

PRIVATE HAULER AGREEMENT

THIS PRIVATE HAULER AGREEMENT (hereinafter the "Agreement") is made and entered into this _____ day of _____, 20 ____ by and between the CITY OF VENICE, FLORIDA, a municipal corporation whose mailing address is 401 W. VENICE AVE., VENICE, Florida 34285 (hereinafter the "City"), and (Name of Private Hauler) _____ whose mailing address is (Street Address, City, State, Zip) _____ (hereinafter the "Private Hauler") (collectively hereinafter "the Parties")

WITNESSETH:

WHEREAS, the Private Hauler has applied for a permit to collect, transport and dispose of garbage, rubbish, garden trash, industrial waste, commercial rubbish, construction debris, and demolition debris (hereinafter "Permit") within the city limits of the City, pursuant to the provisions of Chapter 54 of the City of Venice Code of Ordinances (hereinafter "the City Code"); and

WHEREAS, the City has proposed certain conditions that must be met prior to the issuance of said Permit;

AGREEMENT

NOW THEREFORE, in consideration of the terms, conditions, covenants and mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Issuance of Permit. No Permit will be issued unless and until all required documents are submitted to the City of Venice Public Works Department for review and approval. Upon review and approval, the City Public Works Department will issue the Permit in the name of the Private Hauler. The granting of the Permit pursuant to this Agreement shall not be construed as a grant of a franchise or vested rights. This Agreement supersedes and controls over any and all prior Private Hauler Agreements executed by the Parties. The Private Hauler is not authorized to conduct work until a Permit has been issued by the City of Venice Public Works Department.
2. Renewal. This Agreement and the Permit must be renewed every three years. The Private Hauler shall submit all required documents and the then applicable permit fee at least 30 days prior to the expiration date of the Agreement and Permit. The Private Hauler shall be responsible to update the City of any changes in all required documents during the life of this Agreement within 30 days of the change.
3. Permit Application/Affidavit and Permit Application Fee. The Private Hauler has completed a sworn affidavit, attached hereto as Exhibit "A" and incorporated herein, pursuant to City Code, and this sworn affidavit serves as the permit application of the Private Hauler. The permit application fee in the amount of \$250.00 was paid to the City at the time the Private Hauler submitted to the City the permit application/affidavit.
4. Liability Insurance. The Private Hauler agrees to maintain insurance in the minimum types and amounts required by the City's Human Resource Department pursuant to the City Code. The City does not represent that such types and amounts are sufficient to protect the Private Hauler's interests or liabilities, and the insurance requirements of the City Code shall in no way be interpreted to limit the Private Hauler's liability under this Agreement. A copy of the certificate evidencing the insurance coverage and naming the City as an additional insured is attached hereto as Exhibit "B" and is incorporated herein.
5. Monthly Fee. The Private Hauler agrees to furnish to the City a duplicate copy of the Private Hauler's monthly billing in the format required by the City for services provided within the City limits via e-mail to scarpenter@venicegov.com. The Private Hauler shall remit to the City each month a fee calculated as

follows:

\$1.56 multiplied by the size of the container (in cubic yards) multiplied by the frequency of collection.

The Private Hauler agrees to remit this fee to the City within 30 days of the end of the month in which the waste material was collected. In the event payment is not delivered to the City within 30 days of the end of the month in which the material is collected, the City shall charge a late fee of \$15.00 or fifteen percent (15%) of the total amount owed, whichever is greater. If any monthly fees due from the Private Hauler to the City are outstanding following the expiration or termination of this Agreement and the accompanying Permit, the City reserves the right to refuse to issue any subsequent Private Hauler permits until all outstanding monthly fees are paid.

6. Agreement to Make Books and Records Available. The Private Hauler agrees to make all books and records applicable to business conducted under the Permit available to the City for inspection and audit. Such books and records shall be made available to the City upon demand. The City shall be responsible for maintaining the confidentiality of any proprietary information obtained from the Private Hauler during any such inspection and/or audit.
7. Agreement to Provide Notice of Proposed Modification of Service or Container. The Private Hauler agrees to provide prior notice to the City of any proposed modification of the service or container. The Private Hauler agrees not to implement such modification until it receives the prior written approval of the City for such modification.
8. Method of Making Collections. The Private Hauler agrees to collect and transport all materials in a manner and method acceptable to the City. The Private Hauler agrees to take care in the loading and transportation of garbage and other solid waste refuse so that none of the material to be collected is left on public property or on City streets or alleys. Any garbage or other refuse left on public property or on City streets or alleys by the Private Hauler shall be cleaned up immediately by the Private Hauler or its designee. If the Private Hauler fails to clean up the same within six business hours after notice from the City, the City may cause such public property, streets, or alleys to be cleaned and may charge all costs to the Private Hauler, plus an administrative overhead fee of 50% of the costs. In addition, the Private Hauler agrees to comply with Section 52-204 of the City Code as it may be amended from time to time.
9. Penalties for Non-Compliance. Should the City find that the Private Hauler has violated this Agreement or Chapter 54 of the City Code or has made false statements in its permit application/affidavit or on any submittal pertaining to the Permit, then the City may, after notice to the Private Hauler and an opportunity for the Private Hauler to be heard, revoke the Permit in its entirety, suspend the Permit for a stated period of time, place the Private Hauler on probation, or place other conditions thereon as the City finds necessary. During a period of suspension, the Private Hauler shall immediately cease all collection activities for the duration of the suspension period. In the event the Permit is revoked, the Private Hauler shall immediately cease collection activities within the City, and may only resume collection activities after a new Agreement, required documents, and payment are submitted to the City in the same manner as with the previous permit.
10. Relationship of Parties. It is not the intent of the Parties that this Agreement be construed or deemed to represent a joint venture or common undertaking between the Parties, or between any Party and any third party. While engaged in carrying out and complying with the terms of this Agreement, the Private Hauler and its agents and employees are independent principals and not contractors for or officers, agents, or employees of the City. The Private Hauler shall not at any time or in any manner represent that it or any of its agents or employees are employees, officers, or agents of the City.

11. Amendments.

- a. The Parties acknowledge that this Agreement may be amended by mutual consent subsequent to execution. All amendments to this Agreement shall be ineffective unless reduced to writing and executed by the Parties.
- b. The City reserves the right to amend the City Code at any time during the effective term of this Agreement and the associated Permit, which may affect provisions of this Agreement, and to require compliance with the amendments.

12. Notices. All notices, demands, requests for approvals or other communications from any Party to another shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, hand delivery or by facsimile transmission to the office for each Party indicated below and addressed as follows:

- a. **To the Private Hauler:**

With a copy to:

- b. **To the City:**

City of Venice
Public Works
Department
Attn: Director

(Physical Address)
221 S. Seaboard Ave.
Venice, FL 34285

(Mailing Address)
221 S. Seaboard Ave
Venice, FL 34285

With a copy to:
City of Venice
City Attorney's Office
Attn: City Attorney

(Physical/Mailing
Address)
236 Pedro St.
Venice, FL 34285

13. Effectiveness of Notice. Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the fifth business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Paragraph. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other Party and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular Party hereto, all other Parties may rely upon the last address given. Notices given by facsimile transmission shall be effective on the date sent.
14. Non-Action or Failure to Observe Provisions of this Agreement. The failure of any Party to promptly or continually insist upon strict performance of any term, covenant, condition, or provision of this Agreement, or any Exhibit hereto, shall not be deemed a waiver of any right or remedy that the Party may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition, or provision.
15. Governing Law and Venue. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. Venue for any proceeding arising under this Agreement shall be in the Twelfth Judicial Circuit, in and for Sarasota County, Florida, for state actions and in the United States District Court for the Middle District of Florida, Tampa Division, for federal actions, to the exclusion of any other venue.
16. Construction. The provisions of this Agreement shall not be construed in favor of or against any particular Party as each Party has reviewed the terms and conditions hereof and, by execution of this Agreement, acknowledges that said Party has carefully considered the legal ramifications of the instrument and has consulted with legal counsel or has knowingly and willingly chosen not to do so.
17. Entire Agreement.
- a. This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the Parties and supersedes and controls over any and all prior agreements (including any and all prior Private Hauler Permit Agreements executed by the Parties), understandings, representations, correspondence, and statements whether written or oral. No Party shall be bound by any agreement, condition, warranty, or representation other than as expressly stated in this Agreement, and this Agreement may not be amended or modified except by written instrument signed by the Parties hereto, in accordance with this Agreement.
 - b. Any provisions of this Agreement shall be read and applied in para materia with all other provisions hereof.
18. Expiration or Termination.
- a. This Agreement and the associated Permit shall automatically expire three years after the date of issuance unless timely renewed pursuant to Paragraph 2, above.
 - b. This Agreement and the associated Permit shall be terminated:
 - (1) Following the revocation of this Agreement and the associated Permit by the City in accordance with Paragraph 9 above; or
 - (2) Following a written notification of termination by either Party, or their successors in interest. The termination shall be effective ten days following receipt of the written notification.
19. Approvals. For the purposes of this Agreement, any required written permission, consent, approval, or agreement by the City means the approval of the Director of the Public Works Department or his designee, unless otherwise set forth herein, and such approval shall be in addition to any and all permits and other licenses required by law or this Agreement.
20. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is declared invalid or unenforceable, the remainder of this Agreement, including any valid portion of the invalid term or provision and the application of such invalid term or provision to circumstances other than those as to which it is held invalid or unenforceable by a court of competent

jurisdiction, shall not be affected thereby and shall, with the remainder of this Agreement, continue unmodified and in full force and effect.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute a single instrument.
22. Third Party Beneficiaries. The rights and obligations of the Parties set forth in this Agreement are personal to the Parties, and no third parties are entitled to rely on or have an interest in any such rights and obligations.
23. Assignment. This Agreement may be assigned only upon approval by the City and satisfactory proof by the assignee of compliance with all terms, conditions, and requirements of this Agreement, the accompanying Permit, and the City Code.
24. Indemnification. The Private Hauler shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, orders, decrees, actions, proceedings, losses, damages, costs and expenses (collectively, "Claims"), including but not limited to Claims related to damage or injury to property or persons (including loss of life) and court costs and attorney's fees at trial and on appeal, whether or not a lawsuit is commenced, alleged, or claimed by any person or entity, arising out of or in connection with, either wholly or in part, any of the following:
 - a. The performance of the Private Hauler's obligations under this Agreement (including any amendments hereto) by the Private Hauler, its employees, agents, representatives or subcontractors; or
 - b. The failure of the Private Hauler, its employees, agents, representatives, or subcontractors to comply and conform with applicable laws in the performance of the Private Hauler's obligations under this Agreement; or
 - c. Any negligent act or omission of the Private Hauler, its employees, agents, representatives, or subcontractors in the performance of the Private Hauler's obligations under this Agreement, whether or not such negligence is claimed to be either solely that of the Private Hauler, its employees, agents, representatives, or subcontractors, or to be in conjunction with the actual negligence of others, including that of any of the Indemnified Parties; or
 - d. Any reckless or intentional wrongful act or omission of the Private Hauler, its employees, agents, representatives, or subcontractors in the performance of the Private Hauler's obligations under this Agreement.

The provisions of this Paragraph are independent of, and will not be limited by, any insurance required to be obtained by the Private Hauler or otherwise obtained by the Private Hauler, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

25. Compliance with Federal, State, and Local Laws. The Private Hauler shall abide by all applicable federal, State, and local laws, rules, and regulations (collectively, "Laws") including, but not limited to, Laws related to environmental compliance and the collection, transport, and disposal of waste materials.
26. Authority to Execute and Bind. The person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Private Hauler. If for any reason the person signing this Agreement is found to not have authority to execute this Agreement on behalf of the Private Hauler, such person agrees that they shall be personally liable under the terms and conditions of this Agreement.

Under penalty of perjury, I declare that I have read the foregoing Agreement and that the facts stated in it are true.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

WITNESSES

Sign _____

Print _____

Address _____

PRIVATE HAULER

By: _____

Print: _____

Title: _____

Date: _____

Sign _____

Print _____

Address _____

CITY OF VENICE

By: _____

As Its: _____

Date: _____

ATTEST:

Lori Stelzer, City Clerk
(SEAL)

EXHIBIT A

PRIVATE HAULER PERMIT APPLICATION/AFFIDAVIT

BEFORE ME, the undersigned authority personally appeared _____,
(Name of Affiant)

whom being duly sworn deposes and says:

1. That I am employed as _____ for _____

(Title of Position)

(Name of Private Hauler)

hereinafter referred to as Applicant, and that I am authorized by the Applicant to execute this Affidavit.

2. That the Applicant is registered to do business in the State of Florida as a

____ Corporation

____ Limited liability company

____ Partnership or limited liability partnership

____ Other type of business entity (please describe) _____

3. That the mailing address and phone number for the Applicant is _____

4. That the name of the Applicant's designated representative is
and the mailing address for the named designated representative is

5. That Applicant is applying for a permit to collect, transfer, and dispose of garbage, rubbish, garden trash, industrial waste, commercial rubbish, construction debris, and demolition debris within the city limits of the City.

6. That attached hereto (if applicable) is a complete record of all felony convictions, civil penalties, and misdemeanor convictions involving solid waste collection or disposal against the Applicant and every partner, officer or director of Applicant.

7. That the foregoing statements are made upon my personal knowledge and belief.

FURTHER AFFIANT SAITH NAUGHT. _____ AFFIANT (sign)

_____ AFFIANT (print)

SWORN TO AND SUBSCRIBED before me by _____ who is (Notary choose one) personally known to me, or who has produced _____ as identification, this ____ day of _____, 20____.

Notary Public

Print Name of Notary Public

My Commission Expires: _____

****The \$250.00 permit application fee is due at the time this Permit Application/Affidavit is submitted to the City.**

EXHIBIT B
CERTIFICATE OF INSURANCE