

**MEMORANDUM**

**TO:** Honorable Mayor and City Council Members  
**FROM:** Christine C. Davis, Finance Director  
**DATE:** November 6, 2008  
**RE:** Non-Exclusive Commercial Garbage Franchise

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**PURPOSE**

The purpose of this item is to obtain Council approval of Ordinance Numbers: 368, 369, 370, 371, 373, 374 and 375, thereby granting multiple one (1) year Non-Exclusive Commercial Trash, Garbage, Recyclable Materials and other Refuse Franchises.

**BACKGROUND**

In accordance with Section 6-27 of the Code of Ordinances of the City of Orange City, the following companies have requested a Non-Exclusive Commercial Trash, Garbage, Recyclable Materials and other Refuse Franchise to be awarded by the attached ordinances.

<u>Ordinance</u>	<u>Company name</u>
368	4 Jays – Management, Inc.
369	Waste Pro
370	Container Rental
371	Sunshine Recycle
373	Emerald Waste Services
374	Orlando Waste Paper Co. Inc.
375	Waste Services of Florida, Inc.

This will be the second and/or third consecutive one-year franchise granted to the aforementioned haulers. The franchises as presented will take effect January 1, 2009 and will be effective through December 31, 2009. With the approval of the City, the franchise may be granted an additional term (one year).

**RECOMMENDATION**

Staff recommends the City Council approve Ordinance Numbers: 368, 369, 370, 371, 373, 374 and 375.

**ORDINANCE NO. 373**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, PROVIDING FOR A NON-EXCLUSIVE FRANCHISE TO EMERALD WASTE SERVICES LLC (EWS) FOR THE COLLECTION AND DISPOSAL OF COMMERCIAL TRASH, GARBAGE, RECYCLABLE MATERIALS AND OTHER REFUSE WITHIN THE CITY LIMITS; PROVIDING FOR DEFINITIONS, TERMS CONDITION, RATES, COMPLIANCE WITH LAWS, ARBITRATION, STANDARDS OF PERFORMANCE, COLLECTION, REGULATION OPERATIONS, HOURS, ROUTES, PENALTIES, ACCOUNTING, COMPLAINT RESOLUTIONS; CONTAINING A REPEALER PROVISION; A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Orange City finds it in the public interest to ensure that all commercial areas within its limits are adequately provided high-quality commercial collection and disposal service; and

**WHEREAS**, the City of Orange City finds it is in the public interest to retain regulatory authority over commercial refuse collection and disposal, to the extent allowed by law, because of the overriding public health, safety and welfare considerations, associated with the provisions of this service; and

**WHEREAS**, the City of Orange City finds it is in the public interest to provide high-quality commercial refuse collection in a coordinated effort with the collection of residential refuse; and

**WHEREAS**, the City of Orange City finds that the enactment of this Ordinance creating a Non-Exclusive Franchise is in the best interest of the health, safety and welfare of its citizens.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:**

**SECTION 1.** There is hereby granted to EWS (herein called the "Franchisee") its successors and assigns, a non-exclusive right, privilege or franchise to collect garbage, refuse, trash, recyclables, and other solid waste materials from commercial establishments within the City of Orange City, Volusia County, Florida, during the term and subject to the following limitations and conditions as hereinafter set forth.

1. Definitions

a. "City" shall mean the City of Orange City, Florida, a municipal Corporation.

b. "Franchisee" shall mean the individual, partnership or corporation who/which agrees, as hereinafter provided to perform the work or service, or to furnish materials or equipment, or both as set forth in this franchise.

c. "Commercial solid waste" shall mean garbage, rubbish, trash, etc., resulting from the normal activities of commercial establishments and establishments that are required to obtain an occupational license from the City.

d. "Garbage" shall mean every waste accumulation and animal and vegetable matter which attend the preparation, use, cooking, processing, handling or storage of meats, fish, fowl, fruits, vegetables or other matter which is subject to decomposition, decay, putrefaction and the generation of offensive and noxious gases or odors, or which during or after decay may serve as breeding or feeding materials for flies, insects or animals.

e. "Commercial rubbish and trash" shall mean such combustibles as paper, wood, yard trimmings, etc., and non-combustibles such as metal, glass, stone, dirt, etc.

f. "Commercial establishments" shall mean any public place, building, and/or enterprise devoted in whole or part to a business enterprise whether non-profit or profit making in nature; except where such place, building, and/or enterprise constitutes a single family resident or multiple dwelling of four (4) units or less. All condominiums, patio homes and manufactured homes and other such facilities where the individual units are used for residential purposes, that use a central form of collection, consisting of any containers serviced by mechanical means, shall be considered commercial establishments. Included but not limited to all mobile home parks excluded from the residential franchise shall likewise be considered commercial establishments.

g. "Special material" shall mean bulky materials or other special wastes that are not stored in standard storage containers and cannot be picked up by a normally used collection vehicle. Wastes not to be collected are major appliances, furniture, building materials, tree limbs, non-containerized trash piles or any abnormal amount of refuse not suitable for containerization which will be picked up by calling office of franchisee and arranging by special service to be billed on basis of labor, truck costs and dumping charges.

h. "Container" shall mean any portable, nonabsorbent enclosed container with a close fitting cover, or doors, approved by the Health Department and the City, which is used to store large volumes of refuse. It must be capable of being serviced by mechanical equipment.

2. Term

a. The term of this franchise shall terminate on December 31, 2009. Following the effective date hereof provided, however, the City reserves the right to terminate the same prior thereto if the Franchisee defaults in any one of the terms and conditions herein specified.

b. With the approval of the City, this Franchise may extend for an additional term, provided the Franchisee shall make application for said extension not earlier than ninety (90) days and no later than thirty (30) days prior to expiration. Once the franchisee makes application the extension will subject to approval by the City Council.

3. Minimum Service

The Franchisee shall make at least two (2) weekly collections at all commercial establishments subject to the terms of this ordinance and at sufficient additional intervals necessary to protect the environment, unless otherwise approved in advance by the City, provided however, where the refuse is exclusively non-putrescible in nature, once weekly collections may be permitted.

4. Hours

Collections shall be made between 7:00 a.m. and 7:00 p.m. unless different times are established by the City.

5. Litter

The Franchisee shall not litter premises in the process of making collections and shall promptly pick up all papers, material or debris that may be scattered about the container. Franchisee shall collect all material that has been placed in or about its container unless otherwise directed by the City.

6. Approved Containers

Amounts and types of solid waste placed in containers for collection shall be stored in standard manufactured-type mechanically served containers only, unless otherwise approved by the City, compatible with the Franchisee's servicing equipment and subject to City and other governmental regulation and whose volume is listed in cubic yards. Franchisee shall provide adequate containers for the services rendered hereunder. Such containers shall be provided at Franchisee's cost and shall remain the property of Franchisee, unless the container is owned by the customer.

7. Special and Hazardous Materials

Franchisee may provide hauler service for special and hazardous materials not routinely generated in business or commercial areas. Said materials shall be stored and placed in a manner approved by the City and the Franchisee. No hazardous wastes will be collected by the Franchisee unless specifically required by the generator, approved by the City and agreed to by the Franchisee.

8. Collection Equipment

a. The Franchisee shall provide an adequate number of vehicles for regular collection services. They shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the name and phone number of the Franchisee and vehicle number not less than six inches (6") in height on the rear and each side.

b. Franchisee shall certify to the City upon the commencement of each franchise year the nature and quantity of vehicles and equipment on hand available for regular collection services and backup in the event of any breakdowns.

9. Office

The Franchisee shall establish and maintain local contact or such other facilities through which it can be contacted, where services may be applied for, and complaints can be made. It shall be equipped with sufficient telephones, shall have one (1) responsible person in charge during collection hours and shall be open during collection hours.

10. Hauling

All solid waste hauled by the Franchisee shall be contained, or enclosed that leaking, spilling or blowing are prevented. In the event of any spillage, the Franchisee shall immediately clean up the liter.

11. Disposal

All solid waste for disposal shall be hauled to sites or facilities legally empowered to accept it for treatment or disposal.

12. Charges and Rates

All charges and rates for the commercial collection of garbage shall be set by the Franchisee in negotiation with the commercial establishment requiring the service. Franchise fees shall be set by the City.

13. Location

All solid waste shall be placed in approved containers at locations that are readily accessible to the Franchisee's personnel. Containers shall be located on private property. The use of City property for the sighting of containers may be approved by the City after investigation.

14. Compensation and Payment

a. Compensation shall be paid by the Franchisee to the City on a monthly basis based upon a Franchisee fee of twenty percent (20%) of the gross revenue related to franchisee's waste collection operations within the City.

b. All payments shall be due on the twenty-fifth (25<sup>th</sup>) of the month following the month of service. Any and all payments not paid by the 25<sup>th</sup> of the month following the month of service shall bear interest at the rate of 18% per annum from the first (1<sup>st</sup>) of the month of service.

15. Discontinued Service on Delinquent Accounts

a. The Franchisee may discontinue service as set forth in this section. Persons who have not remitted required payments within fifteen (15) days after the date of billing shall be notified, said notification shall contain a statement that service may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. In the event the Franchisee intends to discontinue a delinquent account, it shall so notify the City at least fifteen (15) days prior to the last day of collection. Upon payment of delinquent fees, the Franchisee shall resume collection the next regularly scheduled collection day.

b. The City shall have the authority to direct the Franchise to continue service notwithstanding the fact that an account may be delinquent upon written assumption by the City of fees accruing by virtue of Franchisee's continued service. If the City elects to instruct the Franchisee to continue service, the City shall be entitled to reimbursement from the commercial establishment served, plus all costs of collection to include attorney's fees.

16. Reports

On the twenty-fifth (25<sup>th</sup>) day of the month following the month of service hereunder the Franchisee shall provide the City with a report. Said report shall be in a form, either hard copy, computer disk (compatible with the City's computers) or otherwise satisfactory to the City. The report shall include such information as the City may reasonably require so as to ensure proper service to commercial establishments serviced by the franchisee within the City and to ensure Franchisee's compliance with the terms and conditions of this report. Unless otherwise directed by the City each report shall contain as a minimum:

- (1) Customer's Account No.
- (2) Customer's Business Name
- (3) Customer's Business Address
- (4) Container(s) Capacity/Size
- (5) Date Account Opened
- (6) Date Account Closed
- (7) Monthly Billing
- (8) Franchise Fee Amount

This report shall be submitted no later than the twenty-fifth (25<sup>th</sup>) of the month following the month of service, covering all activities during the month of service, to the Finance Department.

17. Complaints

All complaints shall be resolved within twenty-four (24) working hours by the Franchisee.

18. Notification

The Franchisee shall notify all customers about procedures, regulations, and days of collection.

19. Franchisee Personnel

a. The Franchisee shall assign a qualified person or persons to be in charge of operations in the City and shall give the name or names to the City, information regarding experience shall also be furnished.

b. Franchisee's collection employees shall wear a clean uniform bearing the company's name.

c. Each employee shall, at all times, carry valid operator's license for the type of vehicle he is driving.

d. The City may request the dismissal or appropriate discipline of any employee of the Franchisee who violates any provision hereof or who is wanton, negligent, or discourteous in the performance of his duties.

e. The Franchisee shall provide operating and safety training for all personnel and shall certify same to the City annually during the effective dates of this Franchise.

f. The Franchisee shall comply with the Equal Employment Opportunity Program, the Fair Labor Standards Act and all other applicable Federal and State Statues pertaining to Fair Employment practices.

20. Franchise Equipment

All trucks or other vehicles used on the public streets and roads within the City of Orange City shall be required to conform to all current State motor vehicle requirements and local City adopted truck routes.

21. Compliance within Laws

The right is hereby reserved for the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations by ordinance or otherwise shall be reasonable and not in conflict with the intended purpose of this ordinance. The Franchisee shall conduct operations under the ordinance in compliance with all applicable laws and its failure to comply shall constitute a default hereunder. This franchise shall not be construed to repeal or revise any existing ordinance and to the extent that any provision of this franchise is inconsistent with any existing ordinance, then such existing ordinance shall prevail and control. If Franchisee defaults the City may revoke this Franchise upon thirty (30) day written notice.

22. Performance Bond

The Franchisee shall furnish to the City a Performance Bond executed by a surety authorized to do business in the State of Florida in the amount of \$20,000.00 or letter of credit acceptable to the City, insuring the faithful performance of the terms of this ordinance and executed by a surety company licensed to do business within the State of Florida. Said Performance Bond is in an amount deemed by the City and the Franchisee to be reasonable and necessary to enable the City to ensure all franchise fees due and payable hereunder and paid as and when due.

23. Liability

The privileges herein granted are upon the express conditions that the Franchisee shall be liable for all damages or injury to persons or property caused by its neglect or mismanagement, or by the actions of any of its employees while engaged in the operations herein authorized, or for any actions or proceedings brought as a result of the award of this franchise to Franchisee, to specifically include but not limited to Antitrust actions or proceedings. Franchisee further agrees to purchase comprehensive public liability and property damage insurance in the amount of \$5,000,000, per accident, event or occurrence, naming the City as an additional insured to the extent of its rights against Franchisee arising by virtue of this section. The insurance policy will provide that the City shall be given fifteen (15) days written notice prior to cancellation or modification. A copy of said policy of insurance shall be filed with City Clerk on or before the effective date of the franchise.

24. Licenses

The Franchisee shall, at its sole expense, procure from all Governmental authorities having jurisdiction over the operations of the Franchisee, including the City, all licenses, certificates, permit or other authorization which may be necessary for the conduct of its operations. The Franchisee shall pay all taxes, licenses, certification, permit and examination fees and excises which may be assessed, levied, exacted or imposed on its property, on its operations, on its gross receipts, and upon this franchise and the rights and privileges granted herein, and shall make all applications, reports and returns required in connection therewith.

25. Worker's Compensation

The Franchisee shall carry, with an insurance company authorized to transact business in the State of Florida, a policy that fulfills all the requirements of the Worker's Compensation Act of said State, including all legal requirements for occupational diseases.

26. Assignment

No assignment of franchise or any right occurring under this ordinance shall be made in whole or part by the Franchisee without the express written consent of the City and the franchisee commercial customer. In the event of any assignment, the assignee shall assume the liability of the Franchisee.

27. Books, Records and Audit

a. The Franchisee shall keep records of wastes collected and charges therefore; and the City shall have the right to review those records which in any way pertain to the payments due it, as well as the billing of all customers by the Franchisee. The Franchisee will be responsible for the monthly billing of the customers.

b. Franchisee shall furnish the City with an annual audit, due on December 15th of each calendar year, for the service year or portion thereof ending the previous September 30th. Said audit shall be prepared by an independent certified public accountant complete with creditor's opinion which opinion shall be acceptable to the City. The audit shall reflect the accuracy and completeness of the information provided the City by the Franchisee with special attention to the franchise fee.

28. Right to Require Performance

The failure of the City at any time to require performance by the Franchisee of any provisions hereof shall in no way affect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

29. Modification

This franchise constitutes the entire agreement and Understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto, and adopted as an amending franchise ordinance.

30. Notice

As required for any purpose in this franchise, notice shall be addressed and sent by certified United States mail to the City and the Franchisee as follows:

CITY: City Manager  
City of Orange City  
205 E. Graves Avenue  
Orange City, Florida 32763

FRANCHISEE: EMERALD WASTE SERVICES LLC  
P. O. BOX 168  
FREEPORT, FL 32439

31. Remedies, Attorney's Fees and Costs

All remedies provided in this Franchise shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the City at law or in equity. In the event the City shall prevail in any action arising hereunder, Franchisee shall pay to the City its costs, including attorney's fees.

32. Headings

The headings of the sections of this franchise are for purposes of convenience only and shall not be deemed to expand or limit the provisions contained in such sections.

33. Warranty of Franchisee

The Franchisee represents and warrants unto the City that no officer, employee or agent of the City has any interest, either directly or indirectly, in the business of Franchisee to be conducted hereunder

34. Amendment

The City reserves the right to amend this ordinance in any manner necessary for the health, safety or welfare of the public and the City reserves the right, in the public interest from time to time, to prescribe reasonable rules and regulations governing Franchisee's operations hereunder.

35. Repealer Provision

All ordinances, parts of ordinances and or resolutions, in conflict herewith be the same are hereby repealed.

36. Severability

Should any section or provision of this Franchise Ordinance or any portion thereof, the deletion of which would not adversely affect (in the general sense) the receipt of any material benefits or substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part hereof, other than the part declared to be invalid. In the event of such practical invalidity, the City and Franchisee shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

**FRANCHISE ACCEPTANCE AGREEMENT**

**WHEREAS**, the City of Orange City, a municipal corporation of the State of Florida ("City"), awards an non-exclusive franchise to EWS ("Franchisee"), for the collection and disposal of commercial garbage, refuse, trash, recyclables, and other solid waste materials within the City limits of the City of Orange City, Florida, for a period of one (1) year, beginning January 1, 2009 and ending December 31, 2009.

**NOW THEREFORE**, in consideration of City's approval of said franchise, Franchisee agrees as follows:

1. EWS accepts the franchise subject to all of the terms, conditions, and limitations imposed in the franchise document.
2. EWS agrees to fulfill all the obligations contained in the franchise document.
3. It is further agreed and understood that EWS guarantees the performance of its duties pursuant to the franchise document.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF ORANGE CITY

EMERALD WASTE SERVICES, LLC

By: \_\_\_\_\_  
Chester Murray  
Title: Interim City Manager

By: \_\_\_\_\_  
Title: Authorized Agent

ATTEST:

\_\_\_\_\_  
Deborah J. Renner, CMC City Clerk

**ROLL CALL VOTE AS FOLLOWS:**

First Reading, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Donald Sandford	_____	Jeff Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

**ROLL CALL VOTE AS FOLLOWS:**

Second Reading, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Jim Mahoney	_____	Donald C. Sherrill	_____
Tom Laputka	_____	Tom Abraham	_____
Donald Sandford	_____	Jeff Allebach, Vice Mayor	_____
Harley Strickland, Mayor	_____		

**PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.**

**ATTEST:**

**AUTHENTICATED:**

\_\_\_\_\_  
Deborah J. Renner, CMC, City Clerk

\_\_\_\_\_  
Harley Strickland, Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
William E. Reischmann, Jr., City Attorney