

RESOLUTION NO. 1779

A RESOLUTION AUTHORIZING THE EXECUTION OF A NEW SOLID WASTE FRANCHISE AGREEMENT

WHEREAS, the City of St. Helens has determined that the protections and maintenance of the public health, peace, safety, and welfare of the residents of the City can best be accomplished by the continuation of garbage and recycling service under the grant of a franchise; and

WHEREAS, City staff has worked with Hudson Garbage Service to negotiate a new franchise agreement.

NOW, THEREFORE, BE IT RESOLVED that the City of St. Helens does hereby adopt the Solid Waste Franchise Agreement attached hereto and made a part hereof by this reference.

Approved and adopted by the City Council on February 15, 2017, by the following vote:

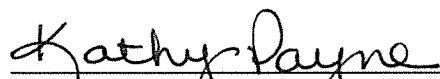
Ayes: Locke, Conn, Morten, Scholl

Nays: None



Rick Scholl, Mayor

ATTEST:



Kathy Payne, City Recorder

SOLID WASTE FRANCHISE AGREEMENT

THIS SOLID WASTE FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of the 1st day of March, 2017, by and between the **CITY OF ST. HELENS**, a municipal corporation in Columbia County, Oregon, hereinafter referred to as the City, and **WASTE CONNECTIONS OF OREGON, INC.**, dba Hudson Garbage Service, an Oregon corporation, hereinafter referred to as the Franchise Holder.

WHEREAS, the City, through its Council, has determined that the protection and maintenance of the public health, peace, safety, and welfare can best be accomplished by the continuation of garbage service under the grant of a franchise; and

WHEREAS, Waste Connections of Oregon, Inc., dba Hudson’s Garbage Service is the current garbage service franchise holder; and

WHEREAS, the current franchise will expire in March, 2017; and

WHEREAS, Franchise Holder wishes to invest a substantial sum in capital investments in local facilities and wishes to have a longer time frame to amortize the investment; and

WHEREAS, the City has been satisfied with the services provided by the Franchise Holder and is willing to enter into a new 10 year franchise agreement; and

WHEREAS, the Franchise Holder is willing to render the service of collection and disposal of solid waste and recyclables within the City upon the terms and conditions hereafter set forth; and

WHEREAS, the recycling agreement entered into by both parties on March 1, 2007 is revoked and replaced by this franchise agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

Section 1. Exclusive Franchise

There is hereby granted by the City to the Franchise Holder the exclusive right, privilege, and franchise to collect, convey, and transport solid waste and recyclables upon the streets of said City, subject to the restrictions hereinafter set forth, and the provisions of the ordinances of the City as now existing or as hereafter amended or adopted. The collection, conveyance, and transportation for compensation of drop boxes is not included within the exclusive rights granted herein.

Section 2. Recycling Requirements

- a. The Franchise Holder shall provide weekly residential pickup of the following commingled recyclables in a roll cart of at least 65 gallons in size:
 - i. Milk cartons/drink boxes,
 - ii. Plastic bottles and containers #1,2,3,4,5,6, and 7,
 - iii. Film plastic,

- iv. Mixed paper/junk mail,
 - v. Cardboard,
 - vi. Cereal type boxes,
 - vii. Magazines,
 - viii. Newspapers,
 - ix. Aluminum cans, tin cans, and small pieces of metal (less than 12 inches in length and less than 5 pounds).
- b. Every other week, except for the month of November when service is provided weekly, the Franchise Holder shall provide residential curbside pickup of yard debris in roll carts of at least 95 gallons in size.
- c. For commercial customers (more than 10 employees and at least 1,000 square feet of commercial space), the Franchise Holder shall provide appropriate containers for weekly collection of the following materials:
- i. Cardboard,
 - ii. Mixed office paper,
 - iii. Magazines,
 - iv. Glass,
 - v. Tin.
- d. For multi-family dwellings the Franchise Holder shall provide the opportunity for multi-family dwellers to recycle those items listed in Section 2(a).
- e. The Franchise Holder shall provide an expanded recycling education and promotion program that supports the management of solid waste in the priority of waste prevention, reuse, recycle, compost and lastly, safe disposal. This program must be implemented in accordance with OAR 340090-0040(3)(c) and will include:
- i. Promotion of home composting.
 - ii. Promote use of free depots for glass and used oil recycling.
 - iii. Deliver or mail brochures annually to customers that explains how, why, when, and where they can recycle glass and used motor oil.
 - iv. Make oil recycling brochures available to retailers that sell motor oil.
 - v. All new customers will be mailed recycling education materials and recycling schedules.
 - vi. Annually mail customers recycling information, including benefits of recycling.
 - vii. Target one community or media event per year to promote recycling.
 - viii. Use a variety of media formats to provide information to customers and residences about recycling opportunities and waste prevention and reuse tips at least quarterly.
- f. A free recyclable drop-off depot center will be provided to all citizens by Franchise Holder somewhere within the incorporated limits of the City. This center will be advertised through a variety of media formats to all customers and citizens on a regular quarterly basis. The center will have clearly marked containers for the deposit

of all principle recycling materials as outlined in ORS 459A.

Section 3. Collection Requirements

The Franchise Holder hereby agrees to provide solid waste collection and recycling services to any person within the City who requests such service, provided that such person is not in default for non-payment for any prior service rendered under this franchise agreement. The Franchise Holder further agrees to collect and dispose of, in a good workmanlike manner, all types of solid waste as defined as:

"Solid waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper, and cardboard, useless or discarded commercial, industrial, demolition and construction materials. "Solid waste" does not include:

- (a) Hazardous waste as defined in ORS 466.005.*
- (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.*

The acceptance of solid waste is subject to the rules and regulations of the approved disposal site such that Franchise Holder is not required to accept waste not accepted at the approved disposal site. Notwithstanding any other term contained herein, the Franchise Holder shall have no obligation to collect any waste which is, or which the Franchise Holder reasonably believes to be radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Title to and liability for any Excluded Waste shall remain with resident/generator of such Excluded Waste, even if the Franchise Holder inadvertently collects and disposes of such Excluded Waste. If the Franchise Holder finds what reasonably appears to be discarded Excluded Waste, the Franchise Holder shall notify the resident/business/generator, if such can be determined, that the Franchise Holder may not lawfully collect such Excluded Waste and leave a tag specifying the nearest location available for appropriate disposal.

Section 4. Term

The rights, privileges, and franchise herein granted shall continue and be in force for a period of ten (10) years.

Section 5. Franchise Fee

In consideration of the rights, privileges, and franchise herein granted, the Franchise Holder shall pay to the City of St. Helens a franchise fee of seven percent (7%). The franchise fee shall be based on the gross revenue collected from its customers for solid waste service within the City. Gross revenue shall not include uncollectible accounts. Gross revenue shall not include revenue generated from the sale of recyclable material or revenue from curbside recycling and yard debris programs. The payment of such fees shall be on a quarterly basis, and will begin on July 1, 2017. Payment is to be made within fifteen (15) days after the end of the quarter. Failure to pay such fees shall be deemed sufficient cause for termination or suspension of the franchise.

Section 6. Rates

The rates to be charged for collecting and disposing of solid waste shall be set by resolution.

Section 7. Non-Discrimination

All patrons served by said Franchise Holder shall be served in non-discriminatory and an impartial manner.

Section 8. Dumping Requirements

Franchise Holder shall deposit all solid waste in a suitable place for dumping and disposing of such solid waste which disposal site shall be approved by the City and all other state or federal agencies which regulate such disposal areas.

Section 9. City-wide Clean-up

Nothing contained in this franchise shall prevent the City from employing men and using vehicles for the purpose of collecting and removing garbage for the city-wide cleanup sponsored by City or other public agency.

Section 10. City Inspections

The hauling of solid waste shall be under the supervision of the City Council, and the Council may make regular inspections of solid waste hauling equipment and the manner of hauling solid waste upon the streets of the City.

Section 11. City Facilities Garbage

The City shall pay for its garbage service in like manner and at the same rates as any other commercial business. Notwithstanding the foregoing, Franchise Holder shall provide solid waste collection services to the City at McCormick Park free of charge. Such service shall be one 6-yard container once per week.

Section 12. Rights of Franchise Holder for Collection Containers

The Franchise Holder will provide all necessary containers for the collection of solid waste and recyclables to all customers covered by this franchise agreement. No person, other than the person producing or depositing the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchise Holder, shall interfere with or remove any solid waste container from its location. No person, other than the person producing or depositing the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchise Holder, shall interfere with or remove any contents from a solid waste container. No person, other than the person producing or depositing the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchise Holder, shall interfere with or remove the lid, nor shall any such person collect, molest, or scatter waste into any solid waste container. No unauthorized person shall deposit solid waste into any solid waste container. The Franchise Holder may, during the term of this franchise, bring civil action against any party who violates this provision of the franchise agreement to a court of competent

jurisdiction and may, if the Franchise Holder prevails, recover reasonable costs and attorney's fees, including those on appeal.

Section 13. Reservation of Rights

The City reserves the right to vacate any street or to close any street or streets used by the Franchise Holder during the course of construction or during the course of necessary repairs thereto or in the event that any street becomes dangerous to the operation of automobiles.

Section 14. Compliance

The Franchise Holder agrees that he will comply with all laws and regulations pertaining to his activities as provided by any agency or department of the United States, State of Oregon, County of Columbia, or the City.

Section 15. Indemnity

The Franchise Holder further agrees and covenants to pay all damages for injury to real or personal property, or for any injury sustained by any person growing out of any negligent act or deed of Franchise Holder, his agents or employees, and further agrees to hold harmless, indemnify, and defend the City from and against all claims, demands, suits, and actions of every name and description brought against the City for or on account of any such injuries to real or personal property caused by said Franchise Holder, his agents or employees, in the exercise of any and all rights granted herein by the City, or by or in consequence of any negligence of the Franchise Holder, his agents or employees, or by or on account of any negligent act or omission of said Franchise Holder, his agents or employees. Notwithstanding the foregoing, the City warrants that the City's pavement, curbing or other driving surface or any right of way reasonably necessary for the Franchise Holder to provide the services described herein are sufficient to bear the weight of all of the Franchise Holder's equipment and vehicles reasonably required to perform such services. The Franchise Holder will not be responsible for damage to any such pavement, curbing, driving surface or right of way, which results from the weight of Franchise Holder's vehicles providing service hereunder, except to the extent resulting from the negligence or willful misconduct of the Franchise Holder.

Section 16. Insurance Requirements

The Franchise Holder agrees to carry, at his own expense, the following:

- a. Workers compensation insurance per State of Oregon Statutes;
- b. General liability insurance:
 - i. Personal injury with limits of not less than \$1,000,000 per occurrence;
 - ii. General Aggregate of not less than \$2,000,000.
- c. Auto liability insurance:
 - i. Personal injury with limits of not less than \$200,000 per person and \$500,000 per occurrence;
 - ii. Property damage with limits of not less than \$50,000.

The Franchise Holder agrees to include the City as an additional named insured on both general

and auto liability insurance policies. Above limits may be provided by Franchise Holder through any combination of primary, umbrella, excess, deductibles or self-insured retention. All insurance premiums shall be paid by the Franchise Holder and shall be without cost to the City.

Section 17. Non-Performance

If the Franchise Holder shall fail from any cause within his control to gather the solid waste within the City of St. Helens, and such failure shall continue for a period of ten (10) days, or should the Franchise Holder for any reason fail to perform the conditions, agreements, provisions, acts, or things herein mentioned within ten (10) days after having been given notice of default, then the City shall have the right to terminate this agreement, whereupon the Franchise Holder's rights herein granted shall cease, and the Franchise Holder shall surrender and forfeit any right and privilege granted by this agreement; provided, however, that the Franchise Holder shall not be liable for suspension of operation caused from excessive storms, accidents, or casualties caused by an act of God, or the public enemy.

Section 18. Franchise Holder Responsibilities

- a. Should the Franchise Holder, except by reason of a strike, act of God, or disaster, fall further than one week behind in its collection schedule, the City may, at its option, cause such refuse to be collected and disposed of.
- b. The Franchise Holder shall maintain a telephone, for the receipt of service calls or complaints, and shall be available for such calls on all working days. Any complaints must be given prompt and courteous attention, and, in case of missed scheduled collections, the Franchise Holder shall investigate and, if verified, shall arrange for pickup of said refuse within 24 hours after the complaint is received.

Section 19. City Authority

It is expressly understood that this franchise is granted subject to all the terms and provisions of the charter and ordinances of the City of St. Helens, now or hereafter to be enacted, relating to the granting of franchises and the collecting, transporting, and conveying of solid waste and the exercise of the police powers of the City of St. Helens, with the same effect as though the same were expressly incorporated herein.

Section 20. City Reservations

The City reserves the right to prohibit or regulate the operation of trucks under this franchise on any street or streets within the City of St. Helens when traffic conditions or the public welfare or public convenience shall, in the judgment of the City Council, so require.

Section 21. Non-Assignment

Franchise Holder shall not assign this franchise or any right, license, or privilege granted herein except upon the express consent of the Council. All operations under this franchise shall be by Franchise Holder as herein contemplated shall be performed or furnished by any contractor or subcontractor except with the express consent of the City Council. In the event consent of the Council is obtained, the provisions of this franchise shall be binding upon the Franchise Holder herein, his assignees, contractors, and subcontractors.

Section 22. Modification

No modification of this agreement shall be valid unless in writing and signed by the parties.

Section 23. Prior Agreements

This franchise agreement is the final and complete agreement of the parties and supersedes and replaces all prior and existing written or oral understandings.

Section 24. Attorney Fees

In the event of suit or action to enforce any of the provisions of this agreement, the prevailing party shall be entitled to recover, as part of his costs, a reasonable attorney fee in both the trial and appellate courts.

Section 25. Council Actions

The City shall not be deemed to have waived the performance of or observance by Franchise Holder of any of the terms, conditions, or provisions hereof unless and except such waiver be by resolution or other appropriate action of its Council, and of which action a record is made.

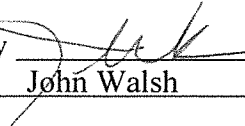
IN WITNESS WHEREOF, we have hereunto set our hands and seals this 15 day of February, 2017.

CITY OF ST. HELENS

FRANCHISE HOLDER
Waste Connections of Oregon, Inc.,
d/b/a Hudson Garbage Service

By: 
Rick Scholl, Mayor

By: _____
Its: _____
Name: _____

By: 
John Walsh, City Administrator