

ORDINANCE NO. 1439-20-04-14

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, FINDING THAT THE PROVISION OF SOLID WASTE COLLECTION AND RECYCLING IS NOT A PUBLIC UTILITY; AMENDING AN EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS; AMENDING CERTAIN TERMS AND CONDITIONS OF THE FRANCHISE GRANT; EXTENDING THE TERM OF THE FRANCHISE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council previously approved, by ordinance, an exclusive franchise agreement for the provision of solid waste and recycling services for the City of Pflugerville (the "Agreement"); and,

WHEREAS, Section 10.A of the Agreement authorizes the franchise holder to petition the City for Operating Cost Adjustments under; and

WHEREAS, the franchise holder has petitioned the City and seeks its approval for a one-time rate adjustment in the base for monthly services and a one-time increase for extra recycling cart; and

WHEREAS, the franchise holder and the City additionally desire to amend the Agreement to provide for brush pickup service to City residents on a "pay per pickup" basis, to amend the term of the Agreement and to require a Company financial contribution to the City's recycling information program.

WHEREAS, the City Council finds the rates and service options should be amended as stated herein, and

WHEREAS, the City Council finds that the awarding of a franchise agreement for the provision of solid waste and recycling services within the City is not a public utility as that term is contemplated by the City Charter and, as such, compliance with Article X of the City Charter is not required; and

WHEREAS, the City Council finds that amending the Agreement for the collection, hauling, recycling and disposal of municipal solid waste and recyclable materials is in the best interest and welfare of the public.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

SECTION 1. Incorporation of Recitals. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. Agreement Amended; Authorization for Signature. The Agreement is amended as provided for in the attached Exhibit A and the City Manager is authorized to execute same.

SECTION 3. Cumulative and Repealer Clause. This ordinance shall be cumulative of all other ordinances of the City of Pflugerville, Texas, and shall not operate to repeal or affect any other ordinances of the City except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, are hereby repealed to the extent of such conflict.

SECTION 4. Severability Clause. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

SECTION 5. Effective Date. That this Ordinance will become effective on its adoption and passage by the City Council in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this 14 day of April, 2020.


CITY OF PFLUGERVILLE, TEXAS

By:



Victor Gonzales, Mayor

ATTEST:



Karen Thompson, City Secretary

APPROVED AS TO FORM:



Charles E. Zech, City Attorney
Denton Navarro Rocha Bernal & Zech PC

**FIRST AMENDMENT TO
EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING,
RECYCLING AND DISPOSAL OF MUNICIPAL SOLID WASTE AND RECYCLING
MATERIALS IN THE CITY OF PFLUGERVILLE, TEXAS, FEBRUARY 1, 2018**

This First Amendment to Exclusive Franchise Agreement for the Collection, Hauling, Recycling And Disposal of Municipal Solid Waste and Recycling Materials in The City Of Pflugerville, Texas, February 1, 2018 (“Amendment”) is made and entered into as of the 14th day of April 2020, by and between WASTE CONNECTIONS LONE STAR, INC., a Texas Corporation, (f/k/a Progressive Waste Solutions of TX, Inc.) (hereinafter “Company”) and CITY OF PFLUGERTVILLE, TEXAS (“City”). Company and City are each individually referred to herein as a “Party” and collectively as the “Parties”. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement (as defined below).

BACKGROUND

WHEREAS, Company and City entered into an Exclusive Franchise Agreement for the Collection, Hauling, Recycling and Disposal of Municipal Solid Waste and Recycling Materials in The City Of Pflugerville, Texas, effective February 1, 2018, (the “Agreement”); and

WHEREAS, the Agreement allows Company to petition City for Operating Cost Adjustments under Section 10.A; and

WHEREAS, Company petitioned City and seeks its approval for a one-time rate adjustment in the amount of eighty-five cents (\$0.85) per residence per month on the basis of material and unusual changes in the cost of operations due to changes in recyclable material commodity prices; and

WHEREAS, Company petitioned City and seeks its approval for a one-time rate adjustment for extra recycling cart; and

WHEREAS, the Parties additionally desire to amend the Agreement in order to engage the Company to provide brush pickup service to City residents on a “pay per pickup” basis, to amend the term of the Agreement and to require a Company financial contribution to the City’s recycling information program.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and obligations as set forth in this Amendment, the receipt and adequacy of which is hereby agreed to and acknowledged, the parties hereto agree as follows:

1. Amendment to Section 7 BULKY ITEMS, BAGS, AND BUNDLES (B) Negotiated Collections. Section 7(B) of the Agreement is hereby amended to add the following language to the end of subsection B.:

Notwithstanding the foregoing, beginning no later than October 1, 2020, Company shall provide brush pickup service for residents of the City on a pay per pickup basis. The

resident(s) shall schedule such pickup by contacting Company directly. The resident(s) shall pay Company directly in advance for the scheduled pickup in an amount not to exceed thirty-five dollars (\$35.00), plus applicable sales tax. Any and all loads to be picked up shall not exceed four (4) cubic yards per pickup, per residence.

The brush pickup service is for the collection and disposal of brush, limbs, and branches, including clean woody vegetative material, not greater than six (6) inches in diameter, and no longer than four (4) feet in length, generated and accumulated by Residential Units, that result from landscaping maintenance of those Residential Units. This service specifically excludes stumps, roots, or shrubs with thorns or intact root balls. Landscaping materials such as pickets or any items with nails are also excluded from the definition of acceptable waste with this brush pickup service.

2. Amendment to Section 12. TERM OF AGREEMENT & TRANSITION ASSISTANCE.

Section 12 of the Agreement is amended to extend the term to conclude on January 31, 2026. All other language in said section shall remain the same.

3. Amendment to Section 5. PUBLIC EDUCATION PROGRAM. Section 5(B) of the Agreement is hereby amended to add the following language to the end of subsection B.:

Company agrees to pay up to \$2,000.00 by the end of each month to the City to sponsor the City's monthly newsletter as a means for continued recycling program education.

4. Amendment to Section 9. RATES AND FEES. Section 9 of the Agreement is amended to provide that the Base Service (1x) Week Trash Collection of Municipal Solid Waste as described in Section 4B of the Agreement and Every Other Week Recycling Collection of \$15.18 per residence per month is hereby amended to provide for an amount of \$16.03 per residence per month.

5. Amendment to Section 9. RATES AND FEES. Section 9 of the Agreement is amended to provide that the Extra Recycling Cart (Each per Month) is amended to reflect a new amount of \$3.40.

6. Counterparts. This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

7. Ratification. All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect.

8. Conflicting Provisions. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the Parties execute this Amendment as of the date first written above.

Company:

WASTE CONNECTIONS LONE STAR, INC.

By: _____



Name: _____

Gregory W. Hee

Its: _____

Division Vice President

City:

CITY OF PFLUGERVILLE, TEXAS

By: _____



Name: _____

Sereniah Breland

Its: _____

City Manager