment terms and procedures for customers of the Facility.
6. **Compliance with Laws:** All waste provided by Ground Works Lawn Landscaping & Roll Off Service, LLC to the Facility for disposal shall comply with all current and future applicable Arkansas Department of Environmental Quality Regulations, including Regulation 22 and Regulation 23; and all other applicable federal, state and local environmental requirements. In the event that Ground Works Lawn Landscaping & Roll Off Service, LLC delivers waste to the Facility that does not conform to the identified regulations and requirements, Ground Works Lawn Landscaping & Roll Off Service, LLC, shall be responsible for any cost incurred by the City in the treatment and handling of the non-conforming waste.
7. **Vehicles**
 - a. **License:** All vehicles utilized by Ground Works Lawn Landscaping & Roll Off Service, LLC to deliver solid waste to the Facility pursuant to this Agreement shall have a hauler's license issued by the Sebastian County Regional Solid Waste Management District.
 - b. **Covered Loads:** All solid waste delivered by Ground Works Lawn Landscaping & Roll Off Service, LLC to the Facility pursuant to this Agreement, shall be delivered in vehicles in which all loaded solid waste is covered and secured to prevent

blowing or dropping on public rights-of-way or City-owned property from the point of location to the point of disposal at the Facility.

8. **Inspection of Records:** Both parties shall have access to the governmental and business records of the other party relevant to this Agreement, for the purpose of verifying any information pertinent to this Agreement. Any exercise of such right of inspection shall occur at the normal business office and during the normal business hours of the party who holds the information. Ground Works Lawn Landscaping & Roll Off Service, LLC acknowledges that it will comply with reasonable requests of the City for information regarding the types and amounts of solid waste being disposed of at the Facility, as well as the location of the collection of the waste, as relevant to this Agreement.
9. **Dispute Resolution:** In the event that either party believes that the other party is in violation of any provision of this Agreement that party shall provide to the other party, in writing, a notice of the alleged breach. Within ten (10) days of receipt of notice, the notified party shall respond to the allegations. If the response does not resolve the issue, either party may request, in writing, that a meeting of the parties and/or their authorized representatives, be held. Such meeting shall be held within thirty (30) days of this request, at the Office of the Fort Smith City Administrator. Except in an emergency situation, neither party may initiate litigation regarding the alleged breach until the dispute resolution provisions, as set forth herein, have been completed. If this meeting does not result in a resolution of the dispute, either party may pursue any appropriate legal or equitable remedies, including rescission, with a court of competent jurisdiction.
10. **Term:** This permit and agreement shall have a term of two (2) years from July 1, 2021 to June 30, 2023.
11. **Choice of Law:** This Agreement shall be governed by the laws of the State of Arkansas.
12. **Assignment:** The provisions of this Agreement are not assignable by either party without the prior, written consent of the other party.
13. **Revocation of franchise:**
 - a. The board of directors may revoke any solid waste collection franchise if the franchisee:
 - i. Fails to comply with any provision of this article, any other city ordinance, or any state or federal law applicable to the collection and disposition of solid waste material
 - ii. Makes a false statement in the application or in a hearing concerning the solid waste collection franchise; or
 - iii. Fails to pay a fee required by the article at the time it was due
 - iv. Before revoking a franchise under subsection (a) above, the director shall notify the franchisee in writing that the franchisee is being considered for revocation. The notice must include the reason for the proposed revocation, and a statement that the franchisee has ten (10) days to comply with the notice.

1. Franchise shall be revocable upon ten (10) days notice by the City when, in the opinion of the designated agent of the Fort Smith City Administrator, the work being performed by Ground Works Lawn Landscaping & Roll Off Service, LLC is being performed in such a manner as to constitute a public menace or nuisance or to be detrimental to the health, safety, and welfare of the citizens of the City.
 - b. Should a franchisee have its franchise revoked, the franchisee may be granted a period of time, up to a maximum of six (6) months, by the director to conclude its solid waste business in the City of Fort Smith, as long as the franchisee continues paying the set franchise fee and maintains the required insurance requirements.

14. **Non-transferability:** A solid waste collection franchise issued to one (1) person may not be transferred to another person without authorization by the board of directors.

15. **Indemnification:** Ground Works Lawn Landscaping & Roll Off Service, LLC agrees to indemnify and hold harmless the City from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and reasonable attorneys' fees resulting from Ground Works Lawn Landscaping & Roll Off Service, LLC operations hereunder. Provided, however, that Ground Works Lawn Landscaping & Roll Off Service, LLC shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, or attorneys' fees solely caused by the willful or negligent acts or omissions of the City's employees.

16. **Insurance:** Ground Works Lawn Landscaping & Roll Off Service, LLC shall at all times during the term of this Agreement maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability, and Property Damage Insurance. Before commencement of work under this Agreement, Ground Works Lawn Landscaping & Roll Off Service, LLC agrees to furnish to the City certificates of insurance or other evidence to the effect that such insurance has been procured and is in force. For the purpose of this Agreement, Ground Works Lawn Landscaping & Roll Off Service, LLC shall carry the following types of insurance in at least the amounts specified below:

Workmen's Compensation	Statutory
Employer's Liability	\$ 500,000.00
Bodily Injury Liability (except automobile)	\$500,000.00/occurrence \$ 1,000,000.00/aggregate
Property Damage Liability (except automobile)	\$ 500,000.00/occurrence \$ 1,000,000.00/aggregate
Automobile Bodily Injury Liability	\$ 500,000.00/person \$ 1,000,000.00/occurrence

Automobile Property Damage Liability	\$ 500,000.00/occurrence
Excess Umbrella Liability	\$ 2,000,000.00/occurrence

17. **Force Majeure:** Neither party hereto shall be liable for its failure to perform hereunder due to circumstances beyond its reasonable control, including, but not limited to, strikes or other labor disputes, riots, civil disturbances or sabotage, fires, floods, explosions, accidents, weather or acts of God affecting either party hereunder. In the event any of the circumstances listed in the preceding sentence, or if any federal, state or local court or authority takes any action which would (i) close or restrict operations at the Facility, (ii) limit the quantity or prohibit the disposal of waste at the Facility or, (iii) limit the ability of or prohibit Ground Works Lawn Landscaping & Roll Off Service, LLC, from delivering waste to the Facility, Ground Works Lawn Landscaping & Roll Off Service, LLC shall have the right, at its option, to reduce, suspend or terminate delivery of waste to the Facility, as set forth hereunder, immediately, without prior notices and without any additional liabilities between the parties.
18. **Severability:** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such provision.
19. **Entire Agreement:** This Agreement constitutes the entire understanding between the parties, replacing and amending any prior agreements between the parties, and shall be binding upon all parties hereto, their successors, heirs, representatives and approved assigns. Any provision, term or condition in any acknowledgment, purchase order or other response by the City to Ground Works Lawn Landscaping & Roll Off Service, LLC, or by Ground Works Lawn Landscaping & Roll Off Service, LLC to the City, which is in addition to or different from the provisions of this Agreement shall be deemed objected to by the other party and shall be of no effect.
20. **Notices:** Any notice required to be given pursuant to the provisions of this Agreement shall be considered to be validly delivered, if it is sent by U.S. Certified Mail or if it is hand delivered and a signed receipt is obtained. Such notice should give the following:

If to the City: City of Fort Smith – Solid Waste Services
Director of Solid Waste Services
5900 Commerce Rd
Fort Smith, AR 72916

If to: Ground Works Lawn Landscaping & Roll Off Service, LLC
Devin Manus
708 Hwy 348
Rudy, AR 72952
479-208-0387

This Agreement is executed as of this 20 day of July
2021, by the authorized representatives of the parties.

CITY OF FORT SMITH, ARKANSAS

By: _____

George B. McGill, Mayor

ATTEST:

Heather James
City Clerk, acting

Service, LLC

Ground Works Lawn Landscaping & Roll Off

By: _____

Devin Manus

Counterparts and Electronic Signature:

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The facsimile, email or other electronically delivered signatures of the parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals. Signatures delivered by facsimile, email or other electronic means shall bind the signatory notwithstanding any subsequent failure or refusal to deliver an original signature signed in ink.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/23/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME: Kelton Inge	
Inge Insurance Inc		PHONE (A/C, No, Ext): 4792626366	FAX (A/C, No):
19 Pointer Trail West		E-MAIL ADDRESS: kelton@ingeinsurance.com	
Ste B		INSURER(S) AFFORDING COVERAGE	
Van Buren AR 72956		INSURER A: Century Insurance Co	NAIC #
INSURED		INSURER B: Progressive Insurance Co	
Groundworks Lawn, Landscaping & Roloff, LLC		INSURER C:	
5204 BREWER DR		INSURER D:	
VAN BUREN AR 72956		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	CCP864259	10/31/2020	10/31/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	01279421	10/24/2020	10/24/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A				<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER Exemptions E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Fort Smith - Solid Waste Services

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Kelton Inge