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CARROLL COUNTY, ARKANSAS
WESTERN DISTRICT

**IN THE CIRCUIT COURT OF CARROLL COUNTY, ARKANSAS
CIVIL DIVISION**

STEVEN HEDRICK;
and X-DUMPSTERS,

PLAINTIFF

vs.

CASE CV NO. 2023- 85

CITY OF HOLIDAY ISLAND,

DEFENDANT

COMPLAINT

This civil rights lawsuit seeks to vindicate Plaintiff's rights under the Arkansas Constitution to operate free from protectionist, monopolistic, arbitrary, and irrational government regulation. Plaintiff Steve Hedrick ("Hedrick Plaintiff") simply wants to provide Holiday Island residents reliable and affordable ad-hoc solid waste removal service (not daily trash service) through the use of rentable roll-off dumpster-style bins to Holiday Island residents. Plaintiff Hedrick is unable to do so, however, due to Ordinance 2022-004 ("Ordinance") adopted by the Holiday Island City Council. That Ordinance gives the Carroll County Solid Waste District ("District") a monopoly on the collection and disposal of solid waste in Holiday Island. Plaintiff Hedrick does not operate a business that provides regular trash collection in Holiday Island, which are the only services provided by the District. Instead, Plaintiff Hedrick's company offers *different and supplemental* trash collection services for construction and other temporary waste projects. Thus, the Ordinance harms the people of Holiday Island by arbitrarily preventing the people from contracting with a third party for *supplemental* solid waste services and destroys economic opportunities and job creation by preventing entrepreneurs like Plaintiff Hedrick from offering necessary services to the people of Holiday Island. The monopoly created by the Ordinance violates the Arkansas Constitution's prohibition on monopolies and guarantees of due process.

Therefore, Plaintiffs by and through their undersigned counsel, hereby file this Complaint and sue the City of Holiday Island as follows:

8/23 / PA | PD | AP | SO

I. THE PARTIES

1. Plaintiff Steven Hedrick is an Arkansas citizen and sole owner of X-Dumpsters.
2. Plaintiff X-Dumpsters is an Arkansas business located in, and conducting business in, Holiday Island and Carroll County.
3. Defendant City of Holiday Island (“Holiday Island”) is a municipal corporation incorporated under the laws of the State of Arkansas and located in Carroll County.

II. JURISDICTION AND VENUE

4. At all times pertinent to this action, the acts complained of have occurred in, or are occurring in, Carroll County, Arkansas.
5. This action arises under Article II, Section 19 (Perpetuities and Monopolies), Section 8 (Due Process), and Section 2 (Freedom and Independence) of the Arkansas Constitution.
6. This Court has jurisdiction over declaratory judgment actions pursuant to Arkansas Declaratory Judgment Act, Arkansas Code Annotated §§ 16-111-101, -102, and -112.
7. Venue is proper in this circuit, as the majority of the parties are located in this circuit and the dispute arose in this circuit.

III. STATEMENT OF FACTS

8. Plaintiff Steven Hedrick started X-Dumpsters in 2020 as a retirement job after spending most of his life working in the construction industry.
9. In 2020, he applied for and received a license under the Solid Waste Hauler Licensing Program of the Carroll County Solid Waste District to collect and dispose of solid waste in Carroll County.
10. Plaintiff Hedrick has continued to apply for the renewal of this license as required by law.
11. His current permit (number XD-2023) was issued in March 2023.
12. Plaintiff Hedrick currently maintains his permit, is in good standing, and continues to dispose of solid waste in Carroll County outside of Holiday Island, in accordance with that permit.

13. Plaintiff Hedrick delivers portable dumpsters to job sites so individuals at those sites can dispose of construction and other waste.

14. The dumpsters the Plaintiffs provide are standard dumpsters used for construction waste. Photo attached as Exhibit 1.

15. Individuals rent the dumpsters from Plaintiffs who will then deliver a dumpster to the individual's residence to be filled and picked up within 10-days unless otherwise agreed upon. Contract attached as Exhibit 2.

16. Plaintiffs' contract lists out the materials that are *not* allowed to be disposed of in his dumpsters in accordance with the laws of Arkansas and the Carroll County Solid Waste District.

17. Plaintiff Hedrick started his business with the desire to service many of those in Carroll County who live in hard-to-reach places where other trash-hauling businesses had a hard time servicing.

18. To raise capital to start his business, Plaintiff Hedrick sold some personal possessions, cleaned out his savings, and bought a roll-off dumpster to go into business. He bought one dumpster at a time to avoid going into debt.

19. Plaintiff Hedrick's business grew even during the pandemic, and he recently purchased his seventh dumpster since he began this business in 2020.

20. Plaintiff Hedrick's business consists of offering pick-up services to residents to remove items that are too big for weekly trash services or for residents who are completing a project on their property where standard weekly service is insufficient.

21. Plaintiff Hedrick's ability to continue operating and growing his business has been impaired due to the recent enactment of Ordinance 2022-004.

The Ordinance

22. Ordinance 2022-004 was adopted in April 2022 by the Holiday Island City Council.

23. Ordinance 2022-004 requires all residents and businesses within the city to contract with a selected entity for the collection of solid waste in Holiday Island. Ordinance attached as Exhibit 3.

24. Ordinance 2022-004 authorizes the City Council to select “which licensed Contractor will be authorized to operate [i.e., offer trash-hauling services] in the City of Holiday Island.” *Id.* at 1.

25. Under Ordinance 2022-004 the City Council has “the right to award an *exclusive* franchise” for the collection of solid waste (emphasis added). *Id.* at 2.

26. Ordinance 2022-004 provides that “[t]he collection of Solid Waste by anyone other than the approved Contractor or Contractors is prohibited.” *Id.* at 1.

27. Ordinance 2022-004 defines “Solid Waste” as “all putrescible and non-putrescible waste in solid or semisolid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, or street refuse, but excluding yard waste, extraordinary materials, [and] hazardous materials, as defined by the Contractor.” *Id.* at 3.

28. Ordinance 2022-004 defines “Yard Waste” as “grass clippings, mulch, brush, tree limbs, leaves, sticks, or any other item derived from a once-living tree or plant species.” *Id.*

29. Ordinance 2022-004 defines “Extraordinary Materials” as “hazardous wastes, body wastes, dead animals, abandoned vehicles, vehicle parts, large equipment and parts thereof.” *Id.*

30. Ordinance 2022-004 defines “Hazardous Material” as “wastes that are hazardous by reason of their pathological, explosive, radiological or toxic characteristics, or by virtue of their being defined as hazardous by any state or federal law or regulation.” *Id.*

31. Ordinance 2022-004 defines “Excluded Solid Waste” as including “but ... not limited to, yard waste, medical waste, construction and demolition waste (except in roll-off containers provided by CCSW), large bulky items, appliances, batteries, paint, items containing an engine or compressor, items containing CFCs or PCBs (such as white goods), and any radioactive, volatile, flammable, explosive, toxic

or hazardous substance or material, including any substance listed or characterized as toxic or hazardous by any applicable federal, state, or local law.” *Id.*

32. The City Council approved Ordinance 2022-004 on April 19, 2022, with compliance mandated by September 1, 2022. *Id.* at 7–8.

Statements of the Mayor

33. The Mayor of Holiday Island, Dan Kees, announced the passage of Ordinance 2022-004 in an April 20, 2022 post on the City’s website. ¹

34. In the April 20, 2022, post Mayor Kees explained that the selected contractor was the Carroll County Solid Waste District, and that all residents and businesses “that have water utilities provided by the Holiday Island Suburban Improvement District must contract for trash pick-up with” the Carroll County Solid Waste District.

35. Mayor Kees further explained that among the motivating factors behind Ordinance 2022-004 were the illegal dumping of trash, the problem of people storing bags of trash on their property, wear and tear on the roads caused by having a single day for trash collection, and compliance with (unspecified) state laws.

36. Mayor Kees released a second statement on September 23, 2022, noting the end of the transition period of solid waste collection, and accusing individuals who opposed Ordinance 2022-004 of “being ‘the resistance’ [which] does not make them good community members.”²

Letters Received by Plaintiff Interpreting the Act.

¹ Mayor Dan Kees, *Solid Waste Collection*, Mayor’s Messages (Apr. 20, 2022), <https://www.cityofholidayisland.com/post/solid-waste-collection>.

² Mayor Dan Kees, *Update on Zoning Ordinance, Sheriff’s Deputy Contract, Code Enforcement, & Trash Service Transition*, Mayor’s Message (Sept. 23, 2022), <https://www.cityofholidayisland.com/post/update-on-zoning-ordinance-sheriff-s-deputy-contract-code-enforcement-trash-service-transition>.

37. Initially, Plaintiff Hedrick did not believe that the service provided by X-Dumpsters fell within Ordinance 2022-004.

38. It was Plaintiff Hedrick's understanding that Ordinance 2022-44 only applied to regularly-scheduled trash collection services, not the ad-hoc or temporary trash collection services that Plaintiff Hedrick's company provides.

39. On April 27, 2022, Plaintiff Hedrick received a letter from Mayor Kees informing him of the passage of Ordinance 2022-004, identifying him as an approved solid waste hauler in Carroll County, and informing him that the Carroll County Solid Waste District was now the sole service provider for the solid waste in Holiday Island. Letter attached as Exhibit 4.

40. The April 27, 2022, letter indicated that Plaintiff Hedrick could no longer provide his services to people in Holiday Island as a result of Ordinance 2022-004.

41. On November 8, 2022, Plaintiff Hedrick received a letter from Aaron Hoyt, Holiday Island's code enforcement officer, asserting that on October 26, 2022, Plaintiffs had a roll-off dumpster at a residence in Holiday Island, along with reports of containers at other locations, and explaining that because X-Dumpsters is not an approved contractor for collecting or hauling solid waste in Holiday Island, Plaintiffs must immediately discontinue placing additional containers in the city limits or he would receive a citation. Letter attached as Exhibit 5.

42. On November 17, 2022, Tim McKinney, the Carroll County Solid Waste District Chairman, sent a letter to Plaintiff Hedrick informing him that due to violations of Holiday Island's Solid Waste Ordinance, his license to operate in Carroll County would be suspended if he did not immediately cease operating in Holiday Island. Letter attached as Exhibit 6.

43. The letters from Mr. Hoyt and Mr. McKinney asserted that the presence of his dumpsters on property not his own was sufficient to violate the Ordinance.

44. Plaintiff Hedrick is informed and believes and on that basis alleges that the Ordinance forbids him from engaging in *any* trash removal services in Holiday Island, including services that do not supplant the required scheduled trash collection but merely supplements that service.

45. As a result of the letters from Mr. Hoyt and Mr. McKinney, Plaintiff Hedrick ceased his operations in Holiday Island.

46. Plaintiff Hedrick's business and residence are still located in Holiday Island.

47. Plaintiff Hedrick has been forced to turn down numerous jobs in Holiday Island as a consequence of threats of enforcement of the Ordinance, costing him business opportunities and harming his ability to run his business.

48. Plaintiff Hedrick continues to serve residents in other areas of Carroll County and is still licensed by the Carroll County Solid Waste District to do so.

Harm to Plaintiffs Steven Hedrick and X-Dumpsters

49. But for the exclusivity provisions described above, Plaintiffs would currently be renting roll-off dumpsters to residents of Holiday Island just as they did before the Ordinance and continue to do in other areas of Carroll County.

50. If the exclusivity provisions of Ordinance 2022-004 were rescinded or invalidated, Plaintiffs would immediately begin renting roll-off dumpsters to the residents of Holiday Island as they did before the adoption of the Ordinance.

51. Plaintiffs continue to suffer harm each day the exclusivity provisions of Ordinance 2022-004 remain in effect because they cannot engage in business in Holiday Island as a result of those provisions.

Harm to the Citizens of Holiday Island

52. The exclusivity provisions of Ordinance 2022-004 create an unnecessary protectionist barrier to competition by forbidding any other entity from offering solid waste disposal services outside of regularly scheduled trash collection.

53. The exclusivity provisions of Ordinance 2022-004 prevent consumers from being able to use a solid waste disposal business other than the Carroll County Solid Waste District for the collection of their solid waste above and beyond the regularly scheduled trash collection.

54. The exclusivity provisions of Ordinance 2022-004 prevent individuals and businesses from being able to operate in Holiday Island and restrict innovation in the provision of trash collection services.

55. The exclusivity provisions of Ordinance 2022-004 restrict the right of individuals to earn an honest living.

**There is No Legitimate Basis for the *Exclusive Monopoly*
Granted to Carroll County Waste Management District**

56. The exclusivity provisions of Ordinance 2022-004 prohibiting any other entities from providing supplemental solid waste collection services in Holiday Island do not advance any legitimate government interest.

57. Upon information and belief, Defendant Holiday Island possesses no evidence that the exclusivity provisions prohibiting any other entities from providing supplemental solid waste collection services in Holiday Island advances any government interest.

58. The exclusivity provisions that act as a blanket prohibition on any other entity providing supplemental solid waste collection services in Holiday Island do not promote or protect public health, safety, welfare, or general prosperity.

59. On information and belief, Defendant Holiday Island has no evidence that the exclusivity provisions promote or protect public health, safety, welfare, or general prosperity.

60. In threatening to apply the exclusivity provisions of Ordinance 2022-004, Defendant Holiday Island gives the Carroll County Solid Waste District a special advantage and protects the District against legitimate economic competition at the public's expense, without any rational connection to the public health, safety, welfare, or general prosperity.

Declaratory and Injunctive Relief Allegations

61. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend that Ordinance 2022-004 violates the anti-monopoly clause and the due process clause of the Arkansas Constitution. Plaintiffs are informed and believe, and on that basis allege, that Defendants hold the Ordinance to be lawful in all respects.

62. Accordingly, declaratory relief is appropriate.

63. Due to the Ordinance, Plaintiffs have been compelled to turn down multiple business opportunities in Holiday Island on a weekly basis. If not enjoined by this Court, Defendants and their agents, representatives, and employees will continue the enforcement of the Ordinance which violates the Arkansas Constitution's anti-monopoly provision and violated Plaintiff Hedrick's right to earn an honest living as protected by the Arkansas Constitution's due process clause. Thus, the ordinance is causing Plaintiff Hedrick injury in the form of harm to his business.

64. Plaintiffs have no plain, speedy, and adequate remedy at law for these injuries.

65. Accordingly, injunctive relief is appropriate.

**COUNT I
Violation of the Arkansas Constitution's Prohibition Against Monopolies**

66. Plaintiffs reassert and reallege paragraphs 1 through 65 as if fully stated herein.

67. Article II, Section 19 of the Arkansas Constitution declares that "monopolies are contrary to the genius of a republic, and shall not be allowed."

68. Defendant Holiday Island, through Ordinance 2022-004, arbitrarily grants an exclusive monopoly to one entity, the Carroll County Solid Waste District, for the collection of solid waste.

69. Defendant Holiday Island, through Ordinance 2022-004, forbids any business other than those specified in Ordinance 2022-004, the right to contract with Holiday Island residents to serve their trash-hauling needs.

70. The Ordinance shields the Carroll County Solid Waste District from competition by denying X-Dumpsters the opportunity to operate in Holiday Island.

71. Because the Ordinance violates Article II, Section 19 of the Arkansas Constitution, Plaintiffs seek declaratory relief regarding the validity of Ordinance 2022-004 and the status of Plaintiffs' rights under Article II, Section 19 of the Arkansas Constitution.

72. Defendant's actions have caused and are causing irreparable harm to the Plaintiffs.

73. There is no compelling, substantial, important, or even rational reason for the Defendant to prevent Plaintiffs from operating a roll-off dumpster business that provides supplemental trash haul services in Holiday Island, nor is such a prohibition necessary to achieve, narrowly tailored to, or rationally related to any compelling, substantial, or important government interest.

74. Unless the City of Holiday Island is permanently enjoined from committing the above-described violations of the Arkansas Constitution, Plaintiffs will continue to suffer ongoing irreparable harm.

COUNT II
Violation of the Arkansas Constitution's Guarantee of Due Process

75. Plaintiffs reassert and reallege paragraphs 1 through 74 as if fully stated herein.

76. Article II, Section 8 of the Arkansas Constitution guarantees due process of law to the Plaintiffs.

77. The rights protected by Article II, Section 8's due process clause include the rights to liberty, to "acquir[e], possess[]and protect[] property," and to "pursu[e] their own happiness." *See also*, Article II, Section 2.

78. Ordinance 2022-004 violates these rights because it forbids Plaintiff Hedrick from engaging in a lawful occupation, and places unusual and unnecessary restrictions upon his right to earn a living for reasons unrelated to his fitness or capacity to practice his occupation and unrelated to the protection of public health, safety, welfare, or general prosperity.

79. Because Ordinance 2022-004 violates Article II, Sections 2 and 8 of the Arkansas Constitution, Plaintiffs seek declaratory relief regarding the validity of Ordinance 2022-004 and the status of Plaintiffs' rights under Article II, Sections 2 and 8 of the Arkansas Constitution.

80. There is no compelling, substantial, important, or even rational reason for the Defendant to prevent the Plaintiffs from operating a roll-off dumpster business that provides supplemental trash haul services to residents of Holiday Island, nor is such a prohibition necessary to achieve, narrowly tailored to, or rationally related to any compelling, substantial, or important government interest.

81. Defendant Holiday Island's violation of Article II, Sections 2 and 8 of the Arkansas Constitution have caused irreparable harm to the Plaintiffs.

82. Unless Defendant Holiday Island is permanently enjoined from committing the above-described violations of the Arkansas Constitution, the Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

COUNT III
Violation of the Arkansas Constitution's Guarantee of the Fundamental of Life, Liberty, and Property

83. Plaintiffs reassert and reallege paragraphs 1 through 82 as if fully stated herein.

84. Article II, Section 21 of the Arkansas Constitution declares that "No person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner

destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land.”

85. Ordinance 2022-004 violates these protections because it deprives Plaintiff Hedrick of liberties and property by prohibiting him from providing roll off dumpster services to the residents of Holiday Island, a prohibition that is unrelated to Plaintiff’s fitness or capacity to practice his occupation and unrelated to the protection of public health, safety, welfare, or general prosperity.

86. Because Ordinance 2022-004 violates Article II, Section 21 of the Constitution, Plaintiffs seek declaratory relief regarding the validity of Ordinance 2022-004 and the status of Plaintiffs’ rights under Article II, Section 21 of the Arkansas Constitution.

87. There is no compelling, substantial, important, or even rational reason for the Defendant to prevent the Plaintiffs from operating a roll-off dumpster business that provides supplemental trash haul services to residents of Holiday Island, nor is such a prohibition necessary to achieve, narrowly tailored to, or rationally related to any compelling, substantial, or important government interest.

88. Defendant Holiday Island’s violation of Article II, Section 21 of the Arkansas Constitution have caused irreparable harm to the Plaintiffs.

89. Unless Defendant Holiday Island is permanently enjoined from committing the above-described violations of the Arkansas Constitution, the Plaintiffs and the general public will continue to suffer ongoing irreparable harm.

IV. RELIEF SOUGHT

WHEREFORE, Plaintiffs Steven Hedrick and X-Dumpsters request that this Court:

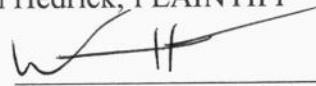
A. Enter a declaratory judgment that Ordinance 2022-004 violates Article II, Sections 21, 19, 8 and 2, of the Arkansas Constitution;

B. Enter an order permanently enjoining Defendant Holiday Island from enforcing the Ordinance to prevent Plaintiffs from offering supplemental solid waste services in Holiday Island;

- C. Award Plaintiffs nominal damages in the amount of one dollar;
- D. Award Plaintiffs their reasonable costs and attorney fees; and
- E. Award Plaintiffs any other relief as is appropriate under the circumstances.

Steven Hedrick, PLAINTIFF

By:



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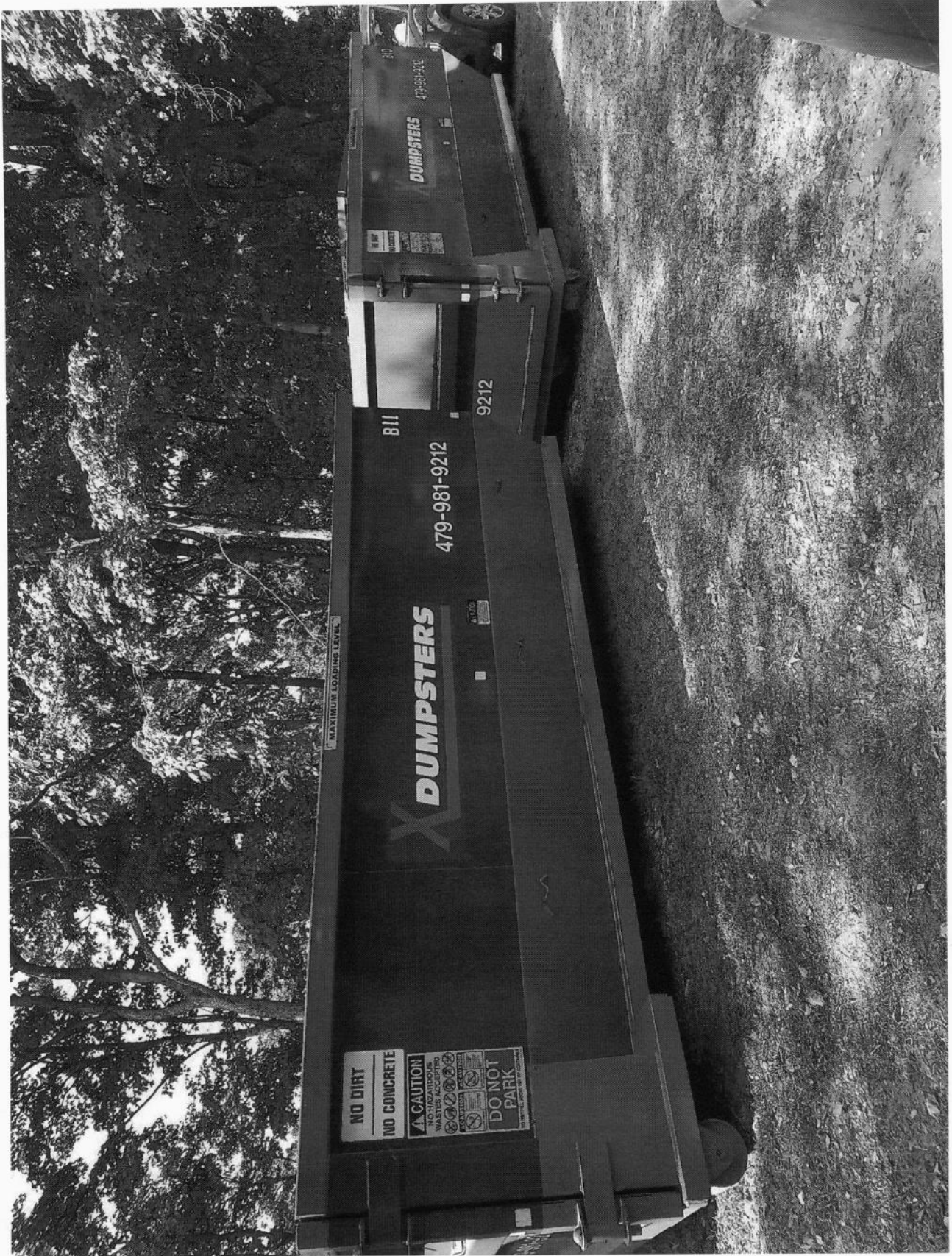
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CARROLL COUNTY, ARKANSAS
WESTERN DISTRICT

EXHIBIT 1

8/23 PA | PD | AP | SO



MAXIMUM LOADING LEVEL

B11

479-981-9212

DUMPSTERS

9212

NO DIRT
NO CONCRETE

CAUTION
NO HAZARDOUS
WASTES ACCEPTED
NO OIL
NO PAINT
NO FLAMMABLES
NO TOXICS
DO NOT
PARK
IN THE FRONT OF TRUCK

DUMPSTERS

479-981-9212



EXHIBIT 2

X Dumpsters Rental Terms & Conditions

- 10-yard dumpster, 10-days, up to 4,000 lbs. = \$400*
- 15-yard dumpster, 10-days, up to 6,000 lbs. = \$500*

Customer will accept full responsibility for contents of dumpster and agree to additional charges if the dumpster contains unacceptable materials or is over the allowed weight limit for the rental. After the dumpster has been removed from the property, any outstanding balance will be charged to the customer's credit/debit card. If there is no card on record, any balance due will be made by cash or check.

The following items are unacceptable for pickup and will incur an additional charge equivalent to fees imposed by the landfill:

- | | | | |
|-------------|-----------------------------|------------------------------|--|
| • Asbestos | • Solvents of any kind | • Auto parts | • Tires / Computer |
| • Asphalt | • Oil | • Backhoes | • Excavators |
| • Stone | • Pallets | • Highly Flammable | • Yard debris (grass, leaves, sticks, stump, etc.) |
| • Sack | • Free or smoking materials | • Explosives | |
| • Silt | • Batteries | • Bio-hazardous | |
| • Tires | • Herbicides and pesticides | • Liquid wastes | |
| • Paint | | • Iron | |
| • Chemicals | • Acetone | • Tank or hazardous material | |

*Overweight loads (in excess of the included 4,000 lbs.) will be charged an additional \$1 per lb. in excess of 4,000 lbs., and any unacceptable content found in the dumpster will incur a trip fee to return the unacceptable contents to the pickup site.

2) Do not overload dumpster; load to fill only. Any overweight citations or legal judgments against X Dumpsters' assets while hauling from the customer's job site will be paid by the customer, and/or dumpster may not be loaded for safety reasons. Customer is responsible for unloading excess debris at their expense.

3) Customer is responsible for having a clear and accessible path for servicing containers. If dumpster is inaccessible or not ready for pickup, a trip fee will apply. Trip fees necessary for us to change a date the trip fee includes, but are not limited to: overloaded containers, too heavy power lines or tree branches, cars or any items or materials blocking access to pick-up or deliver a dumpster, material heaped too high or hanging over the edge of the dumpster, dumpsters that are too heavy to be removed, locked gates or fences, inaccessible driveways or parking lots for any reason(s) out of our control. The trip fee can range anywhere from \$100 - \$200. This fee covers driver's fuel, toll, and time for re-routing the driver's planned schedule.

4) X Dumpsters charges a \$25 fee to cancel your order, as long as the order is cancelled by 4:00pm CST on the business day prior to delivery. When we refund your credit card, it will be for the amount we charged, minus \$25. However, we will credit the \$25 fee to your next order. Orders cancelled after 4:00pm on the business day prior to the delivery will be charged a \$250 trip fee. This is due to the fact that our scheduling has already been completed and must be adjusted for the last-minute change.

5) Dumpsters are not to be moved by customers. X Dumpsters will move the dumpster upon request, however, a trip fee will apply. Customer is responsible for any damage done to the dumpster while on their job site. Fees for damage will be charged back to customer.

6) If it rains, snows, sheets, hails, etc. while the dumpster is in your possession, please understand that X Dumpsters has no control over these events. This may affect the weight of your dumpster. We do not have, in our possession, or at our disposal, any tools or technology to prevent rain, snow, etc. from entering your dumpster. The customer has the option of placing a tarp, sheet of plywood, or any other type of barrier over the dumpster to prevent the entry of rain or snow. Additionally, the dumpsters are not water-tight and will not hold water beyond the perimeter of concrete in the dumpster, and/or a minimal pooling on the floor of the dumpster. Please understand that our company has to pay the landfill for the disposal of the contents of your dumpster. We are charged based on the weight, and if a dumpster is heavier based on water retention, we still have to pay the landfill fee. No discounts or rebates will be given if rain affects the weight of your dumpster.

7) Customer will accept full responsibility for any damage to their driveway, lawn, etc., which results from delivery and/or pick-up of the dumpster under the direction of the customer or individuals working for the customer.

8) Customer is responsible for securing any permits required for placement of the dumpster, and is responsible for any fines, impounds, or costs incurred from cities, counties, or city jurisdictions while dumpster is on the customer's job site, for failure to secure such permits.

9) Customer understands the rental time for the dumpster and that any time after the rental period has expired (10-day rental) X Dumpsters may remove the dumpster from the job site. Any days exceeding the 10 days will cost \$20 per day and the dumpster is picked up. All dumpsters must be paid for upon or prior to delivery.

10) Customer understands that in the event customer fails to pay in full all amounts due, X Dumpsters may refer such matters to an attorney or collection agency. Customer agrees to pay, in addition to any amount due, all costs incurred by X Dumpsters as a result of this action, including court fees, collection fees, late fees and \$20 fee for returned checks. A mechanic's lien will be placed on the property once the account goes into collection status.

11) Customer understands that it is their responsibility to contact X Dumpsters when the dumpster is ready for pick-up. Rental time stops once the customer has notified X Dumpsters that the dumpster is ready for removal.

I, _____, have read and understand the above terms and conditions of this rental agreement.

Customer Name: _____
 Customer Signature: _____

Box _____
 Invoice _____
 Date: _____

EXHIBIT 3

ORDINANCE NO. 2022-004

CITY OF HOLIDAY ISLAND, CARROLL COUNTY, ARKANSAS

AN ORDINANCE PROVIDING FOR THE REGULATION OF SOLID WASTE AND RECYCLING COLLECTION AND DISPOSAL WITHIN THE CORPORATE LIMITS OF THE CITY OF HOLIDAY ISLAND; DECLARING AN EMERGENCY AND PRESCRIBING OTHER MATTERS RELATED THERETO.

WHEREAS, Ark. Code Ann. § 8-6-201 *et seq.* requires every municipality to have a system in place to provide for the collection and disposal of solid waste; and

WHEREAS, the City Council of the City of Holiday Island finds it necessary to adopt reasonable regulations to constitute an appropriate system of collection and disposal of solid waste and recycling in order to protect the public peace, health, safety, and general welfare of the citizens of the City of Holiday Island.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOLIDAY ISLAND, ARKANSAS:

Section 1. Regulations Created, Contractor, Franchise Fee. Ark. Code Ann. § 8-6-201 *et seq.* requires every municipality to have a system in place to provide for the collection of and disposal of solid waste. The City Council shall be authorized to determine which licensed Contractor will be authorized to operate in the City of Holiday Island. The collection of Solid Waste by anyone other than the approved Contractor or Contractors is prohibited. Any Solid Waste service provider operating within in the municipal limits of the City of Holiday Island must have a copy of a current license issued by the City and on file with the office of the City Recorder. The Contractor shall have the right and privilege to operate collection vehicles and equipment on such streets, public ways, rights-of-ways, or easements of the City.

Any Unit serviced by a Holiday Island Suburban Improvement District water meter is assumed to be inhabited, and as such, generating solid waste. Solid waste collection by a City approved Contractor is mandatory for any property with a Holiday Island Suburban Improvement District water meter installed. The fact that legal title to property is in the name of any person, business or other entity, constitutes prima facie proof that the person, business or other entity is responsible for the payment of charges provided for in these regulations. The fact that charges incurred were for services provided to a tenant, agent or other person using the title holder's property shall not be grounds for avoidance of penalties under this ordinance. Any person refusing or failing to pay any charge assessed pursuant to the provisions of these regulations, including both

the failure to pay for Residential Solid Waste and Recycling collection and the failure to pay for the collection of Commercial Waste, shall be guilty of a violation of these regulations and punished as provided by these regulations.

The City Council reserves the right to award an exclusive franchise and to impose a Franchise Fee, which shall be set not to exceed four percent (4%) of the rate charged, for the privilege of doing business in the City pursuant to such contract, to a single Residential and/or Commercial Contractor at some future date. In such a case, no other person or entity except such exclusive contractor shall be permitted to convey or transport Solid Waste or recycling for Regular Units within the City. Such Franchise Fee shall be payable according to terms set forth in an agreement between the Contractor and the City.

Section 2. Definitions. The following words, terms and phrases, when used in this regulation, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Approved Container” means a 96-gallon container (or other approved size) provided by the solid waste Contractor and a 65-gallon container (or other approved size) provided by the Contractor with wheels and a lid for the collection of acceptable Solid Waste or recycling. If bag service is selected by the customer, the customer must provide their own container that does not exceed 35 gallons in volume capacity nor 50 pounds in weight when full, with a lid.

“Bulky Waste” means waste to include furniture, appliances, metal items, larger items not normally collected from the weekly residential collection programs. Items not considered Bulky Waste include construction materials, tires, paint, hazardous waste, pesticides, appliances containing Freon, and any item specified as Excluded Waste.

“City” means the City of Holiday Island, Arkansas.

“Commercial Waste” means Solid Waste generated by a commercial or industrial establishment or a multiple residential unit, business, or combined units of businesses (including B&B's, VRBO's and other forms of short term rentals) that streamline waste into consolidated containers that typically generate more than two (2) cubic yards of Solid Waste per week, or an Agricultural Customer, meaning any customer owning ten (10) acres or more of land for agricultural use who chooses not to be a Residential Waste customer.

“Contractor” means the sanitation company approved by the City for Residential and/or Commercial Solid Waste and/or Recycling services. "Approved Subcontractor" shall mean an agent or subcontractor of Contractor specifically authorized and approved by the City to collect Solid Waste and Recycling Materials in the City.

“Dumpster” means a large trash receptacle with a lid designed to be hoisted and emptied into a truck.

“Dumpster Corral” may be required when a waste dumpster is located outside any residential building as necessary for the normal conduct of a business or other activity, it shall be considered an allowable accessory use. All such waste dumpsters shall be located in a manner that the dumpster and its contents cannot be seen from the frontage roadway or enclosed by a dumpster corral of opaque screening constructed of

solid walls or fences of masonry, wood frame or metal. The dumpster corral must be constructed and placed to allow access for Contractor Collection equipment. Construction of the dumpster corral requires a building permit and shall not be within the setback requirements for the lot.

“Excluded Solid Waste” includes, but is not limited to, yard waste, medical waste, construction and demolition waste (except in roll-off containers provided by CCSW), large bulky items, appliances, batteries, paint, items containing an engine or compressor, items containing CFCs or PCBs (such as white goods), and any radioactive, volatile, flammable, explosive, toxic or hazardous substance or material, including any substance listed or characterized as toxic or hazardous by any applicable federal, state, or local law.

“Extraordinary Materials” means hazardous wastes, body wastes, dead animals, abandoned vehicles, vehicle parts, large equipment and parts thereof.

“Franchise Fee” means up to 4% of the total collected receipts from the collection of Residential or Commercial Waste in the City which is payable to the City as provided by the agreement between the Contractor and the City for the collection of Residential Solid Waste and Commercial Solid Waste within the City.

“Garbage” means the same as Solid Waste.

“Hazardous Materials” means wastes that are hazardous by reason of their pathological, explosive, radiological or toxic characteristics, or by virtue of their being defined as hazardous by any state or federal law or regulation.

“Non-Recyclable Materials” means Solid Waste that will not be collected by the Contractor for sale in a spot or future market for processing and use or reuse including, but not limited to, light bulbs, porcelain, plastic bags, plastic containers with symbols #3 through #7 and such items as indicated from time to time as Non-Recyclable Materials by the Contractor.

“Residential Unit” or **“Residential”** means a dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four (4) families or units who reside in the same dwelling. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto.

“Residential Waste” means Solid Waste generated by residences as well as businesses that generate less than two (2) cubic yards of Solid Waste per week.

“Solid Waste” means all putrescible and non-putrescible waste in solid or semisolid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, or street refuse, but excluding yard waste, extraordinary materials, hazardous materials, as defined by the Contractor.

“Trash” means the same as and shall be defined as Solid Waste.

“Unit” means residence, business or industry within the City that generates solid waste and other materials that must be disposed.

“Yard Waste” means grass clippings, mulch, brush, tree limbs, leaves, sticks, or any other item derived from a once-living tree or plant species.

Section 3. Solid Waste Fees. Fee schedules for Solid Waste collection are to be as negotiated directly between the Contractor and the City.

Section 4. Payment of Fees. The Contractor shall be responsible for collection of all fees.

Section 5. Disposition of Funds. All fines assessed and paid under the provisions of these regulations, except those portions required to be paid out for other purposes, shall be deposited in the City general fund.

Section 6. Containers.

A. Residential. All residential units shall set out Solid Waste and Recycling for collection by a Contractor in Approved Containers. All loose waste material is to be properly bagged and placed in Approved Containers in order to facilitate the collection of materials without items being disburbed by blowing wind or scattered by animals. Unless special arrangements are made, trash is to be placed at the end of the drive after 5:00 p.m. on the day before collection and trash containers are to be retrieved and stored no later than 10:00 p.m. on collection day. This requirement applies to all trash items collected. Violation of such requirement will result in one (1) warning notice given by trash collector. After one (1) notice is given to a resident, subsequent violations will be referred to the City of Holiday Island Code Enforcement Officer and the resident will be subject to being fined for littering.

B. Commercial. Solid Waste generated by a commercial or industrial establishment or a multiple residential unit, business, or combined units of businesses (including B&B's, VRBO's and other forms of short-term rentals) must utilize a dumpster provided by the Contractor. The business entity responsible for streamlining multiple sources of waste into one dumpster is responsible for maintaining with the Contractor a list of active water meter locations being serviced. Overflow of the dumpster is expressly prohibited and no other materials (paint cans, electronics, cardboard, etc.) are to be placed or stored in or around the dumpster.

C. Dumpster Corral. If a dumpster is to be kept in a residential area it must be kept in an enclosure (dumpster corral) or otherwise out of view of passing traffic and cannot emit any offensive odor. Dumpsters must be kept closed such that rainwater is prevented from entering the dumpster. Leaking of any liquid from the dumpster to the ground is expressly prohibited.

Any commercial enterprise that as part of their business streamlines solid wastes from multiple locations into a dumpster must register with the City of Holiday Island and identify the locations being serviced.

D. Part Time Residents. Part time residents who will not be at their residence on trash collection day can utilize a dumpster provided by the City. Trash being put in these dumpsters must contain a bag tag purchased from the City. The City will advise as to the location of the dumpsters when purchasing the bag tags. The City will maintain a record of bag tag purchases by water meter location.

E. **General Contractors.** The general contractor of any construction site shall provide adequate trash containment facilities for the construction site. All such trash containment facilities must be able to hold a minimum of five (5) cubic yards of refuse and must contain no openings of greater than three (3) inches. The trash containment facility must be in place no later than at the time of the first required inspection of the site by the City or its authorized representative. The trash containment facility shall be emptied on a regular basis. If the City received a complaint regarding a trash containment facility at a construction site, the City or its authorized representative shall notify the general contractor in writing regarding the complaint and shall request that efforts be undertaken by the general contractor to remedy the situation. If subsequent complaints are received by the City pertaining to the same construction site, the City or its authorized representative shall provide the general contractor with written notice that the general contractor has three (3) working days in which to remedy the situation. If the general contractor does not remedy the situation within that time, it shall be considered a violation of this code, and shall be punishable pursuant to these regulations. In addition, the City or its authorized representative shall cease all inspections until the construction site complies with this section.

Section 7. Burning and Dumping of Solid Waste. It shall be a violation of these regulations for such owner, occupant, tenant or lessee of any dwelling place, Unit or business in the City, or any other person, to dispose of Solid Waste or Recycling Waste, construction waste and industrial waste, by dumping, burning or discharging said waste on any property within the City except through the use of approved services as provided for in these regulations or specifically authorized by state law or authority. If a person is found to have disposed of Solid Waste in a manner not allowed by ordinance, he shall be guilty of a violation of these regulations and punished as provided for in these regulations.

Section 8. Collection. Collection schedules will be published by the hauler. Notifications of changes to the schedule due to weather, holidays or any other interruption will be made by the hauler.

Section 9. Penalties and Fines. Any individual found to be disposing of Solid Waste in a manner not permitted by this code or specifically authorized by state law shall be guilty of a misdemeanor violation and subject to a fine of no greater than the sum of \$500 for any one specified offense or violation, double that sum for each repetition of the offense or violation. If the prohibited offense is, by its nature, continuous or ongoing in respect to time, the fine or penalty for allowing the continuance thereof, in violation of these regulations or ordinance, shall not exceed \$250 for each day that it may be unlawfully continued.

Section 10. Inspectors. The City Council shall have power to employ one (1) or more Code Enforcement Officers to insure a proper enforcement of the provisions of this ordinance.

Section 11. Enforcement. For the purpose of enforcing the provisions of this ordinance and other ordinances pertaining to the health and sanitation of the inhabitants of the City, the health officers and employees of Carroll County, Arkansas are hereby granted full power and authority to act within said City and to perform all and singular the duties of such health units on behalf of the City which they have under the laws of the State of Arkansas and the rules and regulations of the State Board of Health of the State of Arkansas.

Section 12. Bulky Item Collection.

A. The following regulations governing the collection and disposal of Bulky Waste are hereby adopted as follows:

1. Bulky Waste Collection Service. A special service shall be provided for the collection and disposal of major appliances, furniture, and other bulky waste in accordance with the following requirements:

a. Residential customers are allowed two (2) curbside bulky item collections per year. Bulky item collection is limited to three (3) items per pickup. Apartment complexes and other multi-family housing units consisting of more than four (4) units shall not be eligible.

b. All residential customers will be advised by the Contractor of the collection dates and times.

c. Bulky Waste shall not be placed curbside until the day prior to the scheduled collection, but not later than 7:00 a.m. the day of collection. All items must be placed within five (5) feet of a City street and out of the street/roadway. All item(s) must be accessible to the collection vehicle and shall not be obstructed by vehicles, mailboxes, trees/limbs, or any other physical barrier. There must be at least twenty (20) feet overhead clearance above the items to be collected.

d. All items must be separated and placed as instructed. Solid Waste items presently collected by the Contractor shall not be mixed with bulky items. Should Solid Waste be mixed in with Bulky Waste, no service shall be extended. Excluded Solid Waste, Extraordinary Materials and Hazardous Waste are prohibited from being collected, and must be disposed of by the owner or responsible party in an approved manner. The Contractor reserves the right to deny collection of any and all Bulky Waste item(s).

B. Fees may be billed for major appliances. Charges will be placed on the residential customer's monthly bill per the approved rates.

Section 13. Excluded and Hazardous Waste. The Contractor shall publish a list of white goods and Bulky Waste items that are acceptable for collection. The Contractor

will also publish a list of electronic equipment and other Excluded Materials or Hazardous Wastes that are not acceptable for pick up and inform the residents of the proper disposal options.

Section 14. Transport of Waste. Any person operating any truck or other vehicle to transport litter, waste, trash, or garbage within the City of Holiday Island shall take reasonable steps to prevent its contents from blowing, dropping, falling off, or otherwise departing from the vehicle or attached utility trailer. Such reasonable steps shall include a secure cover or tarp if reasonably necessary to prevent the contents from blowing, dropping, falling off, or otherwise departing from the vehicle or utility trailer. However, no vehicle hauling predominately metallic material shall be required to be covered if it is loaded in a manner which will prevent the material from falling or dropping from the vehicle or utility trailer.

Section 15. Recycling. Offering recycling service for items such as glass, plastics, cans, paper and cardboard is required for any Contractor. Non-Recyclables shall not be placed in the Approved Container for Recycling. The Contractor shall publish and provide a list of all approved Recycling items that are acceptable for collection.

Section 16. Severance Clause. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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 such holdings shall not affect the validity of the remaining portions thereof.

Section 17. Repeal of Ordinances in Conflict. Any matters set forth in this Ordinance which are contrary to the existing ordinances of the City of Holiday Island shall prevail, and the Holiday Island Ordinances shall be amended to conform thereto, and all other ordinances and resolutions or parts of ordinances and resolutions in conflict herewith and therewith are hereby repealed to the extent of such conflict.

Section 18. Effect. Compliance with this Ordinance is required after September 1, 2022.

EMERGENCY CLAUSE. The City Council hereby determines that this Ordinance is necessary for the sanitary provision of solid waste and recycling services within the City of Holiday Island. Therefore, an emergency is declared to exist, and this Ordinance being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the day set forth hereinabove. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto the ordinance enacting this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

Ordinance 2022-004

PASSED AND APPROVED this 19 day of APRIL, 2022.

APPROVED:


Daniel Kees, Mayor

ATTEST:


Wesley Stillé, City Recorder-Treasurer

EXHIBIT 4



City of Holiday Island

X Dumpsters
40 Pyramid Lane
Holiday Island, Ar. 72631

4-27-2022

You are receiving this letter because you were identified to the City of Holiday Island by the Carroll County Solid Waste District to be an approved solid waste hauler in Carroll County. This is to inform you that on 4-19-2022, the City of Holiday passed Ordinance 2022-004 making trash collection mandatory in Holiday Island and designating the Carroll County Solid Waste District as the sole service provider. A transition period ending 9-1-2022 has been established after which time all Holiday Island residents and businesses must be transitioned to CCSW. The ordinance regulates residential, commercial, and other business waste including roll off containers for construction projects. It does not, however, prevent businesses or individuals from doing property clean up in Holiday Island provided the solid waste collected is hauled off by CCSW.

I need to also advise you that your business address of Pyramid Lane in Holiday Island is in Unit 2 which is zone R1 single family residential and as such operating a commercial enterprise at that location is a violation of the Unit Declaration of Reservations as well as City Ordinance 2021-033. If you are not aware of these restrictions, both the Declaration of Reservations and the ordinance can be viewed on the city website at www.cityofholidayisland.com.

While the City and the residents of Holiday Island appreciate the service provided by the other haulers in the past, this move is necessary in order to address a rapidly growing problem with illegal dumping in the City and well as having a manageable system for the City to meet its statutory requirements for complying with State and Federal environmental regulations. If you have any questions you can call me at 479-379-8041.

Dan Rees



Mayor - Holiday Island

EXHIBIT 5



City of Holiday Island

Steve Hedrick
X Dumpsters
40 Pyramid Lane
Holiday Island, Ar. 72631

11-8-22

Dear Sir:

On 4-27-22 you were mailed a letter indicating the following:

"You are receiving this letter because you were identified to the City of Holiday Island by the Carroll County Solid Waste District to be an approved solid waste hauler in Carroll County. This is to inform you that on 4-19-2022, the City of Holiday passed Ordinance 2022-004 making trash collection mandatory in Holiday Island and designating the Carroll County Solid Waste District as the sole service provider. A transition period ending 9-1-2022 has been established after which time all Holiday Island residents and businesses must be transitioned to CCSW. The ordinance regulates residential, commercial, and other business waste including roll off containers for construction projects."

On 10-26-2022, you had a roll off container placed at 57 Table Rock Drive, Holiday Island, Ar, with reports of containers at other locations. This is in violation of Holiday Island Ordinance 2022-004 Section #1 "the collection of solid waste by anyone other than the approved contractor or contractors is prohibited". X Dumpsters is not an approved contractor for collecting or hauling solid waste in Holiday Island.

You must immediately discontinue placing any additional containers within the city limits of Holiday Island, Ar. Further infractions will result in a citation being issued.

Aaron Hoyt

Holiday Island Code Enforcement Officer.

EXHIBIT 6

CARROLL COUNTY SOLID WASTE DISTRICT

706 South Main, Berryville, AR 72616

PH: 479 253-2727/PH: 870-413-7156/FAX: 870-929-6378

www.carrollcountysolidwaste.com


November 17, 2022

X Dumpsters
40 Pyramid Lane
Holiday Island, AR 72631

Due to repeated violations of City ordinances of Holiday Island regarding the operation of solid waste services, the Carroll County Solid Waste District board voted at their meeting on November 17, 2022, if solid waste services are not suspended by November 30, 2022, your permit to operate in Carroll County will be suspended. This suspension of permit will include all of Carroll County.

If you have any questions you may contact our District Director, George Boatright.

479-981-9184


Mayor Tim McKinney
Chairman
Carroll County Solid Waste District

called 11/24 AM 11-2022

FB
CC

George Boatright
479-981-9184