

ORDINANCE 34A-2014

**AN ORDINANCE GRANTING FRANCHISE AGREEMENTS BETWEEN THE CITY OF POST OAK BEND, TEXAS AND CONTRACTOR(S) FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLING SERVICE AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT, SETTING FORTH GENERAL SPECIFICATIONS ESTABLISHING RATES FOR COLLECTION AND DISPOSAL OF SOLID WASTE AND RECYCLING SERVICES, PROVIDING FOR THE COLLECTION OF ESTABLISHED RATES AND PROVIDING FOR ENFORCEMENT AND PRESCRIBING A PENALTY FINE OF NOT LESS THAN \$25 A DAY NOR MORE THAN \$1,000, AND MAKING EACH DAY A SEPARATE OFFENSE.**

**WHEREAS**, the City of Post Oak Bend has the responsibility to provide for the health and welfare of its citizens ;and

**WHEREAS**, the City of Post Oak Bend is authorized to adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal (Tex. Health & Safety Code § 363.111(a));

**WHEREAS**, the City of Post Oak Bend has authorized to contract with certain other public entities or a private contractor(s) to furnish solid waste collection, transportation, handling, storage, or disposal services (Tex. Health & Safety Code § 364.033);

**WHEREAS**, the City Council of the City of Post Oak Bend has determined that it is in the public interest of said City and its citizens to grant **Non-Exclusive** Franchises to **CONTRACTOR(S)** to provide for the satisfactory and efficient collection removal, and disposal of solid waste and recyclable materials so as to maintain safe and sanitary conditions within Post Oak Bend; and

**WHEREAS**, it has been and is determined by the City Council of the City of Post Oak Bend to be in the best interest and necessary to preserve and protect the public health of all citizens of said City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POST OAK BEND, TEXAS**

1. That all previous ordinances, resolutions and agreements and amendments thereto regarding and granting permission for the collection, removal and disposal of solid waste and recyclable materials within the City of Post Oak Bend are hereby suspended effective on the date of this ordinance.
2. **Parties:** The parties to this contract are the **CITY OF POST OAK BEND, KAUFMAN COUNTY, TEXAS (herein after "City") and CONTRACTOR(S) C** (herein after "Contractor(s)")
3. **Term of Contract:** This contract shall be for a term of two (2) years commencing on the 1st day of May 2015. Following the end of the initial two (2) year term (as well as all subsequent terms under this franchise) the expiring term shall automatically renew for an additional two (2) years unless the City or Contractor(s) notifies the other party, in writing, and no less than 90 days prior to the end of the term, that the party elects to terminate this contract. **Grant of Authority:** There is hereby granted by the City to Contractor(s) the *non-exclusive right* and privilege to operate and maintain within the City of Post Oak Bend a service for the collection and removal of garbage, trash, brush and other items intended to be discarded. (hereinafter called "solid waste") and **recyclable materials**. The right and privilege granted in this contract for the purpose set forth above shall be *non-exclusive* and (*no other or other*) contractor(s), person or corporation shall be permitted to engage in garbage collection or recycling service from residential, commercial or industrial generators, within the City during the term of this franchise. (*Collection and disposal of construction debris is excluded from the exclusive grant of authority.*)
5. **Compliance with Laws and Ordinances:** Contractor(s) shall at all times during the terms of this contract be subject to all such reasonable regulations as the City may hereafter provide. In addition, Contractor(s) shall observe all state and federal laws, rules and regulations. relevant to collection removal and disposal of solid waste. **Only Single Axle container trucks will be allowed to operate in the City.**

**6. Definitions: The following definitions shall apply with respect to this ordinance and franchise contract:**

- A. Bags: Plastic sacks designed to store refuse with sufficient wall strength to maintain physical integrity when lifted by top. Total weight of a bag shall not exceed (35) pounds.
- B. Bulky Heavy Waste: Stoves, refrigerators (freon must be removed), water tanks, washing machines, furniture and other waste materials other than construction debris, dead animals, brush, yard waste, hazardous waste or stable matter with weights or volumes greater than those allowed for containers.
- C. Bundle: Tree, shrub and brush trimmings or newspapers and magazines securely tied together forming an easy handled package not exceeding four feet (length) & 35 pounds.
- D. Construction Debris: Waste bundling materials resulting from construction, remodeling, repair or demolition operations.
- E. Container: A receptacle with a capacity of greater than 20 gallons but less than 96 gallons constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, having a tight fitting lid capable of preventing entrance into the containers by vectors. The weight of a container and its contents shall not exceed 75 pounds .
- F. Dead Animals: Animals or portions thereof equal to or greater than 20 pounds in weight that have expired from any cause, except those slaughtered or killed for human use.
- G. Disposal Site: A refuse depository including but not limited to sanitary landfills, transfer stations, incinerator and waste processing/separation centers licensed, permitted or approved to receive for processing or final disposal of refuse & dead animals by all governmental bodies & agencies having jurisdiction & requiring such licenses, permits or approvals.
- H. Hazardous Waste: Any chemical compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the state to be "hazardous" as that term is defined by or pursuant to Federal or state law. Tires and Vehicle Batteries are considered "hazardous waste".
- I. Producer: An occupant of a Residential Unit or Commercial Unit who generates refuse.
- J. Refuse: This term shall refer to Residential Refuse and Bulky Waste, Construction Debris, and Stable Matter generated at a Residential Unit unless the context otherwise requires.
- K. Residential Refuse: All garbage and rubbish generated by a producer at a residential unit.
- L. Residential Unit: A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than one family. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto.
- M. Rubbish: All waste wood, wood products, tree trimmings, grass cutting, dead plants, weeds, leaves, dead tree, or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packing or wrapping items like glass, ashes cinders, and any and all other waste materials not included in definitions of Bulky Waste, Construction Debris, Dead Animals, Garbage, Hazardous Waste or Stable Matter.
- N. Stable Matter: All manure and other waste matter from places such as a stable or any animal, livestock, or poultry enclosure, and resulting from keeping animals, poultry or livestock.
- O. Commercial Container: Metal receptacle designed to be lifted and emptied mechanically for use at Commercial and Industrial Units.
- P. Commercial and Industrial Unit: All premises, locations or entities, public or private, requiring refuse collection within the corporate limits of the City, which is not a Residential Unit.

Q. Recyclable Material: Any and all materials as the parties may agree in writing (i.e. newspaper, aluminum cans, and plastic)

R. Recycling Container: A rigid plastic container with a capacity of maximum ninety-six (96) gallons or less used to facilitate curbside recycling. Container to be marked for recycling

**8. Responsibilities of Contractor(s):**

**A. Hold Harmless:** Contractor(s) will indemnify, hold harmless, and exempt the City, its officers, agents, servants and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Contract, arising out of a willful or negligent act or omission by Contractor(s), its officers, agents, servants and employees; provided, however, that Contractor(s) shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees arising out of a willful or negligent act or omission by the City, its officers, agents, servants and employees.

**B. Insurances:** Contractor(s) shall at all times during the Contract maintain in full force and affect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage as provided for herein. All insurance shall be by insurers and for policy limits acceptable to the City and before commencement of work hereunder the Contractor(s) agrees to furnish the City certificated of insurance or other evidence satisfactory to the City to the effect that such insurance has been procured and is in force. The certificate shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given to the certificate holder"

For the purpose of this Contract, the Contractor (s) shall carry the following types of insurance in at least the limits specified below:

Coverage	Limits of Liability
Workmen's Comp	Statutory
Employer's Liability	\$500,000
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 in the aggregate
Automobile & Vehicles	\$2,000,000 Each Occurrence combined single limit for Bodily Injury and Property Damage Liability
Pollution Legal Liability	\$2,000,000 each loss
Excess or Umbrella	\$5,000,0000 per occurrence

Coverages may be provided by the Contractors's parent corporation.

**C. Licenses:** Contractor(s) shall obtain all licenses and permits (other than the license and permit granted by the Contract) necessary to perform the services required of Contractor(s) by this ordinance.

**D. Equipment:** Contractor(s) shall maintain and operate its collection system and equipment in order to render competent and efficient service subject to the terms of this Contract. All equipment including motor vehicles and trucks necessary for the performance of this franchise shall, be in good condition and repair. The container trucks used in collection of garbage shall be all metal, with completely enclosed "Packer" type bodies that are designed and manufactured for the collection of garbage and rubbish. Said collection vehicles shall be painted and numbered and shall have Contractor's name and telephone number painted in letters of a contrasting color on each side of the vehicle in a size and type so as to be easily readable from a distance of 50 feet. All vehicles shall be kept in a clean and sanitary condition.

**9. Service Required of Contractor(s):** Contractor(s) shall provide, as a minimum, the following services within the corporate limits of the City of Post Oak Bend, Texas.

### **A. Residential Service:**

- (1) Contractor(s) shall provide collection service for the collection of residential garbage(except bulky waste) to each Residential Unit one (1) time per week.
- (2) Such collections services will be provided starting at no earlier than 7:00 A.M.
- (3) Contractor(s) will furnish curbside pickup of grass, leaves, and other similar residential yard-grown refuse on regular pickup days placed in plastic bags not exceeding 35 pounds in weight or placed in garbage cans. Trees, brush, shrubbery and the like to be picked up with garbage, subject to the quantity limitations herein above set forth, shall be cut and tied in bundles of not more than four feet in length and 35 pounds in weight each, if the same is not placed in garbage cans.
- (4) Contractor(s) will furnish curbside pickup of recyclable materials one day every week on same day as regular waste pick up. Recycling services include plastic bottles (must be rinsed), metal cans (coffee cans, etc.), aluminum cans, cardboard (non-wax coated) paper, newspapers, and envelopes (remove mylar on window envelopes). All plastic, aluminum, and metal must be rinsed. Unacceptable items are garbage, carbon paper, plastic wrap or wax paper, food & drink items, paper towels & napkins, tissue, rubber bands, courier or padded envelopes and glass. NO GLASS WILL BE AFFECTED. All recyclable material must be placed in a separate container. This container can be a trash can of your choosing or a ninety-six (96) gallon container with a recycling logo purchased from Contractor(s).
- (5) In the event that a resident may desire pick-up of excessive or unusual items, or service not contemplated by the ordinance, such resident should make independent arrangements with the Contractor(s). Contractor(s) shall have no obligation whatsoever to collect Hazardous Waste, Infectious Waste or Special Waste.

### **B. Commercial Service**

- (1) All commercial establishments and business operations in the City are required to have solid waste collection and disposal service. Commercial service is available for either "hand pick up" or by commercial or industrial containers. All commercial and industrial containers will be supplied by the Contractor(s). Each commercial establishment and business operation is responsible for insuring that the size of container and number of times of service are adequate to meet the solid waste collection needs of the business and to assure that no "overflow" situations occur.
- (2) The schedule of costs for commercial hand pickups, commercial or industrial containers for solid waste collection for commercial and business operations in the City is to be agreed upon by each business and contractor(s).

### **C. Construction Debris.**

Debris from lot clearing and construction operations, rock, brush, tree limbs, 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, or remodeling of residence, but may be done for the owner on payment of an extra charge as agreed to between the Contractor(s) with such payments being made directly to the Contractor(s). Construction debris collection and removal are excluded from the non exclusive grant of authority.

### **D. SPECIAL COLLECTIONS AND SERVICES**

- (1) **Municipal Locations.** The Contractor(s) / Service Provider(s), if exclusive, will provide, at no cost to the City, up to an aggregate number of seven (7) Containers (each up to eight (8) yards in size) to collect Municipal Solid Waste at certain municipal locations within the City once per week, as needed.
- (2) **Special Events.** The Contractor(s) / Service Provider(s), if exclusive, will provide, at no cost to the City, one Container (up to eight (8) cubic yards in size) for up to one City designated special events per calendar year.
- (3) **Disaster Relief Services** Upon request by the City, the Service Provider(s) / Contractor(s) may provide special collection and disposal services due to damage or destruction resulting from a flood, tornado, hurricane or other similar disaster. For the services provided under this section, the Service Provider(s) shall charge the City an amount equal to the rates and fees allowed under the Federal Emergency Management's Agency's grant for the disaster relief services provided to the City under this Section or a rate mutually agreed upon by the City and the Service Provider(s). Nothing herein shall be construed as to limit the City's ability to contract with additional

vendors to provide the disaster relief services contained in this Section. The franchise fee shall not apply to the disaster relief services provided for under this Section.

(4) **RECORD-KEEPING:** Contractor(s) shall maintain accurate records of customers, of services rendered, of payments received, and of franchise fees due and payable under this franchise for each and every month during the term of this franchise. Contractor(s) shall be responsible for billing each customer directly. Contractor(s) shall make available to the City all records necessary to conduct an audit of compliance under this franchise during the franchisee's normal business hours.

5. If exclusive, Contractor(s) shall provide pick up at the park areas at no additional charge

(7) Contractor(s) shall maintain an office through which it may be contacted. It shall be staffed with sufficient competent personnel to handle calls and inquiries from 8:00 a.m. to 5:00 p.m., Monday through Friday.

### **E. Holiday Schedule**

Contractor(s) shall notify all customers of Contractor(s)'s Holiday Schedule. If garbage collection falls on one of Contractor(s)'s recognized holidays, garbage pickup will be made on the next day following the holiday. Recyclable materials will also be picked up on the next day.

### **10. Disposal of Garbage and Refuse:**

Contractor(s) shall have the responsibility of the disposal of all refuse, garbage, and weeds collected under this agreement and all of said material shall be disposed of in compliance with the laws of the Federal Government and the State of Texas and/or the rules, regulations, and standards established or to be established by the Federal Government and the Texas Commission on Environmental Equality. Contractor(s) will provide name and location of state approved disposal sites.

**11. Responsibilities of City:** Complaints received by the City concerning solid waste collection and recycling services from residential and commercial customers will promptly be reported to Contractor(s). Contractor(s) shall promptly respond to complaints received and provide the City with a report concerning corrective and/or investigation actions taken by the Contractor(s) on each complaint.

### **12. Responsibilities of Customer:**

- A. Garbage containers, bags and bundles must be placed at curbside locations for collection. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. Garbage container, bags and bundles shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians.
- B. When construction work is being performed in the right-of-way, garbage containers, bags and bundles shall be placed as close as practicable to access point for the collection vehicle.
- C. Placements of containers does not apply to residents who have made arrangements directly with the Contractor(s) for concierge services (if needed) for disabled individuals.

### **13. Rates, Collection, Payment:**

- A. Rates for collection services monthly, if exclusive, will be established per household. If exclusive, special rates may be set up for senior citizens (65 and above), disabled veterans or disabled individuals at a special rate per month.
- B. Contractor, if exclusive, shall have the right to request a one-time increase of (10%) to the rates stated in the above section A to cover increase costs for fuel and/or costs to take waste to an Approved Disposal Site. Such request for the one-time increase shall be presented to the City Council and accompanied by any proof requested by City Council and the City Administrator. Upon such sufficient proof the City shall not unreasonably withhold approval.
- C. Monthly Statements: Contractor(s) will directly bill each customer in the City and, if exclusive, shall require that payment be due on the first day of each month. If payment is not received by the (30th) day of the due date, Contractor(s) may discontinue collection services to such customer and may pursue any collection remedies to it

under law. Contractor(s) shall be solely responsible for any claims, suits, damages liabilities or expenses resulting from Contractor(s)'s discontinuance of service at any location.

- D. Monthly Franchise Statements and Payments: The Contractor(s) / Service Provider(s) will remit to the City a franchise fee equal to five percent (5%) of the gross receipts collected from company billing statements for Single Family Residence Units and Commercial/Industrial Units. Payments shall be made monthly for each calendar month of the franchise and the franchise fee shall be paid to the City on or before the 15th day of each month (for the immediate preceding month's service) commencing on January 15, 2015. Payment after that date shall include a late penalty of \$50.00. The franchise fee will be paid to the City of Post Oak Bend on collected payments only. All outstanding payments will be sent upon collection of payment.
- E. Taxes: In addition to the amounts billed and collected by the Contractor(s) / Service Provider(s), the Service Provider(s) shall also be responsible for billing, collecting and remitting/paying any and all sales, use, and service taxes assessed or payable in connection with the Services in and to the City of Post Oak Bend.
- F. Billing for Roll-Off Services and Roll-Off Franchise Fee is six percent (6%).

#### 14. Legal Provisions

- A. Interruption of Service: In the event the collection and disposal of garbage shall be interrupted for any reason for more than forty-eight (48) hours as a sole result of a willful or negligent act of Contractor(s), 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. An exception for not providing regularly scheduled service to certain locations would be hazardous conditions in which case a report will be made to the City and service shall resume when the hazardous condition is rectified. City and Contractor(s) agree that Contractor(s) shall not be responsible or liable in any way for damages by fire, flood, earthquake or other acts of God.
- B. Excessive Interruption in Service If the interruption of service mentioned in the paragraph next above continues for a period of seven (7) days as a sole result of a willful or negligent act of Contractor, then City shall have the right to terminate the rights and privileges granted in this contract.
- C. Assignment No assignment of Franchise Contract or any other right accruing hereunder shall be made in whole or in part by Contractor(s) without the express written consent of any assignment the assignee shall assume the liability of Contractor(s).
- D. Severability: If any section, sentence, clause, paragraph or portion of this agreement shall, for any reason, be declared illegal or invalid, such invalidity shall not affect the remaining provisions thereof.
- E. Repealer: All ordinances, parts of ordinances or resolutions in conflict are expressed repealed.
- F. Each violation of any of the provisions of this ordinance shall constitute a penal offense and shall be punishable of a fine of not less than \$25.00 or more than One Thousand Dollars (\$1,000.00) and each day that such an offense continues shall be a separate offense.
- G. The Mayor is authorized to execute such contract(s) on the behalf of the City of Post Oak Bend, Texas.
- H. 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 or condition by Contractor(s), Contractor(s) agrees to pay all costs expended by the City including reasonable attorney fees.
- I. In the event of a natural disaster (defined as a storm, flood or tornado) wherein the City is declared a disaster area by the State or Federal government, City shall have the right to dispose of rubbish and trash and will attempt in good faith to use Contractor(s)'s facilities if they can be used at the same or lower costs than other methods available to the City. This provision shall also apply to the disposal of any rubbish or trash resulting from severe weather or fire of lesser degree than a natural disaster.

15. **Notices:** Where written notices are provided for in this agreement, same shall be sufficient to notify Contractor(s), if mailed certified mail to (Contractor(s) Name, address), and shall be sufficient to notify the City if mailed certified mail to the City of Post Oak Bend, 1175 County Road 278, Kaufman, Tx. 75142.

PASSED AND APPROVED this 9th day of December 2014.

CITY OF POST OAK BEND, KAUFMAN COUNTY

BY RAYMOND BEDRICK  
RAYMOND BEDRICK

MAYOR

ATTEST:  
BARBARA BEDRICK  
BARBARA BEDRICK  
City Secretary