

AGREEMENT

This agreement is by and between the **CITY OF ERLANGER**, a Home Rule City , with its principal office and place of business at 505 Commonwealth Avenue, Erlanger, Kenton County, Kentucky, hereinafter identified and referred to as the “**CITY**”, and Rumpke Waste and Recycling with its principal office and place of business at 3990 Generation Drive, Cincinnati, OH 45251, hereinafter identified and referred to as the “**FRANCHISEE**”; and they are entering into this Agreement for themselves, and for their respective successors and assigns.

WITNESSETH:

WHEREAS, on the 29th day of March, 2021, the City advertised for and solicited sealed bids and proposals for an exclusive franchise agreement for the use of the public streets and rights of way of the City, for the collection and disposal of solid and recycling waste from property of the City, and collectible solid and recycling waste from all residential collection units within the City; and

WHEREAS, in response to the aforescribed solicitation and advertisement, the Franchisee submitted the bid attached hereto and incorporated herein by reference, which shall hereinafter be identified and referred to as the “**bid of the Franchisee**”; and

WHEREAS, the Franchisee submitted its bid pursuant to and in reliance upon the representations that the franchise agreement contemplated that all of the residential collection units in the City would utilize and pay for waste collection and disposal services provided by the franchisee and that the City would require all residential collection units in the City to utilize and to pay for the waste collection and disposal services as provided under the Franchise Agreement; and

WHEREAS, on the 11th day of May, 2021, the City accepted the bid of the Franchisee for once per week curbside pickup with once a week voluntary recycling subscription service for an additional fee, subject to the provisions hereof;

NOW, THEREFORE, in consideration of the mutual and reciprocal covenants included therein, the City and the Franchisee hereby agrees as follows:

Section 1.0 - Definitions

As used in this Agreement, the following words and phrases have the meanings indicated therefore:

1.1 - Applicable Laws

The words “applicable laws” mean each, every, any, and all laws, statutes, ordinances, rules, and regulations of the United States, Commonwealth of Kentucky, County of Kenton, and the City of Erlanger, and any Department, Cabinet, Bureau, Administrative Agency, and any other division of any of them which are in any way related to the collection, transportation, storage, handling, processing, or disposition of any solid waste, or this Agreement in regard thereto, or anything permitted, prohibited, or required thereby.

1.2 - Collectible Household Solid Waste

The words “collectible household solid waste” mean household solid waste, including, without limitation, recyclables, that have been generated by the residential use of a collection unit and both:

(a) Cut and tied into bundles no more than four (4) feet in length and weighing no more than seventy-five (75) pounds, or enclosed within tied bags or covered containers having a capacity of no more than ninety-six (96) gallons, except for large individual items, which will not fit into such containers; and

(b) Placed at the common boundary line between the lot or parcel of real estate upon which the collection unit is located, and the right of way line of any public street upon which such lot or parcel of real estate abuts, or another location agreed upon by the Franchisee or designated by the Director of Public Works or the designee thereof, before the arrival of the employees or other representatives of the Franchisee for the collection thereof, on the day indicated in the collection schedule for that collection unit.

1.3 - Collection Unit

The words "collection unit" mean any separate residence for human beings in the City, other than those located within either: (1) a single separate building with more than four (4) separate residences therein, or (2) a multiple building complex, in which all of the buildings thereof are in the same ownership, and located on one lot or parcel of real estate, or adjoining lots or parcels of real estate in the same ownership, and with at least one building thereof having five or more separate residences therein.

1.4 - Collection Schedule

The words "collection schedule" mean the schedule indicated in the document identified as Attachment B attached hereto and incorporated herein by reference, which identifies the days of the week on which residential solid waste and separately collectable recyclables shall be collected from collection units on each street within the City.

1.5 - Household Solid Waste

The words "household solid waste" means solid waste, including, without limitation, recyclables, which have been generated by the residential use of a collection unit.

1.6 - Mailed

The word "mailed" means mailed with postage prepaid, by U.S. Certified Mail, return receipt requested.

1.7 - Recyclables

The word "recyclables" means the cans, cardboard, paper, glass, aluminum, steel, and plastic items.

1.8 - Recycling Collection Unit

The words "recycling collection unit" mean a collection unit for which either the City or someone else has agreed to pay and pays to the Franchisee the additional monthly fee provided herein for the separate collection of recyclables therefrom.

1.9 - Separately collectable Recyclables

The words "separately collectable recyclables" mean recyclables which have been generated by the City or the residential use of a recycling collection unit; and separated from household solid waste, and prepared for collection in the manner described in Appendix B, attached hereto and incorporated by the Franchisee, and placed for collection at the common boundary line between the lot or parcel of real estate upon which the recycling collection unit is located, and the right of way line of any public street upon which such lot or parcel of real estate abuts, before the arrival of the employees or other representative of the Franchisee for the collection thereof on the day indicated therefore in the collection schedule.

1.10 - Solid Waste

The words "solid waste" have the same meaning therefor provided by K.R.S. 224.01-010(31)(a), except for the following items, which are hereby excluded therefrom: (1) automotive fluids, parts and tires, (2) hazardous waste within the meaning thereof provided by K.R.S. 224.01-010(31)(b), and (3) items designed for the use of freon therein, such as refrigerators and air conditioners, unless all freon has been removed therefrom by a certified technician.

1.11 - Waste Site or Facility

The words "waste site facility" have the same meaning therefore provided by K.R.S. 224.01-010(27).

Section 2.0 - Term

2.1 - Initial Term

The initial term of this Agreement shall be for the two year period beginning at midnight on the evening of June 30, 2021, and ending at midnight on the evening of June 30, 2023, with all required customer notifications occurring before then.

2.2 - Term Extensions

The initial term of this Agreement shall be extended by the City for additional periods of two (2) years each, up to a maximum of four (4) times by causing a written notice thereof to be mailed to the Franchisee, at least (30) continuous calendar days before the beginning of the period of each extension.

Section 3.0 - Duties and Obligations of the Franchisee

At all times during the initial term of this Agreement, and each and every extension thereof pursuant thereto, the Franchisee shall:

3.1 - Documentation

Cause the following documents to be issued and maintained in full force and effect; and provide copies or certificates therefore to the City; and provide the City with written notice of any changes therein more than sixty (60) days prior to the effective date thereof.

3.1.1 - Workers Compensation Insurance

A policy of Workers' Compensation Insurance in compliance with the requirements of Chapter 342 of the Kentucky Revised Statutes.

3.1.2 - Liability Insurance

Policies of liability insurance with the coverages and limits of liability indicated in the attached schedule thereof, in which the insurer agrees to:

a. Defend the Franchisee and City against any and all claims and causes of action, of every kind and nature, for any losses, expenses, costs, attorney's fees, obligations, liabilities, injuries, and damages by anybody else, which are allegedly or actually sustained, incurred and endured by anybody else, and which are in any way related to any act or omission of the City or the Franchisee in regard to the collection, transportation, handling, processing or disposal of solid waste, or this Agreement in regard thereto; and

b. Pay on behalf of the Franchisee and the City, or either or both of them, jointly or severally, any and all sums which either or both of them shall become jointly or severally legally obligated to pay, as the result of any act or omission of the Franchisee or the City, or anybody else, jointly or severally, which is in any way related to the collection, transportation, handling, processing or disposal of solid waste, or this Agreement in regard thereto.

c. Prior to providing waste collection services in the City of Erlanger, the Vendor shall cause to be issued and maintained the following policies of insurance through companies approved by the City in which the coverage of the Contractor is primary and noncontributory in regard to all liability coverage, including, without limitation, excess and umbrella policies:

1) Commercial General Liability insurance on ISO form CG00011001 (or a substitute providing equivalent coverage). The limit shall not be less than \$1,000,000 per occurrence. ***The City of Erlanger must be named as an Additional Insured; the certificate***

shall specify that the coverage afforded is Primary and Noncontributory with respect to any other coverage available to the City of Erlanger.

2) Comprehensive owned and non-owned automobile liability insurance with a minimum combined single limit of \$1,000,000.

3) Workers Compensation Coverage specific to the State of Kentucky.

4) If you are performing construction services, the additional insured status must be provided by a combination of CG20100707 and CG20370704.

5) If your services involve pyrotechnics, mechanical amusement devices, inflatable amusement devices, animals of any type (including petting zoo or pony rides) or any other services that the City of Erlanger deems applicable, you must also provide a Commercial Umbrella policy with a minimum limit of \$1,000,000.

6) If your services include the sale of alcohol, you must also provide evidence of Liquor Liability Coverage with a minimum limit of \$1,000,000.

7) If your services are professional in nature, such as architectural, engineering, consulting or legal, you must also provide evidence of Professional Liability coverage (also known as Errors and Omissions coverage) with a minimum limit of \$1,000,000.

The Vendor shall not commence collection until the City is satisfied with and has approved all of the insurance policies and endorsements required hereby and has received certificates evidencing that the Contractor is insured thereby.

3.1.3 - Licenses and Registration

An Erlanger occupational license; and all other licenses and registrations required by any applicable law for:

- a. Engaging in the business and occupation of collecting, transporting, processing and disposing of residential solid waste pursuant hereto; and
- b. The ownership, operation, maintenance and use of the landfill described in the bid of the Franchisee; and
- c. The ownership, operation and use of any motor vehicles by or on behalf of the Franchisee, in the performance of this Agreement.

3.2 - Solid Waste Collection and Removal

Franchisee shall supply one (1) 95 gallon tote per household, with the option of one (1) additional 95 gallon tote if requested at no additional fee. Smaller totes (35 and 65 gallon) must be readily available for customers who live in neighborhoods with homeowner's associations, in condos, or are physically unable to manage a larger tote. Personal totes can also be used by each household. There shall be no limit to how many totes are set out for collection.

3.2.1 Cause the collectible household solid waste from each collection unit and solid waste from all street litter cans and all other property of the City to be collected and removed once a week, according to the collection schedule; provided, however, that the Franchisee has no obligation to collect household solid waste from any collection unit that has a balance due and owing to the Franchisee that is more than 90 calendar days past the date of the invoice sent to the Franchisee to the owner or occupant of the collection unit. The owner or occupant may be charged a late fee that shall be no more than \$20.00.

3.2.2 Cause all solid waste from all street litter cans and all other property of the City to be collected and removed once a week, according to the collection schedule, at no charge or expense to the City.

3.2.3 Provide all labor, equipment, management and administration necessary for such solid waste collection and removal; and in such a manner that all such collections and removals are:

a. With the use of the motor vehicles and equipment identified in the bid of the Franchisee, or by the use of motor vehicles and equipment equal thereto or better in quality or condition, all of which shall have functional mechanical equipment, for the compaction of household solid waste into enclosed cargo spaces without leaking, and shall be maintained by the Franchisee in a condition which is functional, safe, clean and in conformity with all applicable laws; and

b. By collectors and operators trained and licensed therefore, according to all applicable laws, who shall make all reasonable efforts to safely maintain the continued flow of motor vehicle traffic around the collection vehicles and equipment, while they are on public streets and rights-of-way; and

c. According to the collection schedule; provided, however, that the Franchisee shall have 24 hours to remedy missed collections; and, provided further that unless otherwise agreed by the City and the Franchisee:

1) No solid waste collection shall occur on any street before 7:00 A.M., except in pre-authorized areas (Stevenson Road, Commonwealth Avenue, Turkeyfoot Road, and Dixie Highway), or after 5:00 P.M., prevailing time.

2) No solid waste collection shall occur on any Sunday or the holidays of Thanksgiving Day, Christmas Day, or New Years Day; but solid waste collection services shall occur as scheduled on all other holidays. In those years when Thanksgiving, Christmas, and New Years days occur on any other day other than Sunday, the remaining collection day(s) shall be delayed by one day, so that what should have been collected on these

days shall be collected on the following day that is not Sunday. The Franchisee shall make provisions to ensure no reduction in service occurs during any holiday week.

3) As new homes are constructed and occupied, and existing homes become occupied in the City limits, the franchisee shall provide waste services as required by the contract on the next scheduled day of collection after the customer establishes collections services with the Franchisee. Totes must be delivered within (7) seven days after the customer has contacted the Franchisee.

4) The Franchisee must make their drivers aware of school zones and schedules and arrange collection routes that do not conflict with said schedules.

5) Large items, construction material, and yard waste shall be collected, but must be properly contained , bundled, and/or weigh less than 75 pounds.

6) A bi-annual waste event may be conducted during the spring and fall of every calendar year. The Franchisee shall provide dumpsters, assistance, and waste removal for these events, at no charge. The City reserves the right to determine the dates of the event and the location.

7) If there is street construction underway, the Franchisee must contact the Director of Public Works to gain access to the street, ensuring that delayed services do not occur.

8) In the instance of fluid leaking from equipment, the Franchisee must address the leaking according to protocol with the approval of the Director of Public Works, or his designee.

3.3 - Recycling Collection and Removal

Provide each recycling collection unit with a 65 gallon tote for recyclables; and

cause all of the separately collectible recyclables, from each recycling collection unit, to be collected and removed therefrom, separately from all the other collectible household solid waste therefrom, without any limitation on the quality thereof, according to all applicable laws and the collection schedule therefore, and in the same manner hereinbefore described for the collection of household solid waste. Smaller totes (35 gallon) must be readily available for customers who live in neighborhoods with homeowner's associations, in condos, or are physically unable to manage a larger tote.

The Franchisee may provide recycling dumpsters for two locations in the City, and collect waste deposited in the same on at least a weekly basis at the request of the City. This may continue as a trial period of no less than (6) months and if successful, may continue permanently at the City's discretion. The City of Erlanger reserves the right to choose the locations and the sizes of the dumpsters.

3.4 - Cause all separately collectible recyclables that are collected by the Franchisee pursuant hereto to be disposed of through a recycling process, without being deposited in any waste site or facility.

3.5 - Cause all collectible household solid waste and all separately collectible recyclables that are collected by the Franchisee pursuant hereto, to be disposed of according to and in compliance with all applicable laws.

3.6 - Establish and maintain a procedure for receiving, recording, classifying, evaluating and responding to each, every, any and all complaints about the collection and disposal of recyclables and household solid waste pursuant hereto, and provide the City with a monthly report in regard to such complaints. The Franchisee shall designate a specific contact person assigned to insure a high level of customer service in Erlanger. The contact person's name and phone number shall be provided to the City Clerk. The contact person shall have full authority to

act on behalf of the contractor for the purpose of receiving, investigating, and resolving complaints received regarding solid waste contractor complaints. The contact person shall work closely with the City Clerk's Office to insure all customer complaints are resolved in a timely manner. The contact person shall also work to identify and implement solutions to persistent customer complaints. In the case of alleged missed scheduled collections, the Franchisee shall investigate, and, if such allegations are verified, shall arrange for the collection of the solid waste not collected within twenty-four (24) hours after receipt of complaint. In addition, route drivers shall contact the City Clerk's Office at the end of their route to ensure that there were no missed collections or concerns received that day.

3.7 - Provide the City with written monthly management reports about the collection and disposal of recyclables and household solid waste pursuant hereto, which shall include, at a minimum:

3.7.1 - The volume of household solid waste collected, land filled, and diverted from the waste stream; and

3.7.2 - Other information reasonably required to report about the collection and disposal of recyclables and household solid waste; and

3.7.3 - The number, nature, and source of all complaints received by the Franchisee about the collection and disposal of recyclables and household solid waste pursuant hereto; and the evaluation thereof and the response of the Franchisee thereto; and

3.7.4 - Documentation that all recyclables and household solid waste collected pursuant hereto, has been handled, transported, processed and disposed of according to and in compliance with all applicable laws and the provisions of this Agreement.

Section 4.0 - Fees and Changes of Franchisee

The fees and charges of the Franchisee for the collection and disposal of solid waste shall be limited as follows:

4.1 - Collection Units

The fees and charges of the Franchisee for the collection, removal and disposal of the collectible household solid waste and separately collectible recyclables from collection units shall be no more than those indicated in the following schedule, plus a late fee of \$20.00 for each invoice that is not paid within (90) days after the date thereof, for which the Franchisee shall cause invoices therefore to be mailed to the owner or occupant of each collection unit in months of July, October, January, and April of each year for the following four terms:

<u>Term</u>	<u>Solid Waste Collection Fee</u>	<u>Recyclable Collection Fee</u>
7-1-2021 to 6-30-2023	\$15.45 per month	\$5.50 per month
7-1-2023 to 6-30-2025	\$16.22 per month	\$5.78 per month
7-1-2025 to 6-30-2027	\$17.03 per month	\$6.06 per month
7-1-2027 to 6-30-2029	\$17.89 per month	\$6.37 per month
7-1-2029 to 6-30-2031	\$18.78 per month	\$6.69 per month

The fuel surcharge amount will be determined annually based on data for the first week of March. The fuel surcharge will be in place for twelve (12) months. Any increase or decrease in fuel surcharges will begin the first week of April each year. The first opportunity to enact a fuel surcharge during the contract period will be on April 1, 2022 based on March 22, data.

Average Weekly Fuel Cost Per Gallon (Cost Range)	Fuel Surcharge Amount Per Household Per Month	Fuel Surcharge Amount Per Yard for Front/Rear Load Containers	Fuel Surcharge Amount Per Haul for Roll Off Containers
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	One Pickup Per Week	Two Pickup Per Week		
3.00 + Below	\$0.00	N/A	\$0.00	\$0.00
3.01 - 3.25	\$0.12	N/A	\$0.02	\$3.00
3.26 - 3.50	\$0.24	N/A	\$0.04	\$6.00
3.51 - 3.75	\$0.36	N/A	\$0.06	\$9.00
3.76 - 4.00	\$0.48	N/A	\$0.08	\$12.00
4.01 - 4.25	\$0.60	N/A	\$0.10	\$15.00
4.26 - 4.50	\$0.72	N/A	\$0.12	\$18.00
4.51 + Above	\$0.84	N/A	\$0.14	\$21.00

The Franchisee shall provide (1) 95 gallon tote per household for waste collection and one (1) 65 gallon tote per participating households for recycling collection. Each resident shall receive one (1) additional 95 gallon tote for waste collection, upon request, at no additional cost.

TOTE RENTAL

Rental Cost Per Tote Per Month for Additional Totes	Rate/Cost 2021/2023	#1 Extension 2023/2025	#2 Extension 2025/2027	#3 Extension 2027/2029	#4 Extension 2029/2031
35 Gallon Tote	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
65 Gallon Tote	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
95 Gallon Tote	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50

4.2 - City

The City shall have no obligation or liability to the Franchisee for any of the fees and charges thereof for the collection, removal and disposal of solid waste and recyclables from collection units. Additionally, the collection, removal, and disposal of solid waste and recyclables from the street litter cans and other property of the City shall be without any fees or charges of the Franchisee, and the City shall have no obligation or liability to the Franchisee therefore.

Section 5.0 - Duties and Obligations of the City

At all times during the initial term of this Agreement, and each and every extension thereof pursuant hereto, while the Franchisee is in compliance with all of the covenants, requirements and provisions of this Agreement, the City shall:

5.1 - Exclusive Franchise

Cause the Franchisee to have an exclusive franchise for the use of the public streets and rights-of-way of the City for the collection, removal, and disposal of household solid waste and recyclables from collection units by motor vehicles.

5.2 - Notification of Collection Units

Provide the Franchisee with a monthly written notice of all collection units to be added to or removed from the collection schedule.

5.3 - Ordinance Enforcement

Enforce all of the ordinances of the City in regard to the collection, removal, and disposal of solid waste and recyclables against the owners and occupants of collection units who are delinquent in the payment of invoices of the Franchisee therefore. The City acknowledges that the Franchisee based its bid on the economy of scale that all residential collection units in the City would utilize and pay for the waste collection and disposal services defined herein and the City warrants that it will enforce the exclusive franchise in favor of the Franchisee and will require all residential collection units to utilize and pay for the waste collection and disposal services contemplated in the Franchise Agreement.

Section 6.0 - Remedies for Violations

Upon each repeated violation of any provision of this Agreement by the Franchisee that occurs more than ten (10) days after the City has mailed a written notice of any previous violation of such provision to the Franchisee, the City may, in addition to any and all

other remedies provided to the City therefore by law, terminate this Agreement, by mailing a written notice thereof to the Franchisee at least thirty (30) continuous calendar days prior to the effective date thereof; and thereupon, the City shall procure the completion of the balance of this Agreement by someone else; and the Franchisee shall and hereby agrees to pay on behalf of the City, and to indemnify and hold the City harmless from any and all costs and expenses to the City therefore, which are over and above what the City would have paid therefore pursuant to

this Agreement between the date of termination and the date of the subsequent term extension nearest to the date of termination (in no event shall such costs be assessed beyond a term extension for which the City has a right to terminate); and any reasonable attorney's fees incurred by the City in the acquisition thereof. In the event of such an occurrence however, the City shall be under a duty to mitigate its losses, damages, and costs.

Section 7.0 - Indemnification

The Franchisee shall and hereby agrees to defend, indemnify and hold the City and the officers, agents, and employees thereof harmless from all claims, demands, and causes of actions, both at law and in equity, for each, every, and and all past, present and future injuries, losses, costs, expenses and other damages sustained and endured by the City, to the extent due to any tortious act or omission of the Franchisee, or the officers, agents, servants or contractors thereof, in regard to the collection, removal, transportation or disposition of solid waste, or Franchisee's breach of this Agreement, including, without limitation, claims for subrogation, contribution or indemnification by third parties or otherwise, and all costs and expenses of the City in the investigation and defense thereof including, without limitation, court costs and reasonable attorney fees.

Section 8.0 - Time of Essence

Time is of the essence of this Agreement.

Section 9.0 - Assignability

This Agreement may not be assigned by either the Franchisee or the City without the written approval of the other.

Section 10.0 - Miscellaneous

This Agreement:

10.1 - Applicable Law

Shall be interpreted, construed, and enforced according to the laws of the Commonwealth of Kentucky.

10.2 - Entire Agreement

Constitutes the complete Agreement of the City and the Franchisee; and all prior proposals, discussions, negotiations, representations, and condition are merged herein. The Specifications shall be made part of the Agreement.

10.3 - Amendment

Shall not be amended, modified, or supplemented without a written agreement in regard thereto signed on behalf of both the City and the Franchisee.

10.4 - Force Majeure

If Contractor believes that it is being, or will be prevented or hindered in the performance of any of the terms, covenants, or conditions of this Agreement by reasons beyond its control, including without limitation fire, flood, riot, military or usurped power, sabotage, any action taken by any governmental authority (which without fault on the part of the Contractor prevents or hinders the performance by Contractor of its obligations hereunder), or an act of God (whether similar or dissimilar to the matters enumerated in the Section), the

Contractor, by written notice to the Contract Administrator, may declare an event of Force Majeure, and to the extent and for the period that performance hereunder is prevented or hindered by such condition or event, Contractor shall be excused from performance of such term, covenant or condition. In the event of such excused non-performance, Contractor will promptly notify the Contract Administrator of the services it cannot perform, but nonetheless will use its best efforts to conform as closely as reasonably to the specifications hereunder.

Mayor, City of Erlanger

505 Commonwealth Avenue, Erlanger, Ky. 41018

Rumpke of Ky Inc
(PRINTED NAME OF BIDDER)

3990 Generation Drive, Cincinnati OH 45251
(PRINTED MAILING ADDRESS OF BIDDER)

IN WITNESS WHEREOF, this Agreement has been signed for and on behalf of the Contractor and the City of Erlanger by and through their respective officials on the dates indicated.

CITY OF ERLANGER

BY: [Signature]
JESSICA FETTE, Mayor

Subscribed and sworn to before me, a Notary Public, by Jessica Fette, as Mayor of the City of Erlanger, on June 11, 2021.

[Signature]
NOTARY PUBLIC # 603297
Kentucky, State at Large
Commission Expires 7/17/22

State of Kentucky
County of Kenton

RUMPKE OF KENTUCKY, INC
(PRINTED NAME OF FRANCHISEE)

BY: [Signature]
(Signature of Authorized Representative)

William J. Rumpke, Jr., President
(Printed Name of Representative)

Subscribed and sworn to before me, a Notary Public, by
William J. Rumpke, Jr. for RUMPKE OF KENTUCKY, INC.
(Printed Name of Signatory) (Printed Name of Company)

on June 11, 2021.

[Signature]
NOTARY PUBLIC
Commission Expires 1/21/24
State of Ohio
County of Butler



Girma M. Schueler
Notary Public, State of Ohio
My Commission Expires 1-21-2024