

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, GRANTING A NON-EXCLUSIVE FRANCHISE TO **WASTE MANAGEMENT OF TEXAS, INC.** FOR THE COLLECTION OF REFUSE FOR MULTI-FAMILY, COMMERCIAL AND INDUSTRIAL ESTABLISHMENTS; PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE GRANT; ESTABLISHING A TERM OF THE FRANCHISE; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1: Definitions.

Except where the context clearly indicates a different meaning, the definitions appearing in Chapter 52, Section 52.01 of the City of Pflugerville, Texas Code of Ordinances are applicable to this Ordinance. Words and phrases not defined therein will have their common and ordinary meaning.

Section 2: Grant of Franchise.

In accordance with Section 52.08 of the Code of Ordinances of the City of Pflugerville (the "City") and Section 10.01, *et seq.* of the Home Rule Charter for the City, the City hereby grants to **Waste Management of Texas, Inc.**, its successors and assigns (the "Company") consent to operate within the City or to occupy or use the streets of the City to provide refuse collection services to multi-family, commercial, and industrial customers, subject to the terms and conditions contained in this Ordinance.

Section 3: Terms of Franchise.

- (A) *Non-exclusivity.* This franchise is non-exclusive.
- (B) *Term.* This franchise is granted for a period of five (5) years, **beginning February 1, 2018 and ending January 31, 2023.**
- (C) *Franchise Fee/Late Fee.* In consideration of the grant of the franchise, Company agrees to pay the City a franchise fee equal to six percent (6%) of gross revenues for services provided in the City. The franchise fee shall be paid each quarter, within thirty (30) days after the end of the quarter. The City may inspect the books of Company with or without previous notice, at any time during regular business hours. A ten percent (10%) penalty will be assessed on delinquent amounts. An additional ten percent (10%) penalty will be added for every month or portion thereof that said payment is late.
- (D) *Termination.* The franchise may be terminated by mutual agreement of the

parties at any time or may be terminated upon sixty (60) days' notice by either party to the other.

(E) *Notices.* All notices from Company to the City concerning the franchise shall be addressed to the City Manager, City of Pflugerville, P.O. Box 589, Pflugerville, Texas 78691. All notices from the City to the Company concerning the franchise shall be addressed to _____.

(F) *Non-waiver.* Company shall not be excused from complying with any of the terms and conditions of the franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 4: Franchise Responsibility.

Company must comply with Section 52.11 of Chapter 52 of the City of Pflugerville, Texas Code of Ordinances, setting forth Commercial Collection Rules and Procedures.

Section 5: Insurance, Indemnity and Bond.

(A) *Insurance.* Company must secure and maintain in effect insurance to protect Company, its employees, and the City from claims for bodily injuries, death or property damage which may arise out of Company's performance or nonperformance of its duties under the franchise, whether that performance or nonperformance is by Company or one directly or indirectly employed by Company. The following minimum levels of coverage are required:

- (1) Public liability and property damage (no pollution exclusion endorsement is permitted):
 - (a) General Liability: \$1,000,000 per occurrence
 - (b) Property Damage: \$1,000,000 per occurrence
 - (c) Automobile Liability: \$1,000,000

- (2) Umbrella Liability: \$1,000,000

- (3) Worker's Compensation: As required by law.

- (4) Employer's Liability \$500,000

Certificates of insurance confirming coverage and naming the City as an additional insured must be provided to the City on or before the date of the passage of this Ordinance, and renewal certificates must be provided to the City at least 15 days prior to the date of expiration of any required coverage. Company's failure to maintain any required insurance or to furnish any required certificate will be grounds for termination of the franchise. All

insurance certificates must confirm that the insurance may not be terminated or materially changed without 30 days' prior notice to the City.

(B) *Indemnity.* COMPANY, TO THE FULLEST EXTENT PERMITTED BY LAW, WILL AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR FAILURE TO PERFORM THE WORK REQUIRED UNDER THIS FRANCHISE. THIS OBLIGATION WILL NOT BE CONSTRUED TO NEGATE OR REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY THAT WOULD OTHERWISE EXIST. THIS INDEMNIFICATION REQUIREMENT WILL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR COMPANY UNDER ANY WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

Section 6: Subcontracts.

Company may not subcontract with another person on a regular, periodic or long-term basis to provide service or solid waste management service under this Ordinance without prior City approval. Such subcontract will not relieve Company of responsibility for compliance with this ordinance.

Section 7: Transfer, Modification, Revocation.

(A) Company may not transfer this franchise or any portion thereof to other persons or entities, including transfer of the controlling interest of a corporation, unless approved by ordinance of the City council, in accordance with Section 10.04 of the City Charter.

(B) Failure to comply with the provisions of this Ordinance after written notice and a reasonable opportunity to comply will be grounds for the modification, revocation or suspension of this franchise by the City.

(C) Upon receipt of the written notice, referred to in subsection (B), the Company has thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the City. A request for a public hearing before the City must be made in writing and if a public hearing is held, the Company and other interested persons will have a reasonable opportunity to present information and testimony in oral or written form.

Section 8: Acceptance.

Within fifteen (15) days of the effective date of this Ordinance, Company must file with the City a written acceptance of this franchise.

Section 9: Effective Date.

This Ordinance will be read at three consecutive regular City council meetings. The Ordinance will be effective after final passage, which may not occur until at least 28 days after first reading. Within ten days after first reading of this Ordinance, the caption of the Ordinance and a statement indicating where and how to obtain copies of the full ordinance shall be published on the City's official website or other electronic media that is readily accessible to the public.

Section 10: Severability.

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

PASSED AND APPROVED this _____ day of January, 2018.

CITY OF PFLUGERVILLE, TEXAS

By: _____
Victor Gonzales, Mayor

ATTEST:

Karen Thompson, City Secretary

APPROVED AS TO FORM:

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