



## **City of Onalaska**

P.O. Box 880 • Onalaska, Texas 77360

### **ORDINANCE NO. 422 with Exhibit A**

#### **AN ORDINANCE GRANTING PINEYWOODS SANITATION TO OPERATE AN EXCLUSIVE GARBAGE COLLECTION BUSINESS WITHIN THE CITY OF ONALASKA, TEXAS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ONALASKA, TEXAS:**

##### **SECTION 1. TITLE:**

This ordinance shall be known and cited as the Garbage Collection Ordinance.

##### **SECTION 2. GRANT:**

There is hereby granted by the CITY OF ONALASKA, hereinafter referred to as the "City", to Pineywoods Sanitation, hereinafter referred to as "Franchisee", the right and privilege to use all public streets of the City of Onalaska for the purpose of operating its vehicles for garbage collection and disposal services throughout the City. In accordance with the laws of the State of Texas and Ordinances of the City of Onalaska, the right to use and occupy such streets for the purposed herein granted shall be exclusive. Franchisee shall operate its business in compliance with all applicable laws, regulations, and ordinances of the United States of America, the State of Texas, County of Polk, and the City of Onalaska.

##### **SECTION 3. TERM:**

The Franchise term and the rights, privileges, and authorities herein granted shall take effect and be in force immediately on the first day of the month of May, following the date of passage hereof, and shall continue in force and effect for a term of three (3) years, provided that within thirty (30) days after the date of the final passage of this Franchise Ordinance the Franchisee shall file with the City Administrator/City Secretary its written acceptance of the terms of this Franchise Ordinance and promise to comply and abide by all of its provisions, terms, and conditions. In the event that such acceptance shall not be filed within the time required, this Ordinance and the rights, privileges, and Franchise herein granted shall be and become terminated, null, and void.

##### **SECTION 4. FRANCHISE RENEWAL:**

The City, upon application, may renew this Franchise by the Franchisee or the City may choose to publish a Request for Proposal (RFP) for a Garbage Collection Franchise

##### **SECTION 5. TRANSFER OF FRANCHISE:**

The Franchise and all rights hereunder granted by this Ordinance should be a privilege to be held in personal trust by Franchisee. It shall not be assigned, transferred, sold or disposed of in whole or in part by voluntary sale, merger, consolidation, or otherwise, or by force or by involuntary sale, without the prior written consent of the City expressed by Ordinance, and then only on such conditions as may herein be prescribed. The City shall be empowered to take any legal or equitable action to set aside, annul, revoke, or cancel the Franchise, or the transfer of the Franchise, if said transfer is not made according to the procedures established in this Ordinance.

Any proposed sale, transfer, or assign shall only be made by a Bill of Sale or similar document, proposed copies of which shall be filed with the City as least thirty (30) days prior to the proposed date of the sale, transfer, or assignment. The City may, at its option, call a public hearing prior to approving or disapproving such sale, transfer or assignment. The City shall not withhold its consent unreasonably, provided however, that the proposed assignee shall agree to provide proof of financial responsibility as determined by the City.

#### **SECTION 6. FRANCHISE TERRITORY:**

This Franchise shall be for the present territorial limits of the City, or for any area henceforth added thereto during the term of the Franchise.

The Franchisee shall make available garbage collection and disposal services to all property within the City and its residents as of the effective date of this Ordinance.

#### **SECTION 7. USE OF STREETS:**

The Franchisee shall have the right to use the streets of the City for the operation of its garbage collection business as prescribed, regulated, and limited by the provisions of this Ordinance and by any applicable federal, state, or local laws, both present or future.

#### **SECTION 8. RATES AND CHARGES:**

The City shall be empowered to determine and regulate from time to time the charges, fares, and rates of the Franchisee and from time to time to approve revisions of such rates, Franchisee shall file with the City a list of its rates, to be provided to both residential and commercial customers prior acceptance of this Franchise. A list of rates shall be attachment "A" and become a part of this ordinance.

The Franchisee, with prior City approval, may from time to time establish revised rates for services. In such event, the Franchisee shall file a petition with the City, which shall state full and detailed information concerning the rate revisions requested and any supporting financial documentation. The City shall establish the date and time revision request within a reasonable period of time, and shall render a decision on the request within a reasonable period of time following the public hearing.

#### **SECTION 9. FRANCHISE PAYMENT TO THE CITY:**

In consideration of the granting of this Franchise, Franchisee shall pay monthly to the City a sum equal to eight percent (8%) of the gross annual revenues of Franchisee's business. Such payment shall be in addition to and shall not be construed as payment in lieu of personal or real property taxes levied by the City or any other fees chargeable by law. The term "gross annual revenues" shall mean all revenues received by the Franchisee, its affiliates or subsidiaries from

and in connection with the operation of the garbage collection system as authorized by this Franchise. For the purpose of this section, this term shall include, but not be limited to all customer fees, charges for container rentals, if any, revenues from advertising, revenues from any container installation fees, or any other fees received by Franchisee in the operation of its system within the City. The term shall not include any taxes on services furnished by the Franchisee, which are imposed directly on any customer by the City, the State, or other governmental unit.

The Franchise payment due to the City required in this section shall be computed and be due and payable monthly on the first day of each month. The Franchisee shall file with the City within thirty (30) days after the end of the calendar year a financial statement clearly showing the gross revenues received by the Franchisee during the preceding 12 month fiscal period. The city shall receive from the Franchisee records of the number of residential and commercial accounts.

The City shall have the right to inspect the Franchisee's income records, and its other books and journals, the right of audit, and the recompilation of any amounts determined to be payable under this Franchise. The Franchisee shall pay any additional amount due the City as a result of the audit within thirty (30) days following written notice to the Franchisee. No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise Fee under this Ordinance or for the performance of any other obligation of the Franchisee.

#### **SECTION 10. SERVICES TO THE CUSTOMER:**

The Franchisee shall provide to the property owner/occupant or business or business owner such garbage collection and disposal service within the scope of this agreement according to the applicable rates as listed in attachment "A" whether residential cart or commercial dumpster or roll off containers. Service to be provided a minimum of once weekly to a residence or place of business.

The Franchisee shall provide to the customer non-typical collection free of charge once per month, such items as non-hazardous materials or appliances, furniture, bedding, bundled or bagged vegetation debris.

#### **SECTION 11. SERVICES TO THE CITY:**

The Franchisee shall provide to the City the schedule of Complimentary Service that is detailed in the Service and Price Proposal dated March 15, 2019 and is shown as Exhibit A.

#### **SECTION 12. LIABILITY:**

The Franchisee shall indemnify and hold the City harmless from any and all loss sustained by the City on account of any suit, judgement, execution, claim, or demand whatsoever against the City resulting from the Franchisee's construction, operation, or maintenance of the garbage collection system. The Franchisee shall, and by its acceptance of this Franchise, specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to any and all damages and penalties indemnified against it in this section, including all expenses such as attorneys' fees, court costs, or any like costs incurred by the City.

The Franchisee shall carry throughout the term of this Franchise, or as extended, personal and

property damage liability insurance with responsible insurance companies qualified to do business in the State of Texas, such insurance naming the City as a co-insured party. The amounts of such insurance to be carried for liability due to property damage shall be \$100,000.00 as to any one occurrence, and against liability due to personal injury or death, \$100,000.00 as to any one person, and \$100,000.00 as to any one occurrence. Franchisee shall additionally carry automobile liability insurance, on all vehicles operated by Franchisee in its operation, in at least the amount of \$100,000.00 for bodily injury for each person, and \$300,000.00 for each occurrence, and property damage liability of \$100,000.00.

**SECTION 13. RECORD:**

Franchisee shall file with the City copies of all applications, permits, registrations or other documents submitted to or obtained by Franchisee from any State, local or federal authority required by Franchisee for the operation of its business including proof of insurance. The Franchisee shall maintain an office for as long as it continues to operate its business or any portion thereof, and hereby designates such office as the place where notices or other written statements may be served or delivered under this Ordinance. The City shall be notified of the location of such office or any change thereof.

**SECTION 14. PENALTIES:**

The City shall give Franchisee written notice of any violation of any of the provisions of the Ordinance. The City, at its option, in addition to and not in lieu of the remedy of termination as set forth in this Franchise, may assess a penalty of \$100.00 per day for each day Franchisee is in violation of any provision of this Franchise continuing after ten (10) days prior written notice. Further, the City may seek any remedy provided by law for the enforcement and collection of such penalty.

**SECTION 15. TERMINATION:**

The City shall give Franchisee written notice of any violation of any of the provisions of this Ordinance. The City, at its option, in addition to and not in lieu of the remedy of termination as set forth in this Franchise, may assess a penalty of \$100.00 per day for each day Franchisee is in violation of any provision of this Franchise continuing after ten (10) days prior written notice. Further, the City may seek and remedy provided by law for the enforcement and collection of such penalty.

1. Filing of a voluntary petition in bankruptcy by Franchisee;
2. Taking of jurisdiction of Franchisee or Franchisee's assets in a bankruptcy proceeding. and such proceeding continuing for thirty (30) consecutive days;
3. The taking by execution of Franchisee's interest in this Franchise for any of its assets subject to this Franchise;
4. The appointment by a court of a receiver for Franchisee, and such appointment continuing for a period of thirty (30) days.

Notwithstanding any other provision of this Ordinance, the City shall have the option to cancel and terminate this Franchise at any time for failure of the Franchisee to comply with any provision or requirement contained therein.

**SECTION 16. SEVERABILITY:**

If any section, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or

otherwise held to be invalid, such invalidity shall not affect the facility of the remainder of this Ordinance, and any portions in conflict are hereby repealed.

**SECTION 17. FRANCHISEE TRASH COLLECTION EQUIPMENT:**

All residential garbage collection by the Franchisee shall be conducted using single axle vehicles, manually loaded from the rear of the vehicle. The use of any garbage collection vehicle with hydraulic robotic arms is strictly forbidden.

**BE IT ORDAINED** that this Ordinance shall become effective May 1, 2022.

**PASSED** and **APPROVED** this 8<sup>th</sup> day of March, 2022.

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Shirley Gilmore, Mayor ProTem  
City of Onalaska, Texas

ATTEST:

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Angela Stutts, City Administrator/City Secretary  
City of Onalaska, Texas

The parties have caused their duly authorized representatives to enter into this agreement effective as of the date first stated above. Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Signature

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Printed name.

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Title