

ORDINANCE NO. 15-F-18

AN ORDINANCE GRANTING CIBOLO WASTE INCORPORATED, DBA BEXAR WASTE INC., A FRANCHISE FOR MUNICIPAL SOLID WASTE COLLECTION, RECYCLING, AND HOUSEHOLD HAZARDOUS WASTE COLLECTION AND DISPOSAL PROGRAM; IMPOSING PROVISIONS AND CONDITIONS RELATING TO THE EXERCISE OF SAME; AND PROVIDING FOR PENALTIES NOT TO EXCEED \$2000 FOR VIOLATION THEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE.

WHEREAS. It is found to be in the public interest and necessary to protect the health and safety of the citizens of Schertz to have a municipal solid waste collection and disposal service in the City of Schertz, Texas; and

WHEREAS, the City of Schertz is responsible to protect its citizens against nuisances derived from solid waste by providing solid waste handling services including, but not limited to, recycling and the collection, transfer and disposal of solid waste; and

WHEREAS, the Texas Health and Safety Code, chapter 363, authorizes the City to determine all aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste handling services; and

WHEREAS, pursuant to Ordinance No. 13-F-03 the City has had a two-year renewing exclusive franchise relationship with the Franchisee named below; and

WHEREAS, City staff recommends that the City Council award a Ten (10)-year exclusive Franchise to the Franchisee; and

WHEREAS, the City Council has reviewed the Franchisee's record of service and continues to be satisfied with the qualifications of the Franchisee;

NOW, THEREFORE, BE IT ORDANED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS;

This Ordinance shall be known and be cited as the Franchise Ordinance for Collection and Disposition of Solid Waste and Recyclable Materials in the City of Schertz, Texas.

Section 1. Definitions

The words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in the City's Code of Ordinances Section 34-50, except where the context clearly indicates a different meaning.

Section 2. Exclusive Franchise Grant

The City hereby grants to the Franchisee, in accordance with the Cities Solid Waste Regulations governing the collection and disposal of Municipal Solid Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Recyclable Materials over, upon, along and across the City's present and future streets, alleys, bridges and public properties. The City of Schertz reserves the right to grant additional franchises for the collection and disposal of Recyclable Materials, to the extent necessary to accomplish the objects of this ordinance along with the solid waste ordinance.

Section 3. Indemnifications, Insurance, Bonds, and Damage to City Streets

Failure of the Franchisee to comply with the provisions of this section shall be cause for termination of this Franchise as set forth in this Ordinance.

Indemnification. The Franchisee agrees to indemnify and hold the City of Schertz, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.

Insurance. The Franchisee agrees to carry general liability insurance naming the City as additional insured in the minimum amount of \$ 1,000,000 for each occurrence and \$2,000,000 annual aggregate; automobile liability naming the City as additional insured in the amount of \$1,000,000 combined single limit, and worker compensation/employer liability insurance.

Such Policy or policies shall provide by endorsement that it may only be cancelled or amended by the insurance company only after (30) days prior written notice to the City Manager.

Certificate or certificates issued by the insurer evidencing the coverage, cancellation, and amendment provisions set forth in this Section 3a, must be submitted to and approved by the City Attorney no later than the date of second and final reading of this ordinance, and a certificate or certificates issued by the insurer confirming the continuing effectiveness of such coverage, cancellation, and amendment provisions shall be submitted to the City Secretary no later than January 10 of each year of this franchise commencing October 01, 2015.

Upon written request by the City Manager either the original policy (or policies) or copies certified by the insurer must be delivered to the City Secretary.

Bonds. The Franchisee shall furnish an annually renewable bond to the City in the amount of \$300,000 guaranteeing the faithful performance of the Franchisee's obligations under the terms

of this Ordinance, which bond shall be in force no later than the date of second and final reading and be subject to these requirements:

The bond shall be conditioned upon the requirement that the Franchisee shall well and truly observe, fulfill, and perform each term and condition of this franchise and that in case of any breach of condition of the bond, an amount (subject to the required dollar limits of the bond) shall be recoverable from the principal and surety thereof by the City for all liquidated damages for the failure of the Franchisee to well and faithfully observe and perform any provision of this Ordinance, and for any amount billed to the Franchisee by the City for the cost of the City's performing or causing to be performed the Franchisee's obligations hereunder.

Such bond must provide by endorsement that it cannot be cancelled or amended by the bonding company prior to (30) days' written notice to the City Manager. Such bond shall be in form and contain such additional provisions as may be required by the City Attorney.

Such bond shall be executed by the Franchisee as principal and one or more sureties approved by the City Manager.

Either the bond or bonds or copies thereof certified by the surety must be on file with the City Secretary of the City.

Damage to City Streets. Any damage to City Streets resulting from the Franchisee's vehicles shall be the responsibility of the Franchisee. The City shall notify the Franchisee in writing of the damages to streets, sidewalks, street signs and other public roads or structures. The Franchisee shall have a reasonable period, dependent on the nature of damage, from the date of the notice to replace and repair the damage to the satisfaction of the City. Failure for the Franchisee to perform this duty shall serve as authorization for the City to repair the damage and bill the Franchisee. Franchisee shall retain the right to defend against the claim of any such damage if Franchisee is not the source or cause of the damage. Franchisee shall not be held responsible for ordinary wear and tear to pavement and infrastructure caused by the normal and customary garbage collection services provided by Franchisee.

Section 4. Minimum Quality and Performance Standards

Acceptance of this Ordinance by the Franchisee carries with it expectations of both efficiency and quality of service by the Franchisee. The standards below are considered minimum standards. Franchisee shall, at all times during the terms of this contract, be subject to all such regulations as the City has or may hereafter adopt. In addition, Franchisee shall observe all state and federal laws, rules and regulations relevant to collection, removal and disposal of solid waste. Franchisee's failure to comply with ordinances and regulations of other municipal jurisdictions, which affect Franchisee's ability to fulfill the terms of this contract, shall be grounds for termination.

Quality of Service. Customer satisfaction is the ultimate measure of the quality of service. The Franchisee will make every reasonable effort to insure the rate paying customer is treated with

due courtesy and respect. The property of the customer will be treated without abuse. Informal complaints will be resolved as quickly as possible with the customer receiving the benefit of the doubt. Formal complaints will be resolved as provided in section 9.

Equipment and Maintenance Thereof. All equipment, including motor vehicles and trucks necessary for the performance by the Franchisee of this Ordinance shall, on the effective date of the Franchise granted by this Ordinance, be in good condition and repair. Standby equipment shall always be available. The trucks used in collection of Municipal Solid Waste shall be all metal, water tight, with completely enclosed “Packer” type bodies that are designed and manufactured for the collection of garbage and refuse.

Such collection vehicles shall be painted and numbered in letters of a contrasting color on each side of the vehicle and maintained in a mechanically sound and safe condition. All vehicles shall be kept in a clean and sanitary condition and shall be cleaned inside and outside at least once a week. All vehicles also must display an official City of Schertz permit identification.

Times and Frequencies of Pickup and Holidays. The Franchisee shall make no collections in residential areas prior to 7:00 am, and collections in business districts shall not be commenced earlier than 6:00 am. When a business is within 500 feet of a residence, the residential area time shall apply.

There shall be a once a week pickup of Municipal Solid Waste for all residential customers who have been provided a uniform 96 gallon Waste container by the Franchisee at no charge to the customer (“Zone 1”), unless customer requests additional cart containers and pays per fee schedule, Garbage Collection Fees in Solid Waste Ordinance. If no such container has been provided to a residential customer, there will be twice weekly pickup of Municipal Solid Waste from such customers (“Zone 2”). The Franchisee shall provide the City an update from time to time a current map of the City showing Zone 1 and Zone 2 residential customers. The number of pickups may vary for commercial activities, which shall be established by separate contract between the Franchisee and the customer. Upon written request by the City, the Franchisee shall provide the City with a summary of all such commercial pickup arrangements.

Collection will be made for all residential account once a week for Zone 1 customers and twice weekly for Zone 2 customers regardless of National or State holidays, except for Christmas Day, New Year’s Day, July 4, and Thanksgiving Day. The Franchisee may observe any or all the holidays noted above. However, the Franchisee shall collect Municipal Solid Waste at least one day per cycle during those weeks when holidays are observed.

Routes and Pickup Points.

The Franchisee will provide proposed routes for purposes of the collection of regular garbage, small brush and limb pickup as follows:

Zone 1

Monday

Tuesday

Wednesday

Zone 2

Monday and Thursday

Tuesday and Friday

Wednesday and Saturday

The City must approve such routes prior to commencement of operations.

Types of Containers. Trash containers shall be watertight receptacles of solid and durable grade of metal or plastic, not to exceed thirty (30) gallons in capacity except as set forth in this Ordinance or plastic or other waterproof bags manufactured for the purpose of containing garbage or refuse; the combined weight of the garbage and container shall not exceed seventy-five (75) pounds. Containers shall be provided with suitable lifting handle or handles on the outside and close-fitting cover equipped with a handle. The container must not have any inside structures, such as inside bands, and reinforcing angles or anything within the container to prevent free discharge of the contents. Containers that have deteriorated or that have been damaged to the extent of having jagged or sharp edges capable of causing injury to garbage collectors or other persons whose duty it is to handle the containers, or to such an extent that the covers will not fit securely, need not be accepted by the Franchisee.

Special Pickups. The Franchisee shall invoice the City for all Special Pickups the Franchisee's actual costs (which shall not include a Franchisee's overhead charge) for the City's use in invoicing customers.

Brush and Trees. All brush and large trimmings to be collected by the Franchisee shall be placed by customers at the curb line. Trees, brush, and limbs cannot exceed four inches (4") in diameter nor five feet (5') in length. All limbs and brush must be in bundles not to exceed sixty (60) pounds each. Leaves and grass clippings and small brush items are to be placed in cardboard containers, plastic trash bags, or trash cans.

Dead Animals. Dead animals shall not be placed in trash containers. Dead animals in excess of seventy-five (75) pounds are not required to be accepted by the Franchisee. Dead household pets shall be picked up by the Franchisee at no charge. The City's animal services department will pick up other dead small animals at no charge, and the Franchisee will in turn pick up those dead small animals from the City's animal services department at no charge to the City. The Franchisee shall pick up large dead animals located in a right-of-way. If such dead large animal identifiably belongs to an individual or entity (i.e., a cow that has been identifiably branded or tagged), such individual or entity shall pay the Franchisee the charge associated with the pick-up. However, if the dead large animal does not identifiably belong to an individual or entity (i.e., a wild deer), the City shall pay the cost for the pick-up. The owner shall be responsible for the removal and disposal of large dead animals, such as cows, horses, mules, and goats.

Traffic Accident Debris. The Franchisee will provide 24-hour a day, 7 days a week; pick up service of debris resulting from traffic accidents upon telephone or radio notice from the City by a police officer or other City employee. The Franchisee may invoice and collect from the individual(s) or company(ies) involved in such traffic accident or their respective insurers for the

collection and disposal of accident materials. The Franchisee will have no obligation to remove wrecked or disabled vehicles. If the Franchisee fails to adequately respond with a roll-off unit or other suitable equipment (all as determined by the City) within one (1) hour, the Franchisee agrees that the City may contact another person or entity of the City's choosing to remove such debris, and all costs incurred by the City as a result thereof shall be reimbursed to the City by the Franchisee within ten (10) business days of the City's invoicing of the Franchisee. In such case, such person or entity shall not be required to hold a solid waste disposal franchise with the City.

Special Services. The Franchisee will provide services for special residential pickups, such as new move-ins, tree trimming, and similar circumstances. The Franchisee may charge a fee for this service to be billed by the City.

Area of Service and Interruption in Service. The Franchisee will collect MSW and recycling material from all residences and MSW from all commercial businesses in the City not delinquent in the payment for the authorized services provided, or as directed by the City.

In the event that the collection and disposal of MSW shall be interrupted by any reason for more than forty-eight (48) hours, the City shall have the right to make temporary independent arrangements for the purpose of continuing this necessary service to its citizens in order to provide and protect the public health and safety. Costs of the temporary independent arrangements shall be borne by the Franchisee and shall be reimbursed to the City by the Franchisee within ten (10) business days of the City's invoicing of the Franchisee.

If the interruption in service described in the paragraph next above continues for a period of thirty (30) days, the City shall have the right to terminate the rights and privileges granted in this Ordinance.

Office Hours, Staffing, and Service Logs. The Franchisee shall establish and maintain an office in the City with telephone service and shall keep said office open for business from 9:00 a.m. to 5:00 p.m. each and every day except Saturday, Sunday and legal national holidays, as a minimum.

The office shall be staffed with sufficient competent personnel to handle calls and inquiries during office hours. A daily log of all service calls, complaints and inquiries taken therein shall be maintained by the Franchisee and be available to the City upon request.

Section 5. Temporary and Permanent Roll-Off Containers

Rocks, waste, scrap, building materials, or other trash resulting from construction or major remodeling; resulting from a general cleanup of vacant or improved property just prior to its occupancy; or resulting from sizable amounts of trees, brush, and debris cleared from property in preparation for construction, will be removed by the Franchisee as part of the Franchisee's regular service but rates will be derived from approved rates described in Section 15.

Section 6. Changes in Times and Routes of Collection

The City Council reserves the right to change or alter the times and routes of collection. The Franchisee shall be given at least five (5) days' notice if any such action is scheduled to be

discussed by City Council. No changes in collection schedule or routes shall be made by the Franchisee without approval by the City.

Section 7. Disposal of MSW

The Franchisee shall have the responsibility for the disposal of all MSW collected under this Ordinance, and all of such materials shall be disposed of in compliance with the laws of the State of Texas and/or the rules, regulations and standards established from time to time by the Federal Government of the United States of America and the Texas Commission on Environmental Quality.

Section 8. Services to the City.

City Property Pickup. The Franchisee will provide pickup twice weekly for the City at all City properties at no cost to the City. Containers used by the City will be of the size and type appropriate to the volume and characteristics of material.

Special City Events. The Franchisee will provide special pickup during not more than ten (10) City annual events (designated each year by the City in writing to the Franchisee) at no charge. Placement of containers will be at the direction of the Director of Public Works. The Franchisee will provide one twenty (20) cubic yard roll-off container at no charge to the City for each such event.

White Waste. Twice each year, the Franchisee will pick up White Waste. The Franchisee will provide special pickup services daily at designated locations during the Schertz Annual Spring Cleanup. This pickup will include large household appliances, furniture (and other bulky items) tires or other material not normally collected during twice weekly pickup. The dates will be established by the City. This service will be at no cost to the City or the public. Notice of the Cleanup dates shall be published in local media at the expense of the Franchisee.

The Franchisee will provide special pickup services daily at designated locations during the Schertz Annual Fall and Spring Clean-ups. Scheduling will be at the discretion of the Franchisee, with a minimum of 150 days between the Schertz Annual Spring Cleanup and the Schertz Annual Fall Cleanup. This pickup will include large household appliances, furniture (and other bulky items) tires or other material not normally collected during twice weekly pickup. This service will be at no cost to the City or the public. Notice of the Cleanup dates shall be published in local media at the expense of the Franchisee.

Household Hazardous Waste. Twice each year in conjunction with the Spring and Fall Clean-up period, a program to collect and dispose of Household Hazardous Waste will be planned and conducted by the Franchisee. The cost of this program will be borne by the Franchisee. The Franchisee will provide documents detailing costs for each event and recommend adjustments to the program based on participation levels and volume of material collected.

The Franchisee may, with approval by the City, engage a third party to collect and dispose of Household Hazardous Waste where such materials constitute a serious health hazard or the materials require special handling beyond the capabilities of the Franchisee. Any program established will fully comply with the laws of the State of Texas and rules established by the Texas Commission on Environmental Quality.

Biohazardous Waste. The Franchisee will make provisions for the disposal of biohazardous waste resulting from City operations at no cost to the City.

Section 9. Duration of the Franchise, Renewal Options, and Termination

Term and Acceptance. Subject to the requirements relating to insurance and the performance bond set forth in herein, this Ordinance and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term ending June 30, 2025, provided that, within thirty (30) days after the adoption of this Ordinance on second reading, the Franchisee shall file with the City its unconditional acceptance of this Ordinance and promise to comply with and abide by all of its provisions, terms, and conditions. Such acceptance and promise in writing shall be duly executed, and sworn to by an authorized official of the Franchisee on behalf of the Franchisee before a notary public or other officer authorized by law to administer oaths. Failure to file such acceptance shall render this ordinance void.

Termination. The City may terminate this franchise for failure by the Franchisee to comply with the provisions of Section 3 of this Agreement. Upon the City's determination that the Franchisee has failed to comply with any or all of such provisions of Section 3, the City may notify the Franchisee in writing that it is exercising its right to terminate this franchise on thirty (30) days' (or longer, at the option of the City) written notice to the Franchisee; provided, the termination of this franchise by the City due to the Franchisee's failure to comply with Section 3.a. shall not terminate the Franchisee's contractual obligations to the City and all agents, officers, employees, and representatives of the City as set forth in this Ordinance.

The City may terminate this franchise as a result of the Franchisee having twenty-five (25) (5 per year) unresolved complaints outstanding as set forth in this Ordinance. The City may notify the Franchisee that it is exercising its right to terminate this franchise on thirty (30) days' (or longer, at the option of the City) written notice to the Franchisee.

The City may terminate this franchise for failure by the Franchisee to comply with any other provision of this Ordinance if:

- The City has notified the Franchisee in writing of such failure and the Franchisee has failed to correct such failure to the satisfaction of the City within thirty (30) days (or longer period, at the option of the City) of the receipt of such notice or
- The City has notified the Franchisee in writing of such failure twice within a six (6) month period. Such termination shall be effective upon thirty (30) days' (or longer, at the option of the City) by written notice to the Franchisee.

Following receipt of notice of termination as listed above, the Franchisee shall be responsible for continuing compliance with all provisions of this Ordinance until the effective date of termination unless explicitly directed otherwise in writing by the City.

Section 10. Severability, Compliance with Applicable Laws, and Non-Contestability by the Franchisee

Severability. 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.

City Regulations. At all times during the term of this Ordinance, the Franchisee shall be subject to all lawful exercise by the City of its police power and to such reasonable regulations as the City shall from time to time provide, pursuant to the exercise of such police power.

Rights of City. The Franchisee, by acceptance of this Ordinance, expressly acknowledges and accepts the right of the City to issue such franchise and further agrees to fully comply with all appropriate regulations promulgated by any appropriate government agency of competent jurisdiction.

Section 11. Sale, Transfer, or Assignment of Franchise Rights or Assets

The Franchisee shall not sell, transfer, or assign its rights under this Ordinance, or substantially all of its assets, to any other person or corporation without the prior written approval of the City Council.

Section 12. Complaints and Resolution

Complaints from or by the public or a particular customer must be in writing and mailed (or presented) to the City Manager or designated representative for action.

Section 13. Penalties.

The Franchisee will pay a penalty of not less than \$25 or more than \$200.00 for each customer complaint not satisfactorily resolved. Satisfactory resolution will be determined by the City Manager. The Franchisee may appeal to City Council, which will make a final determination. The penalty will be deducted from the Franchisee proceeds the for billing cycle following City Manager determination unless appealed, in which case City Council will provide further instruction. Twenty-five (25) (five per year) unresolved complaints will be a basis for contract review by City Council for possible franchise termination.

Section 14. Investigation and Public Hearing

The City Council shall have full power to examine or cause to be examined at any time, and at all times, the books, papers and records of the Franchisee with relation to the operation of the MSW collection system within the City of Schertz. In this connection, the City shall have the right, through its City Council, to take testimony and compel the attendance of witnesses or the

production of books, papers and records and to examine witnesses under oath and under such rules and regulations as it may adopt. If any officer, agent, or employee of the Franchisee refuses to give testimony before the City Council, the City Council shall have power to terminate this Ordinance.

Section 15. Notices

Where written notices are provided for in this Ordinance, same shall be sufficient to notify the Franchisee if mailed by certified mail to the proper address as specified in this Ordinance and shall be sufficient to notify the City if mailed by certified mail to City of Schertz, 1400 Schertz Parkway, Schertz, Texas 78154, Attention: City Manager.

Section 16. Service Rates

Rates for services provided under this Ordinance are contained in the City's Fee Schedule set forth each budget year. Fees are subject to change.

Section 17. Billing, Collection and Payment

For the purpose of convenience, the billing and collection of the charges levied for all MSW service shall be done by the Utilities Department of the City, and all such fees shall be payable at the Municipal Offices. The City will prorate a new customer service to the nearest half-month charge relative to the commencement of service. (Service shall be considered commencing when water is turned on to that customer). All charges shall be due and payable each month concurrent with utility bills, and, if not paid on or before the due date, the City shall assess a ten percent (10%) penalty for delinquency and collection expenses. Utilities will be discontinued by the City for lack of payment of any garbage bill or any part thereof.

Section 18. Franchise Fee.

The Franchisee shall be paid by the City at the rate of eighty-five percent (85%) of the amount collected, excluding penalties and accepting recycling fees, for each customer served for which billing is made by the City. The Franchisee shall be paid what is due within ten (10) days after closing date of each billing period with the last month payment hereunder to be made during the first calendar month after the expiration of the term hereof or after the cancellation hereof, as the case may be.

Section 19. Recycling

Frequency of Pickup. The Franchisee will collect recyclable material once each week from residences wishing to participate. Each residence address will be charged a fee for this service, whether participating or not. The Franchisee will transport such collected recyclables.

Recycling Containers. The Franchisee shall provide appropriate bins for recycling to each residence at no charge. Bins will be replaced at the City's expense if the bins are stolen and a police report corroborates the theft. Additional bins may be purchased by the homeowner or resident at the City's cost.

Customer Participation. Participation in the recycling program is voluntary but highly encouraged. Failing to actively participate does not relieve the homeowner or resident from payment of recycling fees.

Recycling Proceeds. The proceeds from the Franchisee's sale of recycling materials shall be retained by the Franchisee.

Commercial Recycling. Under the terms of this franchise the franchise shall not be subject to any haul permit fees per vehicle.

Section 20. Legal Provisions

All Ordinances, Parts of Ordinances or Resolutions in conflict herewith are expressly repealed.

In the event that the City is required to take any legal action to enforce the terms and conditions of this agreement because of the breach of or failure to perform any term of condition by the Franchisee, the Franchisee agrees to pay all costs expended by the City including reasonable attorney fees.

In the event of a natural disaster which the City is declared a disaster area by the State or Federal Government, City shall have the right to dispose of rubbish and trash in any manner determined by it to be in the best interests of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, THAT THIS ORDINANCE WAS PASSED and APPROVED on first reading this the ___ day of _____, 2015.

PASSED, APPROVED and ADOPTED on second reading this the ___ day of _____, 2015.

APPROVED:

Mayor, Michael Carpenter

ATTEST:

City Secretary, Brenda Dennis

APPROVED AS TO FORM:

City Attorney