

ORDINANCE NO.

AN ORDINANCE GRANTING CCAA, LLC, D/B/A BCS STOP 'N GO POTTIES, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING DEMOLITION AND CONSTRUCTION DEBRIS FROM RESIDENTIAL SITES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; FOR PARTIAL INVALIDITY AND ASSESSING A PENALTY FOR VIOLATION.

WHEREAS, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of College Station; and

WHEREAS, the City of College Station may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of the City of College Station and for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

WHEREAS, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of a certain classification of solid waste generated within the corporate limits of the City of College Station under the terms of this Franchise Agreement as set out below; and

WHEREAS, CCAA, LLC d/b/a BCS STOP 'N GO POTTIES desires to obtain a franchise to provide for the collection, hauling and disposal of construction debris solid waste from the City of College Station;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, THAT:

**I.
DEFINITIONS**

1. Franchise Agreement means this franchise between the City of College Station and CCAA, LLC d/b/a BCS STOP 'N GO POTTIES for provision of a residential roll-off container demolition and construction debris collection service within the City of College Station, under certain terms and conditions set out herein.

2. BCS STOP 'N GO POTTIES means CCAA, LLC d/b/a BCS STOP 'N GO POTTIES conducting the roll-off container demolition and construction debris collection service.

3. Brazos Valley Solid Waste Management Agency or BVSWMA means a landfill jointly owned by the Cities of Bryan and College Station and operated by the City of College Station on behalf of the cities as authorized through an interlocal agreement.

4. City of College Station or CITY means the City of College Station, Texas a Home-Rule Municipal Corporation incorporated under the laws of Texas.

5. City Council or "COUNCIL" means the governing body of the City of College Station, Texas.

6. Customers means those areas zoned for single family, duplex, and quadraplex uses located within the CITY that generate demolition and construction debris. Not included are multi-family dwellings that are attached to each other such as but not limited to apartments and townhomes.

7. Demolition and Construction Debris means any building material waste resulting from demolition, remodeling, repairs, or construction as well as materials discarded during periodic temporary facility clean-up generated within the CITY.

8. Roll-Off Containers or container means that type of solid waste industry container loaded by winch truck not to exceed fifteen (15) cubic yards in volume.

9. Residential customers means any residential dwelling that is owned or occupied by a resident in the CITY whether as owner, lessee or tenant.

II.

GRANT OF NONEXCLUSIVE FRANCISE

For and in consideration of the compliance by BCS STOP 'N GO POTTIES with the covenants and conditions herein set forth CITY hereby grants to BCS STOP 'N GO POTTIES a NONEXCLUSIVE franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting only demolition and construction debris from residential customers in those areas zoned for single family, duplex, triplex and quadraplex within the jurisdictional limits of CITY using roll-off containers.

III.
DISPOSAL SITE TO BE USED

Unless approved otherwise in writing by ASSISTANT DIRECTOR OF PUBLIC WORKS, BCS STOP 'N GO POTTIES shall utilize the BSWMA landfill located on Rock Prairie Road, College Station, Texas or any other site designated for their municipal solid waste disposal for the disposal of all demolition and construction debris collected by BCS STOP 'N GO POTTIES under this Franchise Agreement. **BCS STOP 'N GO POTTIES shall not dispose of any asbestos or other hazardous wastes at the BSWMA landfill.**

IV.
RATES TO BE CHARGED BY BCS STOP 'N GO POTTIES

Attached hereto as Exhibit "A" and incorporated herein by reference is the Schedule of Rates, which BCS STOP 'N GO POTTIES shall charge for the aforementioned services. The rates provided herein shall be renegotiated at any time that the costs to the company of doing business have increased, due to the operation of new governmental regulation or due to increased costs of material or labor required to provide the services hereunder, or due to increased costs of disposal in a landfill operation. BCS STOP 'N GO POTTIES agrees to use due diligence to keep costs from increasing.

V.
PAYMENTS TO CITY

For and in consideration of the grant of the franchise herein, BCS STOP 'N GO POTTIES agrees and shall pay to CITY upon acceptance of this Franchise Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of BCS STOP 'N GO POTTIES's monthly gross delivery and hauling revenues generated from BCS STOP 'N GO POTTIES's provision of demolition and construction debris roll-off container collection services within the CITY excluding landfill tipping charges. This exclusion is limited only to the amount BSWMA charges BCS STOP 'N GO POTTIES for landfill tipping charges. Any revenue received by BCS STOP 'N GO POTTIES in excess of the landfill tipping charges will be subject to the franchise fee and shall be computed into BCS STOP 'N GO POTTIES 's monthly gross delivery and hauling revenue. Said payment shall be paid quarterly to the City Manager or her delegate and shall be due by the twentieth of the month following the end of the previous quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding amount owed under this Article V.

Failure by BCS STOP 'N GO POTTIES to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XV of this Franchise Agreement (FAILURE TO PERFORM).

VI.
ACCESS TO RECORDS & REPORTING

CITY shall have the right, upon reasonable notice, to inspect during normal business hours BCS STOP 'N GO POTTIES's records, billing records of those customers served by BCS STOP 'N GO POTTIES and all papers relating to the operation of demolition and construction debris collection and disposal within the CITY. BCS STOP 'N GO POTTIES shall cooperate in allowing CITY to conduct the inspections.

The following records and reports shall be filed quarterly with the City Manager or her delegate:

A. Reports of the results of all complaints and investigations received and action taken by BCS STOP 'N GO POTTIES.

B. A listing of all BCS STOP 'N GO POTTIES accounts served and monthly revenue derived from roll-off containers placed in the CITY under terms of this franchise. The reports will include customer's name, address, frequency of pick-up, size of container, and monthly charges.

VII.
PLACEMENT OF ROLL-OFF CONTAINERS

All roll-off containers placed in service shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall BCS STOP 'N GO POTTIES place containers on public streets, alleys and/or thoroughfares without the prior written approval of the CITY. CITY reserves the right to designate the exact location of any or all roll-off container(s) placed in service in the CITY.

VIII.
CONTAINER AND EQUIPMENT MAINTENANCE

BCS STOP 'N GO POTTIES agrees to properly maintain in a safe, clean and sanitary condition, and paint all roll-off containers placed out for service within the CITY.

All equipment necessary for the performance of this franchise shall be in good condition and repair.

All vehicles used by BCS STOP 'N GO POTTIES in the removal of demolition and construction debris shall be covered during transport to prevent spillage, blowing, or scattering of refuse onto public streets or rights of way, private property or adjacent property. A standby vehicle shall always be available.

BCS STOP 'N GO POTTIES's vehicles shall at all times be clearly marked with BCS STOP 'N GO POTTIES's name, address, telephone number and if applicable, state permit number, in letters not less than three (3) inches in height.

IX.

COMPLAINTS REGARDING SERVICE/SPILLAGE

BCS STOP 'N GO POTTIES shall handle directly any complaints pertaining to customer service, property damage or personal injury from their roll-off container service. Any such complaints received by CITY shall be forwarded to BCS STOP 'N GO POTTIES within twenty-four (24) hours of their receipt by CITY. BCS STOP 'N GO POTTIES shall respond to all complaints within twenty-four (24) hours of receiving notice of such complaint from CITY, resolve such complaints promptly and shall report to CITY the action taken. Failure by BCS STOP 'N GO POTTIES to respond and report to CITY on action taken within this twenty-four (24) hour period may subject BCS STOP 'N GO POTTIES to a \$25.00 per incident charge from CITY payable with the next payment due CITY under Article V of this Franchise Agreement.

X.

COMPLIANCE WITH LAWS

BCS STOP 'N GO POTTIES shall comply with all applicable federal, state and local laws, policies, rules and regulations, and ordinances with regard to the collection, hauling and disposal of solid waste, including but not limited to the requirement that all persons on the BSWMA landfill premises wear a hard hat. All operations conducted by BCS STOP 'N GO POTTIES shall be conducted without unnecessary noise, disturbance, or commotion.

XI.

UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY

This Franchise Agreement contains all the terms and conditions agreed on by the parties and no other agreements, or otherwise, regarding the subject matter of this franchise shall be of any force or effect.

Both parties agree and understand that nothing in this Franchise Agreement conveys to BCS STOP 'N GO POTTIES an exclusive franchise for the services described in this franchise and that this franchise is nonexclusive.

XII.

OWNERSHIP OF MATERIALS

Sole and exclusive title to all demolition and construction debris collected by BCS STOP 'N GO POTTIES under this Franchise Agreement shall pass to

BCS STOP 'N GO POTTIES when said debris is placed on BCS STOP 'N GO POTTIES's truck.

XIII
CITY SERVICE

BCS STOP 'N GO POTTIES agrees to provide free service to CITY following natural disasters or Acts of God.

XIV.
INTERRUPTION OR TERMINATION OF SERVICE

A. Termination in Service. In the event that BCS STOP 'N GO POTTIES terminates service to any customer within the CITY's limit, BCS STOP 'N GO POTTIES must notify CITY through registered mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute Failure to Perform under this contract and CITY may invoke the provisions of Article XV of this Franchise Agreement (FAILURE TO PERFORM).

XV.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time BCS STOP 'N GO POTTIES shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after hearing as described herein, revoke and cancel the Franchise Agreement by and between the parties and said Franchise Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the Council of said CITY, CITY shall mail notice to BCS STOP 'N GO POTTIES, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Franchise Agreement. The hearing shall be conducted in public before the City Council and BCS STOP 'N GO POTTIES shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Franchise Agreement between the parties at no penalty to the CITY.

**XVI.
INDEMNIFICATION**

In the event CITY is damaged due to the act, omission, mistake, fault or default of BCS STOP 'N GO POTTIES, then BCS STOP 'N GO POTTIES shall indemnify and hold CITY harmless for such damage.

BCS STOP 'N GO POTTIES shall indemnify and hold CITY harmless for any disposal of any solid waste for which the BSWMA landfill is not permitted whether intentional or inadvertent.

BCS STOP 'N GO POTTIES shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by BCS STOP 'N GO POTTIES, its agents, employees, and representatives.

BCS STOP 'N GO POTTIES agrees to and shall indemnify and hold the CITY, its officers, agents and employees, harmless from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind and character, including all expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the services provided and business operated by BCS STOP 'N GO POTTIES under this Franchise Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

**XVII.
INSURANCE**

BCS STOP 'N GO POTTIES shall procure and maintain at its sole cost and expense for the duration of the Franchise Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by BCS STOP 'N GO POTTIES, its agents, representatives, volunteers, employees or subcontractors.

BCS STOP 'N GO POTTIES's insurance coverage shall be primary insurance with respect to the CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the BCS STOP 'N GO POTTIES's insurance and shall not contribute to it.

BCS STOP 'N GO POTTIES shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before BCS STOP 'N GO POTTIES provides services in the CITY.

- A. STANDARD INSURANCE POLICIES REQUIRED**
 - 1. Commercial General Liability Policy**
 - 2. Automobile Liability Policy**
 - 3. Worker's Compensation Policy.**

- B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES**
 - 1. General Liability and Automobile Liability insurance shall be written by a carrier with a B + VII or better rating in accordance with the current Best Key Rating Guide.**
 - 2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.**
 - 3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence bases for property damage only.**
 - 4. Claims Made Policies will not be accepted.**
 - 5. The City of College Station, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.**
 - 6. A Waiver of Subrogation in favor of the City of College Station with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.**
 - 7. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of College Station.**
 - 8. Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.**

- C. COMMERCIAL GENERAL LIABILITY**
 - 1. Minimum Combined Single Limit of \$2,000,000 aggregate with \$1,000,000 per occurrence for Bodily Injury and Property Damage.**
 - 2. Coverage shall be at least as broad as Insurance service's Office form number CG OO OL.**

3. **No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.**

D. AUTOMOBILE LIABILITY

1. **Minimum Combined Single Limit \$1,000,000 combined single limit per occurrence for Bodily Injury Property on any auto.**
2. **The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section on Item 2 of the declarations page.**

E. WORKER'S COMPENSATION

1. **Employer's Liability limits of \$500,000/\$500,000/\$500,000 are required.**
2. **City of College Station shall be named as Alternate Employer on endorsement WC 99 09 OI unless written through TWCARP.**
3. **Texas must appear in Item 3A of the Workers' Compensations coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States NV, ND, OH, WA, WV, WY.**

F. CERTIFICATES OF INSURANCE

1. **Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:**
 - a. **The company is licensed and admitted to do business in the State of Texas**
 - b. **The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas State Board of Insurance or ISO.**
 - c. **Sets forth all endorsements as required above and insurance coverages as previously set forth herein.**
 - d. **Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.**
 - e. **Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.**

XVIII.
ASSIGNMENT

This Franchise Agreement and the rights and obligations contained herein may not be assigned by BCS STOP 'N GO POTTIES without the specific prior written approval of the City Council.

XIX.
SAFETY AND LIABILITY FOR INJURIES TO CITY OR ABUTTING PROPERTY

BCS STOP 'N GO POTTIES shall perform the collection in accordance with the applicable laws, codes, ordinances and regulations of the United States, State of Texas, Brazos County, and City of College Station and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which BCS STOP 'N GO POTTIES is solely responsible. In the carrying on of the services herein provided for, BCS STOP 'N GO POTTIES shall use all proper skill and care, and BCS STOP 'N GO POTTIES shall exercise all due and proper precautions to prevent injury to any property, or person(s).

BCS STOP 'N GO POTTIES assumes responsibility and liability and hereby agrees to indemnify and hold the City of College Station harmless from and against any and all claims, losses, property damage, personal injury or death arising out of or in connection with BCS STOP 'N GO POTTIES's failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

BCS STOP 'N GO POTTIES shall pay for all damages to City property resulting from the operation of its service and shall pay to every owner of property abutting the residential property on which the container is located that is injured by the operation of the franchise all physical damage caused by any act or omission of BCS STOP 'N GO POTTIES or of any of its subcontractors or employees in the operation of the BCS STOP 'N GO POTTIES service.

XX.
AD VALOREM TAXES

BCS STOP 'N GO POTTIES agrees to render all personal property utilized in its solid waste operation services provided to Brazos County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

**XXI.
NOTICES AND PAYMENTS**

All notices and payments required under the terms of this Contract to be given by either party to the other party shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City Manager
City of College Station
P.O. Box 9960
College Station, Texas 77842

Charles Mancuso
President, CCAA, LLC, d/b/a
Stop 'N Go Potties
P. O. Box 5449
Bryan, Texas 77805

All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**XXII.
PENALTY**

Any person, firm or corporation violating any provision of this ordinance shall be fined not exceeding \$2,000.00 for each offense and each and every day said violation continues constitutes a separate offense.

**XXIII.
AMENDMENTS**

It is hereby understood and agreed by the parties to this franchise that no amendment to the terms of this franchise shall be made unless made in writing, approved by both parties, and attached to this Franchise Agreement to become a part hereof.

**XXIV.
SEVERABILITY**

If any section, sentence, clause or paragraph of this Franchise Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Franchise Agreement.

**XXV.
AUTHORIZATION TO EXECUTE**

The parties signing this Franchise Agreement shall provide adequate proof of their authority to execute this Franchise Agreement. This Franchise Agreement shall inure to the benefit and be binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

**XXVI.
TERM OF FRANCHISE.**

The term of this Franchise Agreement shall be for a period of five (5) years beginning on the 1st day of September, 2005.

**XXVII.
ACCEPTANCE OF FRANCHISE**

This grant of franchise and its terms shall be accepted by BCS STOP 'N GO POTTIES by a written instrument, executed and acknowledged, filed with the City Secretary within thirty (30) days after the date of its passage. The written instrument shall state the acceptance of this franchise and its terms. BCS STOP 'N GO POTTIES shall agree in the instrument to abide by the terms and declare that the statements and recitals in it are correct.

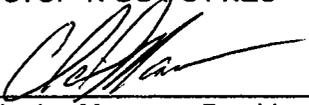
This franchise shall take effect sixty (60) days after the date of its passage by the City Council provided formal acceptance of the terms by BCS STOP 'N GO POTTIES is filed with the City Secretary within the time provided herein.

**XXVIII.
PUBLIC MEETING**

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by TEXAS GOVERNMENT CODE § 551, as amended, and that advance public notice of time, place, and purpose of said meetings was given.

PASSED, ADOPTED and APPROVED by a majority vote of the City Council of the City of College Station on this the _____ day of _____, 2005.

CCAA, LLC, d/b/a
BCS STOP 'N GO POTTIES

BY: 
Charles Mancuso, President

Date: 5/11/05

CITY OF COLLEGE STATION

BY: _____
Ron Silvia, Mayor

Date: _____

ATTEST:

CONNIE HOOKS, City Secretary
Date: _____

APPROVAL:

THOMAS BRYMER, City Manager
Date: _____

JEFF KERSTEN, Finance & Strategic
Planning Director
Date: _____


Carlo A. Robinson
City Attorney
Date: _____

First Consideration and Approval: _____

Second Consideration and Approval: _____

Third Consideration and Approval: _____

Exhibit "A"

SCHEDULE OF RATES

BCS Stop N Go Potties

Rates for a fourteen (14) yard dumpster

\$75.00 plus tipping fee or
\$110.00 minus tipping fee

\$1.00 per day fee after fourteen days on location without disposal