



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/15/06 **First Reading**

Subject: *2006-31*
Approval of Ordinance No. - Award Roll-Off Franchise Agreement -
Set Materials

Department: Public Works.

Recommended Motion:

2006-31
Staff recommends approval of Ordinance No. , granting a non-exclusive franchise for roll-off container service to Set Materials.

Summary:

Staff advertised the non-exclusive franchise agreement for roll-off container service and received nine submittals. Under this agreement, vendors are allowed to contract container services with various organizations, firms or entities within the City of Port Orange for the collection and disposal of construction/demolition debris. In exchange, the City is paid monthly by each vendor, based on "per pick-up" of each container placed in service. In addition to the monthly contract payment, vendors also provide roll-off containers for City use as specified in the ordinance. This agreement with Set Materials will be effective October 1, 2006 through September 30, 2007.

Attachments: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

Department Head <i>[Signature]</i>	Submitted	Date <i>8/14/06</i>
Finance Department <i>[Signature]</i>	Approved as to Budget Requirements	Date <i>8/14/06</i>
City Attorney <i>[Signature]</i>	Approved as to Form and Legality	Date <i>8-8-06</i>
City Manager <i>[Signature]</i>	Approved Agenda Item For	Date <i>8/15/06</i>

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

Second Reading - 9/19/06

ORDINANCE NO. 2006-31

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, GRANTING A NON-EXCLUSIVE FRANCHISE TO SET MATERIALS, INC. TO PROVIDE ROLL-OFF CONTAINER COLLECTION AND DISPOSAL OF WASTE WITHIN THE CITY OF PORT ORANGE; OUTLINING FRANCHISEE'S DUTIES; PROVIDING TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISEE SHALL OPERATE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is an immediate and continuing need for the collection and disposal of construction and demolition debris from organizations, firms, or entities (SERVICE) within the City of Port Orange (CITY) with the use of "roll-off" containers; and

WHEREAS, Set Materials, Inc. (FRANCHISEE), has the necessary equipment, personnel, and experience to properly perform the SERVICE; and

WHEREAS, it appears to be in the best interest of the CITY and its inhabitants, property owners, and merchants, that the FRANCHISEE be awarded a non-exclusive right and FRANCHISE to provide the SERVICE within the CITY limits upon the terms and conditions recited below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1.

1. Definitions.

(a) CONSTRUCTION AND DEMOLITION DEBRIS shall have the same definition and meaning as defined in Section 403.703, Florida Statutes.

(b) SERVICE encompasses the use of "roll-on" and "roll-off" containers (CONTAINERS) as used with mechanical pick-up or compaction devices, or both of these devices.

(c) CONTAINERS means either open-top/scow type used only for non-putrescible materials, or enclosed containers such as the kind typically used with

compaction devices, of ten (10) cubic yards capacity or larger.

2. Franchisee's Authority.

(a) The FRANCHISEE is hereby empowered and authorized to provide ROLL-OFF SERVICE. The FRANCHISEE will either furnish all necessary TRUCKS and other EQUIPMENT to perform such services, or will contract with other persons or companies duly licensed or franchised by the CITY for the furnishing of TRUCKS and EQUIPMENT, provided, however, that at all times the TRUCKS and EQUIPMENT shall comply with the requirements provided herein for EQUIPMENT owned and operated by the FRANCHISEE.

(b) The FRANCHISEE may contract to provide the SERVICE (CONTRACT) with any person, organization, firm, or entity (ENTITIES) within the CITY, if such ENTITIES have first requested the SERVICE. Such contracts must be approved by the Public Works Director or his designee prior to or within one (1) week (7 calendar days) (DATE) of the placement of the CONTAINER for SERVICE. For each CONTAINER placed for SERVICE without a contract having been submitted to the Public Works Director by the DATE, a thirty dollar (\$30.00) inspection and administration LATE FEE shall be paid by the FRANCHISEE to the CITY. The CONTRACT shall not exceed the term of the FRANCHISE.

The FRANCHISEE agrees to provide the Public Works Director with the location of its CONTAINERS and the name and address of and number of pick-ups to be made for each of the ENTITIES. The FRANCHISEE also recognizes that any CONTRACT between the FRANCHISEE and the ENTITIES has no effect whatsoever upon the CITY'S decision to grant the FRANCHISE, or any renewal decision made thereafter. If the Public Works Director disapproves a CONTRACT and the subject CONTAINER remains in service more than forty-eight (48) hours after telephone or written notice by the CITY to the FRANCHISEE to remove the CONTAINER, or if any CONTAINER should remain in service at any location more than forty-eight (48) hours after telephone or written notice from the

(ORD. NO. 2006-)

CITY to the FRANCHISEE to remove the CONTAINER, then, in either or both cases, the FRANCHISEE shall pay the CITY fifty dollars (\$50.00) per day until the CONTAINER is removed.

(c) The FRANCHISEE shall provide the EQUIPMENT and frequency of SERVICE as needed by the ENTITIES and as approved by the Public Works Director.

(d) All lease or purchase arrangements for compaction equipment and for maintenance or service charges for the CONTAINERS agreed upon between the FRANCHISEE and the ENTITIES shall be set forth in the contract between FRANCHISEE and the ENTITIES, and approved by the Public Works Director pursuant to this section.

(e) The FRANCHISEE shall provide one (1) twenty-cubic-yard (20 cu.yd.) roll-off CONTAINER at the Public Works Facility, 407 Virginia Avenue, to be placed at this site every Monday morning before 8:00 A.M. The first such placement shall be as designated by the Public Works Director, in writing, at least seven (7) days in advance of such placement. This roll-off shall be pulled each Saturday before 12:00 Noon. There shall be no CHARGE to the CITY for each pick-up. The FRANCHISEE will pay the landfill tipping fee for each pick-up. In the event the FRANCHISEE fails to provide such CONTAINER during any weekly period, it shall pay to the CITY as liquidated damages for such failure the sum of \$250.00 per occurrence.

(f) The FRANCHISEE shall provide up to twelve (12) twenty-cubic-yard (20 cu.yd.) roll-off CONTAINERS to be placed at various locations throughout the community on an as-needed basis pursuant to written notice from the Public Works Director or his designee. The roll-offs must be picked up within twenty-four (24) hours of notice by the Public Works Director or his designee. There shall be no CHARGE to the CITY for any pick-up or landfill tipping fee. In the event the FRANCHISEE fails to provide any such CONTAINER, it shall pay to the CITY as liquidated damages for such failure the sum of

\$500.00 per occurrence. The FRANCHISEE shall supply any additional CONTAINERS needed by the CITY at a flat fee of \$150.00 per CONTAINER, which includes drop-off, pick-up and landfill tipping fee.

3. Payments.

(a) The FRANCHISEE shall pay the CITY twenty dollars (\$20.00) (CHARGE) for each CONTAINER pick-up. The CHARGE shall be paid monthly and shall be based upon the number of CONTAINER pick-ups by the FRANCHISEE from the ENTITIES during the preceding month.

(b) The FRANCHISEE shall furnish the Public Works Director with an original and one (1) copy of an annual REPORT on or before the forty-fifth (45th) day (REPORT DATE) following the FRANCHISEE'S fiscal year end. The REPORT DATE shall be submitted to the Public Works Director on the date of the FRANCHISEE'S acceptance of this FRANCHISE, and the REPORT shall be prepared by an independent certified public accountant and in accordance with generally accepted auditing standards. The REPORT shall reflect the accuracy of the FRANCHISEE'S payments to the CITY as defined in this ORDINANCE, and shall ensure and include, but not be limited to, the following:

- (1) all CITY accounts are properly coded to reflect CHARGES accrued to the CITY;
- (2) the number of CITY-related CONTAINER pick-ups are correctly reported to the CITY;
- (3) all CITY payments are correctly computed and remitted to the CITY on a timely basis, or the interest-payment provision of subsection d, below, shall apply.

During the term of this FRANCHISE and its renewal, the FRANCHISEE shall make its CITY FRANCHISE books and records available to the CITY at all reasonable times.

Failure to furnish the CITY with the REPORT or to maintain complete and accurate CITY FRANCHISE books, shall be considered a material breach of this FRANCHISE, and the CITY shall be entitled to terminate this FRANCHISE and to collect any damages resulting therefrom.

(c) The FRANCHISEE shall have the sole responsibility for the billing and collection of all CHARGES described herein. Billings shall be monthly and payable on or before the fifteenth (15th) day of the succeeding month. In the event bills are not paid within this time, the FRANCHISEE shall have the right (provided that the FRANCHISEE may otherwise legally do so) to discontinue all SERVICES for non-payment after giving the CITY fifteen (15) days' prior written notice that such SERVICES will be discontinued and after receiving written approval from the Public Works Director to so discontinue the SERVICES.

(d) The FRANCHISEE shall pay the CITY eighty-five dollars (\$85.00) per month (FEE) for administrative and inspection costs and expenses incurred by the CITY in connection with this FRANCHISE. This FEE shall be payable from all FRANCHISEES to the CITY regardless of the number of FRANCHISEE pick-ups, beginning thirty (30) days after the effective date of the FRANCHISE and continuing for the duration of this FRANCHISE.

All statements of FEES and CHARGES by the FRANCHISEE, and the remittance thereof, shall be submitted to the City Finance Director on or before the fifteenth (15th) day following the FRANCHISEE'S fiscal month end. These statements shall specify the previous month's account activities as specified herein, and shall include account names, account numbers, the number of CONTAINER pick-ups during the month, and all discontinued accounts. Failure to submit any remittance specified or referred to in this section on or before the fifteenth (15th) day of each month as required shall result in a

liability for interest at the rate of one percent (1%) per month. Failure to submit any statement shall be considered a breach of this FRANCHISE and shall allow the CITY to terminate the FRANCHISE as may be further provided in Section 9 below.

4. Term.

(a) The TERM of this FRANCHISE shall commence on October 1, 2006, and shall end on September 30, 2007. An acceptance of the provisions, conditions and stipulations of this FRANCHISE shall: (1) be in writing; (2) contain the FRANCHISEE'S local address; and (3) be filed with the CITY Clerk within fifteen (15) days of the adoption of this FRANCHISE.

5. Default.

In the event that the FRANCHISEE fails to provide adequate SERVICES to the ENTITIES by reason of any (1) unknown emergency, catastrophe, natural disaster, war, labor strike, act of God, or similar event; (2) breach of contract; or (3) negligent failure to adequately perform the duties and obligations of this ORDINANCE (as determined solely by the CITY), the CITY may, at its sole option, terminate this FRANCHISE (OPTION I), or take over the ROLL-OFF SERVICES (OPTION II), or both of these OPTIONS. In the event the CITY chooses OPTION II, it shall receive all CHARGE amounts regardless of the amounts normally retained by the FRANCHISEE.

6. Default by Other FRANCHISEES.

In the event other FRANCHISEES default or otherwise fail to provide adequate SERVICES (in the sole determination of the CITY), and the CITY chooses OPTION II as provided in Section 5 above, the FRANCHISEE agrees, if requested by the CITY, to provide the SERVICES or TEMPORARY SERVICES, or both of these types of service, if the FRANCHISEE may reasonably do so, given: 1) the FRANCHISEE'S EQUIPMENT and schedule; and (2) that a reasonable price can be determined by the FRANCHISEE, the

CITY and the ENTITY for the SERVICES undertaking and completion.

7. Liability.

(a) The privileges herein are granted upon the express condition that the FRANCHISEE shall be liable for all damages and injuries to persons and property caused by its neglect or mismanagement, or by the actions of any of its employees while engaged in the SERVICES during the term of this FRANCHISE. Should the CITY be sued therefrom, the FRANCHISEE shall be notified of and have the duty to defend such suit, provided, however, that the CITY has the sole option (OPTION III) to defend itself or to hire independent counsel, and thereafter to tax all such defense costs and fees to the FRANCHISEE. The FRANCHISEE specifically agrees to pay any such judgment rendered against the CITY in any such case, and to reimburse the CITY, in full, for all costs and fees on appeal.

(b) The attorneys chosen by the FRANCHISEE to represent the CITY in any suit concerning matters included within this section, shall be approved by the CITY, unless the CITY chooses to represent itself, as defined above. The FRANCHISEE shall indemnify and hold harmless the CITY, its agents, elected or appointed officials, officers and employees from any and all liability, claims, demands, damages, expenses, fees, penalties, suits, proceedings, actions and costs of actions (including costs and attorney's fees, and costs and attorney's fees on appeal), of any kind or nature, arising out of, resulting from, or in any way connected with the FRANCHISEE'S activities permitted under this FRANCHISE.

(c) The FRANCHISEE further agrees to purchase public liability and property damage insurance (POLICY) in the amount of \$1,000,000.00 (per accident, public liability), and \$250,000.00 (property damage), and naming the CITY as an additional insured under the POLICY. The POLICY must provide that the CITY shall be given thirty (30) days

written notice prior to cancellation or modification, and a copy of the POLICY (or a Certificate of Insurance) shall be filed with the CITY Clerk on or before the effective date of this FRANCHISE and on or before the effective date of each POLICY renewal period.

8. Licenses.

The FRANCHISEE shall, at its sole expense, procure from all local, state, and federal governmental and agency authorities (having jurisdiction over the operations of the FRANCHISEE) all licenses, certificates, permits, or other authorizations which may be necessary for the conduct of the FRANCHISEE'S operations. The FRANCHISEE shall pay all taxes, and license, certification, permit and examination fees, and all excises which may be assessed, levied, exacted, or imposed upon its property, operations, gross receipts, or all or any combination of these assets, and upon this FRANCHISE and the rights and privileges granted herein, and shall make all applications, reports, and returns required in connection therewith to all respective governmental and agency authorities.

9. Termination.

The privileges granted herein to the FRANCHISEE may be terminated by the CITY prior to the expiration of the TERM if any one (1) or more of the following events occur:

(a) The FRANCHISEE fails: (1) to pay the sums, FEES or CHARGES due to the CITY in a timely manner (FAILURE I); or (2) the FRANCHISEE fails to keep, perform, or observe each and every other promise, covenant, and condition designated to it under this ORDINANCE (FAILURE II). In the event of a FAILURE II, the Public Works Director shall notify the FRANCHISEE in writing of such FAILURE, and the FRANCHISEE shall have thirty (30) days (PERIOD) from the receipt of such notice to correct (CORRECTION) the condition giving rise to such notice. If the CORRECTION is not made to the Public Works Director's satisfaction within the PERIOD, the Public Works Director shall give written notice to the FRANCHISEE that the privileges granted herein are terminated as of the date

of such notice.

(b) If and when the FRANCHISEE shall liquidate, dissolve, or sell substantially all of its assets.

(c) If and when there is a transfer of fifty percent (50%) or more of the FRANCHISEE'S voting stock which results in a change in the FRANCHISEE'S control.

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

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

10. Notices.

All notices herein required to be given by the CITY to the FRANCHISEE, except where specifically provided otherwise, may be effected either by hand delivery to any FRANCHISEE employee, or by United States mail (postage prepaid), addressed to the FRANCHISEE at its last known business address. All notices required to be given to the CITY shall be given to both the Public Works Director and the CITY Clerk either by hand delivery or by United States mail (postage prepaid), addressed to Public Works Director, City of Port Orange, 407 Virginia Avenue, Port Orange, Florida, 32127, and City Clerk, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129.

11. Remedies, Attorney's Fees and Costs.

All remedies provided in this FRANCHISE shall be deemed cumulative and additional and not in lieu of or exclusive of each other, or of any other remedy available to the CITY, at law or in equity. In the event the CITY shall prevail in any action arising hereunder, the FRANCHISEE shall pay the CITY'S costs, and any and all attorney's fees thereafter charged to the CITY.

12. Equipment.

(a) The FRANCHISEE agrees that it shall procure and maintain sufficient EQUIPMENT, or that it shall arrange on a contractual basis with other persons owning or leasing EQUIPMENT in compliance with the requirements of this FRANCHISE, to insure that the FRANCHISEE shall at all times be in a position to properly maintain its schedules and to otherwise perform all duties, responsibilities, and conditions required under this ORDINANCE.

(b) All TRUCKS utilized by the FRANCHISEE and all CONTAINERS owned or leased by the FRANCHISEE shall be prominently identified on both the left and right sides with the FRANCHISEE'S name in letters not less than six inches (6") in height, and the FRANCHISEE'S business telephone number in numbers not less than three inches (3") in height, either painted on or attached by signs to such TRUCKS and CONTAINERS.

(c) All of the FRANCHISEE'S TRUCKS, CONTAINERS and EQUIPMENT shall conform to all CITY safety and sanitation requirements for refuse collection vehicles, and the EQUIPMENT must be approved by the Public Works Director. The FRANCHISEE specifically agrees that the Public Works Director shall have the right to inspect the TRUCKS or the EQUIPMENT, or both of these items, at all reasonable times and after having endeavored to give reasonable written or oral notice that such an inspection shall take place.

13. Non-assignability.

This FRANCHISE shall not be assignable by the FRANCHISEE without the prior written consent of the CITY COUNCIL as evidenced by an ordinance authorizing and approving such an assignment.

14. Effective Area.

This FRANCHISE shall be effective within the CITY'S corporate limits as they may from time to time exist.

15. Headings.

The paragraph headings of this FRANCHISE are for purposes of convenience only, and shall not be deemed to expand or limit the provisions contained in such paragraphs or sections.

16. Warranty of FRANCHISEE.

The FRANCHISEE represents and warrants to the CITY that no appointed or elected CITY official, officer, employee or agent has any interest, either directly or indirectly, in the business of the FRANCHISEE to be conducted herein.

17. Non-compliance.

If the FRANCHISEE shall at any time fail to comply with any of the provisions of this FRANCHISE (unless such failure is beyond the FRANCHISEE'S control because of matters deemed to be an act of God), the CITY, after thirty (30) days written notice to the FRANCHISEE, may revoke this FRANCHISE and render it void and of no further effect.

18. Amendment.

The CITY reserves the right to amend this FRANCHISE at any time, and in any manner that the CITY deems necessary for the health, safety or welfare of the public. The CITY also reserves the right to prescribe, from time to time, reasonable rules and regulations (RULES) further governing the FRANCHISEE'S operations herein, including,

(ORD. NO. 2006-)

but not limited to, hours and frequency of CONTAINER pick-up. These RULES may be issued through the Public Works Director, the CITY Manager or his designee, and they need not be memorialized in an ORDINANCE revision or other formal action by the CITY COUNCIL, the CITY COUNCIL'S approval of this ORDINANCE being an approval that the REGULATIONS should be so issued.

Section 2. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 3. This ordinance shall become effective immediately upon adoption by the City Council.

MAYOR ALLEN GREEN

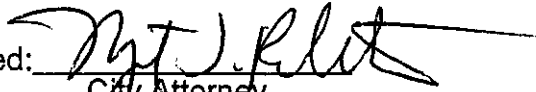
ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved:



City Attorney

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08/07/06

ACCEPTANCE BY FRANCHISEE

The foregoing Ordinance and the Franchise provided for therein, and all the additional and amended terms thereof, are hereby accepted, approved and agreed to this _____ day of _____, 2006.

Set Materials, Inc.

By: _____
Arthur P. Drewry, President

Attest: _____
Secretary

(Corporate Seal)

Witness

Witness

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by Arthur P. Drewry and _____, as President and Secretary, respectively, of Set Materials, Inc., a Florida corporation, on behalf of said corporation.

Notary Public
Printed, typed or stamped name, commission and expiration of commission term:

Notary to check one:
 Personally known
 Produced Identification as follows:
