

Ordinance No. 2017-8

1 AN ORDINANCE OF THE CITY OF ORLANDO GRANTING DEROCHE
2 BUILDING SUPPLY, INC., A NON-EXCLUSIVE FRANCHISE TO PROVIDE
3 ROLL-OFF CONTAINER COLLECTION AND DISPOSAL OF SOLID
4 WASTE WITHIN THE CITY OF ORLANDO; OUTLINING FRANCHISEE'S
5 DUTIES AND PROVIDING THE TERMS AND CONDITIONS UNDER
6 WHICH SUCH FRANCHISE SHALL OPERATE; PROVIDING FOR
7 SEVERABILITY AND AN EFFECTIVE DATE.

8 WHEREAS, there is an immediate and continuing need for the collection and disposal
9 of solid waste from organizations, firms, entities, or persons ("Customers") in the City limits
10 of the City of Orlando ("City") with the use of roll-off containers; and

11 WHEREAS, DeRoche Building Supply, Inc., a Delaware corporation ("Franchisee"),
12 has the necessary equipment, personnel, and experience to properly perform the collection;
13 and

14 WHEREAS, it appears to be in the best interest of the City and its inhabitants,
15 property owners, and merchants, that the Franchisee be awarded a non-exclusive right and
16 franchise ("Franchise") to provide solid waste collection service within the City limits upon
17 the terms and conditions recited below:

18 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
19 CITY OF ORLANDO, FLORIDA:

20 SECTION ONE:

21 1. Definitions:

22 (A) The term "solid waste" (including construction and demolition debris)
23 shall have the same definition as in Section 28.04 of the City Code.

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(B) The term “collection” shall mean the pickup and disposal of solid waste through the use of "roll-on, roll-off" containers as used with mechanical pick-up or compaction devices, or both of these things.

(C) The term “containers” shall mean either open-top/scow-type used only for non-putrescible materials or enclosed containers such as the kind typically used with compaction devices of six (6) cubic yards capacity or larger.

(D) The definitions contained in Section 28.04 of the City Code are hereby adopted by reference as definitions for this Franchise.

2. Franchisee's Authority:

(A) The Franchisee is hereby empowered and authorized to provide collection via roll-off containers. The Franchisee will furnish a minimum of two trucks and other equipment to perform such collection, or will contract with other persons or companies duly licensed by the City for the furnishing of such trucks and equipment, provided, however, that at all times the trucks and equipment shall comply with the requirements provided herein for trucks and equipment owned and operated by the Franchisee.

(B) The Franchisee shall maintain, at all times, a service location or office within the greater Orlando metropolitan area. Proof of service location or office shall be provided upon request to the City’s Solid Waste Division Manager or his designee (“Division Manager”).

(C) The Franchisee may contract to provide collection with any Customer within the City (“Contract”), if such Customer has first requested collection. A Contract shall not exceed the terms and conditions of the Franchise, nor shall a Contract contain a provision for automatic renewal. However, Franchisee may enter into Contracts with Customers for periods of up to three (3) years provided such agreements were entered

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into during the term of the Franchise and the Franchise has not been terminated. Furthermore, all Contracts must specify the delivery date of the container(s) at the collection site. Such Contracts must be submitted to and approved by the Division Manager prior to or within twenty-one (21) calendar days of the placement of the container for collection. For each container placed for collection without a Contract having been submitted to and approved by the Division Manager within the allotted time, a Fifty-Dollar (\$50.00) inspection and administration fee shall be paid by the Franchisee to the City. Additionally, if a Contract is not approved, a Franchisee will be given forty-eight (48) hours after notice (written or telephonic) of such disapproval to remove the container or be fined Fifty Dollars (\$50.00) per day until the container is removed.

The Franchisee also understands that if any container should remain in service at any location more than forty-eight (48) hours after telephone or written notice from the Division Manager to remove the container then the Franchisee shall pay the City Fifty Dollars (\$50.00) per day until the container is removed. The Franchisee agrees to provide the Division Manager with the location of all its containers in the City limits, including the name and address of the Customer, as well as the number of pick-ups to be made. The Franchisee also recognizes that any Contract between the Franchisee and the Customer has no effect whatsoever upon the City's decision to grant the Franchise or any renewal decision made thereafter.

(D) The Franchisee shall provide the equipment and frequency of service as needed by the Customer and as approved by the Division Manager.

(E) The Franchisee shall dispose of solid waste only at landfills approved by the appropriate local, state, and federal governmental agencies.

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(F) All lease or purchase arrangements for compaction equipment and for maintenance or service charges for the containers agreed upon between the Franchisee and the Customer shall be sent to and approved by the Division Manager pursuant to this Section. Furthermore, the Contract between the Franchisee and the Customer shall not include a franchise or City fee. The Franchisee shall give the City prior written notice of any material changes in the Contract between the Franchisee and the Customer, including, but not limited to the following: changes in the schedule of pickups, type of container, contract term, etc.

3. Payments:

(A) The Franchisee shall pay the City Twenty-Five Dollars (\$25.00) per container each time the container is pulled to be emptied ("pull fee"). This pull fee shall be paid monthly and shall be based upon the number of times each container is pulled by the Franchisee during the preceding month, whether or not the Franchisee bills the Customer for the pull, and without regard to the contents of the container. It is hereby understood that for the privilege of doing business within Orlando's city limits the City levies a Twenty-Five Dollar (\$25.00) pull fee on the Franchisee, not on the Customer.

(B) The Franchisee shall furnish the Division Manager with an original and one copy of an annual report ("Report") on or before the ninetieth (90) day following the Franchisee's fiscal year end, which date will be communicated to the Division Manager on the date of the Franchisee's acceptance of this Franchise. (This communication is necessary due to the fact that the Franchisee's fiscal year end is unknown to the Division Manager.) The Report shall be prepared by an independent certified public accountant in accordance with generally accepted auditing standards. The Report shall reflect the accuracy of the

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Franchisee's payments to the City, as defined in this Ordinance, and shall ensure and include, but not be limited to, the following:

- 1) all City accounts are properly coded to reflect all charges accrued to the City (which charges include all administrative fees and penalties);
- 2) the number of container pulls is correctly reported to the City
- 3) all City payments are correctly computed and remitted to the City on a timely basis, or the interest-payment provision of Subsection E, below, shall apply.

In addition to the annual Report, the City Auditors shall have the right to audit the Franchisee's City Franchise records and, in the City's discretion, all other related books and records at such times and with such frequency as the City's determines in its sole discretion. Franchisee shall maintain on site at its local office, at all times, the pull tickets for the previous twelve (12) months.

During the term of this Franchise or its renewal, the Franchisee shall make its City Franchise records and, in the City's discretion, all other related books and records, including, but not limited to dump tickets, customer invoices and customer transaction files, available to the City at all reasonable times. Failure to furnish the City with the Report, or to maintain complete and accurate City Franchise records and all other related books and records, or to make such books and records available to the City, shall be considered a material breach of this Franchise, and the City shall be entitled to terminate this Franchise and to collect any damages resulting therefrom. Franchisee must keep all City Franchise and all other related books and records on file for not less than three (3) years from the termination of the Franchise.

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(C) The Franchisee shall have the sole responsibility for the billing and collection of all fees described herein. Billings shall be monthly, and payable on or before the 21st day of the succeeding month. In the event bills are not paid within this time, the Franchisee shall have the right (provided that the Franchisee may otherwise legally do so) to discontinue all collection for non-payment, after giving the City fifteen (15) days prior written notice that such services will be discontinued, and after receiving written approval from the Division Manager to so discontinue the services.

(D) The Franchisee shall ensure that all dump tickets are completed at the landfill site and contain the following information:

- 1) customer name and service site location, or
- 2) customer account number.

(E) The Franchisee shall pay the City Eighty Dollars (\$80.00) per month (“Administrative Fee”) for administrative and inspection costs and expenses incurred by the City in connection with this Franchise. This Administrative Fee shall be payable from all Franchisees to the City regardless of the number of Franchisee pulls, beginning thirty (30) days after the effective date of the Franchise and continuing for the duration of this Franchise. This Administrative Fee shall be credited against the pull fee.

All statements of fees incurred by Franchisee for pulls during the month shall be submitted to the Division Manager on or before the twenty-fifth (25th) day of the month. These statements shall specify the previous month's account activities as specified herein, and shall include account names, account numbers, the number of container pulls during the month, and all discontinued accounts. Failure to submit any of the fees specified or referred to in this Section 3 on or before the twenty-fifth (25th) day of each month as required, shall result in a penalty at the rate of ten percent (10%) of the monthly obligation outstanding. In

1 addition to any monthly obligation outstanding and any penalty attached thereto, the
2 Franchisee shall pay interest of 1% per month (12% per year) on the total unpaid balance.
3 Failure to submit any statement, addenda, or fees shall be considered a material breach of this
4 Ordinance, and shall allow the City to terminate the Franchise as may be further defined in
5 Section 9 below.

6 4. Term:

7 (A) The term of this Franchise ("Term") shall be for a maximum of
8 three (3) years but in all cases the term shall end on September 30th of each third year. An
9 acceptance of the provisions, conditions, and stipulations of this Franchise shall 1) be in
10 writing, 2) contain the Franchisee's local address, and 3) be filed with the City Clerk within
11 thirty (30) days of the adoption of this Franchise.

12 (B) The Term may be extended in three-year increments at the sole
13 option of the City, by written notice to the Franchisee not less than thirty (30) days prior to
14 the expiration of the current Term. The Franchise is not extended automatically.

15 5. Default

16 In the event that the Franchisee fails to provide adequate collection to a
17 Customer by reason of 1) a force majeure, 2) breach of contract or 3) negligence as
18 determined solely by the City, the City may, at its sole option, terminate this Franchise
19 (Option I), or take over the Franchisee's roll-off collection services (Option II), or both. In
20 the event the City chooses Option II, it shall receive all fees regardless of the amounts
21 normally retained by the Franchisee.

22 6. Default by Other Franchisees:

23 In the event other franchisees default or, in the sole determination of the
24 City, otherwise fail to provide adequate collection, and the City chooses Option II, the

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Franchisee agrees, if requested by the City, to provide permanent and/or temporary collection. Such agreement is predicated on the Franchisee's reasonable ability given 1) the Franchisee's equipment and schedule, and 2) that a reasonable price can be determined among the Franchisee, the City and the Customer, for the undertaking and completion of collection.

7. Liability:

(A) The privileges herein are granted upon the express condition that the Franchisee shall be liable for all damages or injury to persons or property caused by its negligence or mismanagement, or by the actions of any of its employees while engaged in collection during the life of this Franchise. Should the City be sued as a result of the existence of this Franchise, the Franchisee shall be notified and have the duty to defend such suit. However, the City has the sole option to defend itself or to hire independent counsel, and thereafter to tax all such defense costs and attorneys' fees to the Franchisee. The Franchisee specifically agrees to pay any resulting judgment rendered against the City in any such case, and to reimburse the City in full for all costs and attorneys' fees related to an appeal.

(B) The City shall approve any attorney(s) chosen by the Franchisee to represent the City in any suit concerning matters included within this Section unless, as previously stated, the City chooses to represent itself. In any case, the Franchisee shall indemnify and hold harmless the City, its agents, elected or appointed officials, officers and employees from any and all liability, claims, demands, damages, expenses, fees, penalties, suits, proceedings, actions and cost of actions (including attorneys' fees and costs at trial and on appeal), of any kind or nature, arising or growing out of, or in any way connected with the Franchisee's activities permitted under this Franchise.

(C) The Franchisee further agrees to purchase liability and property damage insurance and maintain, in good standing, insurance in the type and amount described below:

(1) Comprehensive General Liability

(a) Bodily Injury coverage shall be for not less than \$1,000,000.00 for each occurrence and not less than \$1,000,000.00 aggregate.

(b) Property damage coverage shall be for not less than \$500,000.00 each occurrence and \$500,000.00 aggregate.

OR

Bodily injury and property damage coverage shall be for not less than \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate.

(2) Business Automobile Liability

Business automobile liability coverage shall be in a combined single limit of not less than \$500,000.00 per occurrence.

The City shall be named as an additional insured under the policy(ies). Moreover, the policy(ies) must provide that the City shall be given thirty (30) days written notice prior to cancellation or modification, and a copy of the policy(ies) or certificate(s) of insurance shall be filed with the City's Solid Waste Division, Attention Franchise Coordinator, on or before the effective date of this Franchise and on or before the effective date of each policy renewal period.

8. Licenses:

The Franchisee shall, at its sole expense, procure from all local, state, and federal governmental and agency authorities having jurisdiction over the operations of the Franchisee all licenses, certificates, permits, or other authorizations, which may be necessary

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for the Franchisee to conduct its operations. The Franchisee shall pay all taxes, licenses, certification, permit and examination fees, and all excises which may be assessed, levied, exacted, or imposed upon its property, operations, gross receipts, or all or any combination of these things, as well as upon this Franchise and the rights and privileges granted herein. Also, the Franchisee shall make all applications, reports, and returns required in connection therewith to all respective governmental and agency authorities.

The Franchisee and its employees shall observe and comply with all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders, and mandatory guidelines, which may pertain or apply to the services rendered related hereto.

9. Termination:

This Franchise may be terminated 1) by the City, at its convenience, upon thirty (30) days prior written notice to the Franchisee; 2) by the Franchisee, following thirty (30) days prior written notice to the City; 3) by the mutual agreement of the parties; or 4) as may otherwise be provided below.

The City may terminate the privileges granted herein to the Franchisee prior to the expiration of the term if any one or more of the following events occur:

(A) The Franchisee fails to 1) pay the sums or fees due to the City in a timely manner (Failure I); 2) submit Contracts, reports, statements or addenda in a timely manner (Failure II); or 3) keep, perform, or observe each and every other promise, covenant, and condition designated to it under this Ordinance (Failure III). In the event of a failure, the Division Manager shall notify the Franchisee in writing of such failure, and the Franchisee shall have thirty (30) days from the receipt of such notice to correct the condition giving rise to the notice. If the failure is not corrected to the Division Manager's satisfaction within the time allotted, then the Division Manager shall give written notice to the Franchisee of the

1 termination of the privileges granted under the Franchise, to be effective as of the date of such
2 notice; or

3 (B) If and when the Franchisee shall liquidate, dissolve, or sell
4 substantially all of its assets; or

5 (C) If and when there is a transfer of fifty percent (50%) or more of the
6 Franchisee's voting stock which results in a change in the Franchisee's control; or

7 (D) If and when the Franchisee becomes insolvent, or makes a general
8 assignment for the benefit of its creditors; or if an action or petition is filed by or against the
9 Franchisee under any part of the Federal Bankruptcy Act or other law relating to the alleged
10 insolvency of the Franchisee, and such action or petition is not dismissed within thirty (30)
11 days of the date of its filing.

12 The Franchisee shall give the City at least fifteen (15) days prior written
13 notice of the occurrence of any of the events in B, C, and D above.

14 In the event any of the privileges granted herein are terminated pursuant to
15 this Section, any liability of the Franchisee to the City accruing thereby, or arising out of any
16 act or event occurring prior to the termination, shall immediately become due and payable to
17 the City, without further notice.

18 10. Notices:

19 All notices herein required to be given by the City to the Franchisee, except
20 where specifically provided otherwise, may be effected either by hand-delivery to any
21 Franchisee employee, or by United States mail (postage prepaid), addressed to the Franchisee
22 at its last known business address. All notices required to be given to the City shall be given
23 to both the Division Manager and the City Clerk either by hand-delivery or by United States
24 mail (postage prepaid), addressed to Solid Waste Division Manager, City of Orlando, 1028

Woods Avenue, Orlando, Florida, 32805; and to City Clerk, City of Orlando, 400 South Orange Avenue, Orlando, Florida, 32801.

11. 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, the Franchisee shall pay the City's costs, and any attorney's fees thereafter charged to the City.

12. Equipment:

(A) The Franchisee agrees that it shall procure and maintain, by whatever means, sufficient equipment to insure that the Franchisee shall, at all times, be in a position to properly maintain its schedules and to otherwise perform all duties, responsibilities, and conditions required of it under this Ordinance. Should the Franchisee purchase or lease equipment or trucks from other persons, then the Franchisee shall submit to the Division Manager a list noting the type and number of equipment and trucks purchased or leased, the duration of the lease, and the name of the person or persons leasing equipment or trucks to the Franchisee. All of the Franchisee's trucks, containers, and equipment shall conform to proper registration and license tag requirements. The equipment and trucks must be approved by the Division Manager.

(B) All trucks utilized by the Franchisee, and all containers owned or leased by the Franchisee, shall be prominently identified on both the left and right sides with the Franchisee's name in letters not less than six inches (6") in height, and the Franchisee's business telephone number, in numbers not less than three inches (3") in height, either painted on or attached by signs to the affected trucks and containers. The Franchisee shall give each

of its trucks an identification number that shall be visible and legible at all times, and that shall appear on the bumper in numbers not less than four inches (4") in height.

(C) The Franchisee specifically agrees that the Division Manager shall have the right to inspect the trucks, the equipment, or both, for compliance with Subsection B above, at all reasonable times and upon reasonable written or oral notice that such an inspection shall take place. The Division Manager shall notify the Franchisee in writing of any violation(s) of Subsection B above, and the Franchisee shall have two (2) business days from the receipt of the notice to correct the violation(s). If the violation(s) is (are) not corrected to the Division Manager's satisfaction within the time allotted, the Franchisee shall pay the City One Hundred Dollars (\$100.00) for each uncorrected truck or piece of equipment. The Franchisee shall pay the City an additional One Hundred Dollars (\$100.00) for every seven (7) calendar days in which the violation(s) remain(s) uncorrected.

13. Assignability:

In the event the Franchisee sells or transfers its business or substantially all of its assets, the Franchisee shall give the City at least fifteen (15) days prior written notice of such sale or transfer and the City may, upon written request, allow for an assignment. This Franchise shall not be assignable by the Franchisee without the prior written consent of the City, as evidenced by an Ordinance. If the Franchisee attempts to assign, transfer or delegate its rights and duties in violation of these provisions without the City's consent, then the City may terminate this Franchise and any such assignment shall be null, void, and of no legal effect whatsoever.

In the case of an assignment, the emerging business, if not already in possession of a Franchise from the City, may only continue to operate, for no more than 90 days, with the permission of the Division Manager. No new service agreements may be executed

1 during this period of temporary operation. Additionally, the emerging business must apply
2 for and receive its own franchise before permanent collection activity will be permitted. If
3 Franchisee fails to comply with the aforementioned conditions, the City may choose to
4 terminate this Franchise, take over the Franchisee's roll-off collection services, fine the
5 Franchisee under the same schedule as that outlined in Section 1, Paragraph 2(C) (referring
6 to fines for having a container in service without a valid service contract) or any
7 combination of the aforementioned penalties.

8 14. Effective Area:

9 This Franchise only governs that activity occurring within the City's
10 corporate limits, as they may from time to time exist. The privileges enumerated herein may
11 be exercised upon any governmental facility and any land owned or controlled by the Greater
12 Orlando Aviation Authority (GOAA). The right to provide service on property owned or
13 controlled by a governmental entity and GOAA is subject to additional approval, and any
14 additional provisions that entity may impose.

15 15. Headings:

16 The Paragraph headings of this Franchise are for purposes of convenience
17 only, and shall not be deemed to expand or limit the provisions contained in such Paragraphs
18 or Sections.

19 16. Warranty of Franchisee:

20 The Franchisee represents and warrants to the City that no appointed or
21 elected City official, officer, employee, or agent has any interest, either directly or indirectly,
22 in the business of the Franchisee as it relates to this Ordinance.

23

17. Non-Compliance:

If the Franchisee shall at any time fail to comply with any of the provisions of this Franchise, the City, after thirty (30) days written notice to the Franchisee, may revoke this Franchise and render it void and of no further effect.

18. Amendment:

The City reserves the right to amend this Franchise at any time, and in any manner that it deems necessary for the health, safety, or welfare of the public. The City also reserves the right to prescribe, from time to time, reasonable rules and regulations further governing the Franchisee's operations herein including, but not limited to, hours and frequency of container pulls. These rules and regulations may be issued through the Division Manager or the Public Works Director or his designee and need not be memorialized in an ordinance revision. Formal action by the City Council, as it relates to these rules and regulations, is also not required, as the City Council's approval of this Ordinance is an approval that the rules and regulations should be so issued.

SECTION TWO: If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and any holding shall not affect the validity of the remaining portion hereto.

SECTION THREE: This Ordinance shall take effect upon its passage and adoption.

ADVERTISED _____, 20__.

READ FIRST TIME _____, 20__.

READ SECOND TIME AND ADOPTED _____, 20__.

CITY OF ORLANDO, FLORIDA

MAYOR or Mayor Pro Tempore (Print Name)

MAYOR or Mayor Pro Tempore (Sign Name)

ATTEST:

Amy T. Iennaco, Interim City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the
City of Orlando, Florida, only.

_____, 20__.

Michael S. O'Dowd
Assistant City Attorney
Orlando, Florida.

ACCEPTANCE BY FRANCHISEE

The foregoing Ordinance and the Franchise provided for therein, and all the terms and conditions thereof, are hereby accepted and agreed to this ____ day of _____, 20__.

DEROCHE BUILDING SUPPLY, INC., (a Delaware corporation)

By: _____
Print Name: _____
Title: _____
Local Address: _____

PERSONALLY APPEARED before me, the undersigned authority, _____, [] well known to me or [] who has produced his/her _____ as identification, and acknowledged before me that he/she executed the foregoing instrument on behalf of said limited liability company as its true act and deed, and that he/she was duly authorized to do so.

WITNESS my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC
My Commission Expires: