

ORDINANCE NO.

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; AMENDING 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 of the Agreement authorizes the franchise holder to petition the City for Rate Adjustments; and

WHEREAS, the franchise holder has petitioned the City and seeks its approval for a rate adjustment in the base rate under Section 9, Rates and Fees, for monthly services; and

WHEREAS, the Agreement allows for modifications and amendments to the terms and conditions by mutual agreement; and

WHEREAS, on the 14th day of April, 2020, the City Council entered into a First Amendment to 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; and

WHEREAS, the City Council finds the rates, rate adjustments and agreement term 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 22nd day of February, 2022.

CITY OF PFLUGERVILLE, TEXAS

Victor Gonzales, Mayor

ATTEST:

Trista Evans, City Secretary

APPROVED AS TO FORM:

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

**SECOND 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 Second 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 (“Ament”) is made and entered into as of the 22 day of February 2022, 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 PFLUGERVILLE, 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 Company and City entered into a 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 (“First Amendment”) on the 14th day of April, 2020; and

WHEREAS, the Agreement allows Company to petition City for Rate Adjustments under Section 10 due to consumer price index increases and fuel cost adjustment, respectively; and

WHEREAS, Company petitioned City and seeks its approval for a rate adjustment in the amount of ninety-six (\$0.96) per residence per month on the basis of the consumer price index and changes in the cost of operations due to fuel costs; and

WHEREAS, the Parties additionally desire to amend Sections 9 and 12 of the Agreement in order to align the agreement term with the City fiscal year beginning October 1 and ending September 30, and extend the term for an additional period of three (3) years.

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 to the following amendments:

A. SECTION 9. RATES AND FEES shall be amended as follows:

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 shall be revised from \$16.55, as approved by City Council in February 2020, per residence per month to \$17.51 per residence per month.

B. SECTION 10 shall be amended as follows (added language denoted as underline and deleted denoted as ~~strikethrough~~):

SECTION 10. RATE ADJUSTMENT.

A. Operating Cost Adjustment. In addition to any other rate adjustments provided for herein, beginning on February 1, 2020, ~~and at any time thereafter during the term of this Agreement,~~ the Service provider may petition the City for additional rate and price adjustments at reasonable times until March 1, 2022. Beginning on October 1, 2022, the Service Provider may petition the City for additional rate and price adjustments 90 days prior to October 1, 2023 on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment.

C. Consumer Price Index.

“Base CPI” means the CPI computed by the Bureau for the month of November for the year preceding the year in which such adjustment will be made, beginning February 1, 2020 until March 1, 2022 and thereafter on October 1 of each subsequent year starting on October 1, 2023. To illustrate, the CPI calculation that will become effective on March 1, 2022 and thereafter on October 1 of each subsequent year will be the comparison of the CPI for November 2020 (Base Year) to November 2021. The base year shall move forward in succession such that the Base Year for the 2023 adjustment shall be 2021, for the adjustment in 2024 shall be 2022 and similarly for successive years.

“Year in Question” means the 12-month period for which the price for Solid Waste collection and recycling service to be provided to the City is to be determined as provided in this subsection, and which shall run from February 1 through January 31. Starting March 1, 2022, the 12-month period shall run from October 1 through September 30.

The price for service specified in ~~subsection B Section 9~~ will remain in effect through January 31, 2020 unless modified by other provisions of the Section. This price will be adjusted on February 1, 2020, and annually thereafter until March 1, 2022, all in accordance with the procedures and formula set for the below. Starting October 1, 2022, this price will be adjusted on October 1, 2023, and annually thereafter, all in accordance with the procedures and formula set forth below. Each adjustment will be in an amount corresponding to the percentage difference between Base CPI and the CPI computed by the Bureau for the month of November for the year, in which such adjustment will be made but no adjustment will ever exceed five percent (5%) for any year in question or reduce the price below the price at the start of the Agreement. The Service Provider will calculate the revised price for service annually and submit the calculation to the City for approval no later than January 15 of each year, beginning in 2020, and the adjustment will be made effective February 1 of each year beginning in the year 2020 through year 2022 and no later than June 1 of each year, beginning in the year 2023 and the adjustment will be made effective October 1 of each year beginning in the year 2023.

D. Fuel Cost Adjustment.

Beginning on October 1, 2022 and on the anniversary date each year of this Agreement until March

1, 2022, at which time such date shall be October 1st of each year starting in 2023, the Service Provider shall adjust all the rates herein in relation to the change, if any, in the average price of diesel fuel during the preceding contract year. All other language in said section shall remain the same.

C. SECTION 12. TERM OF AGREEMENT & TRANSITION ASSISTANCE shall be amended as follows:

The Agreement term is extended to conclude on September 30, 2026. All other language in said section shall remain the same.

D. 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.

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

F. 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: _____

Its: _____

City:

CITY OF PFLUGERVILLE, TEXAS

By: _____

Name: Sereniah Breland

Its: City Manager