

ORDINANCE NO. 1078

AN ORDINANCE GRANTING A FRANCHISE TO TEXAS DISPOSAL SYSTEMS, INC. TO PROVIDE RECYCLING AND SOLID WASTE COLLECTION AND DISPOSAL SERVICES WITHIN THE CITY OF KYLE; PROVIDING FOR THE SCOPE AND NATURE OF THE OPERATION; PROVIDING FOR THE DISPOSAL OF GARBAGE, SOLID WASTE AND REFUSE; PROVIDING A PROCEDURE FOR THE HANDLING OF COMPLAINTS; PROVIDING FOR A FRANCHISE FEE; PROVIDING FOR THE ESTABLISHMENT AND ADJUSTMENT OF CHARGES; REQUIRING INDEMNITY AND INSURANCE; PROVIDING FOR REVOCATION AND AMENDMENT; PROVIDING FOR PAYMENT OF TAXES BY THE FRANCHISEE; PROHIBITING ASSIGNMENT AND SUBLETTING OF THE FRANCHISE WITHOUT CONSENT; PROVIDING FOR FORFEITURE; AND MAKING OTHER PROVISIONS

WHEREAS, Texas Disposal Systems, Inc. ("Company") operates a recycling, solid waste collection and disposal service;

WHEREAS, the Company has provided solid waste collection and disposal services to all residences and businesses within the City of Kyle ("City") since October 1997; and

WHEREAS, it is in the public interest of the for the City to grant the Company a franchise to use and occupy the public streets, alleys and right-of-way easements to provide recycling, solid waste collection and disposal services within the City on such terms and conditions as will provide the City with sufficient controls and options necessary to provide for the public good;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

SECTION 1. Definitions.

1.0 For the purposes of this ordinance, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Section I or otherwise in this ordinance shall be given their common and ordinary meaning.

1.1 The following words, terms, phrases and their derivations shall, in this ordinance, have the meaning given in this section.

1.1.1 "Agreement" means the "Agreement for Solid Waste and Refuse Collection and Disposal Services" made and entered into by and between the City of Kyle and Texas Disposal Systems, Inc.

1.1.2 "City Secretary" shall mean the City Secretary of the City.

1.1.3 "City Manager" shall mean the City Manager of the City or his/her authorized designate.

1.1.4 "City Council" or "Council" shall mean the governing body of the City.

1.1.5 "Commercial Account" means any Customer that is not a Residential Unit, and includes all retail, commercial and industrial uses and businesses, mobile home parks, and any apartment building, nursing home, or similar residential, convalescent or multi-family dwelling consisting of more than three single-family dwelling units.

1.1.6 "Customer" means any firm, person, entity, corporation or organization that is provided recycling, Refuse and Waste collection or disposal services within the City. Customers includes all persons and entities that contract with the Company, or receive service from the Company, for the collection of Refuse and Waste from a business, retail, commercial, industrial or other non-Residential Unit, whether such service is used by said firm, person, entity, corporation, organization or others, and the occupant of each Residential Unit within the City.

1.1.7 "Franchise" shall mean this Ordinance, and all the rights and obligations established herein.

1.1.8 "Gross receipts" shall mean the total amount collected by Company from any and all Customers for services rendered under authority of this Franchise.

1.1.9 "Hazardous Waste" shall mean waste in any amount which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State agency by or pursuant to Federal or State law, or waste in any amount which is regulated under Federal or State law. For purposes of this Franchise, the term hazardous waste shall also include motor oil, gasoline, paint, paint cans and solvents. The term includes any definition thereof provided in the Agreement.

1.1.10 "Refuse and Waste" shall mean any refuse, rubbish, garbage or solid waste material that is not Hazardous Waste and that Company is authorized and required to collect and dispose of pursuant to the Agreement.

1.1.11 "Residential Refuse" shall mean all household and domestic garbage, trash and rubbish, excluding rubbish and used materials resulting from construction or remodeling work, generated by a person or persons dwelling in a Residential Unit.

1.1.12 "Residential Unit" shall mean a dwelling within the Agreement area occupied by a person or a group of persons comprising of not more than two (2) families. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. A condominium dwelling, whether single or multi-level construction whether single family, duplexes, triplexes and fourplexes are included and shall be treated as a Residential Unit, except that each single-family dwelling within such Residential Unit shall be separately billed and provided Residential cart collection service as a Residential Unit.

1.1.13 "Street" or "alley" shall mean all publicly dedicated or maintained streets, alleys, easements and rights-of-way, a portion of which is open to use by the public or vehicular travel.

SECTION 2. Grant of Franchise. The City hereby grants the Company a non-exclusive franchise to use the public streets, alleys, roads and thoroughfares within the City for the purpose of operating and engaging in the business of providing recycling services and collecting and disposing of Refuse and Waste from Commercial Accounts and Residential Units within the City; including, but not limited to, service to all Customers and contracting with Commercial Accounts and providing service pursuant to contract therefore, placing and servicing containers, operating trucks, vehicles and trailers, and such other operations and activity as are customary and/or incidental to such business and service.

SECTION 3. Term. The term of the Franchise Agreement (the "Term") shall be for a ten (10) year period of time commencing April 1, 2021; provided this Franchise shall automatically terminate upon the termination of the Agreement. Between March 1, and March 31, 2022, and every March 1 through March 31 for each subsequent year unless a Party had provided a notice of non-extension as provided below, the Term shall be extended (without further action by the Parties) for an additional year so that the remaining Term shall be for an additional ten (10) years. Either party may give notice of termination of the non-extension in the timeframe listed above. There will be no more than five (5) additional one-year terms(s) added to this Franchise.

SECTION 4. Scope and Nature of Operation.

4.0 The Company may collect and deliver for disposal all Refuse and Waste accumulated within the corporate limits of the City by the Customers and the words "refuse", "garbage", "trash" and "waste" when used in this Franchise are used for convenience and, unless the context shows otherwise, refer to and are limited to Refuse and Waste. The Company will furnish the personnel and equipment to collect refuse, provide the services described herein, and as contracted for with the Commercial Accounts, in an efficient and businesslike manner as provided in the Agreement. All recycling, collection and disposal services will be provided in strict compliance with the Agreement.

4.1 Service Provided - (a) Commercial Accounts. Company shall provide container, bin and other collection service for the collection of all Commercial Accounts within the City, according to the individual Customer agreements and applicable City regulations and shall make

provision for the special collection of Refuse and Waste upon request. The Company shall cause or require its equipment, containers and bins to be kept and maintained in a manner to not cause or create a threat to the public health and shall keep the same in a good state of repair.

(b) Residential Units. Company shall provide service to all Residential Units within the City.

(c) Recycling and Disposal. Company shall provide recycling and disposal services as provided in the Agreement.

4.2 Collection Operation - (a) Save and except as provided in this Section, collection shall not start before 7:00 a.m. or continue after 7:00 p.m. at any location; provided that collections made in a manner that does not cause or result in loud noise, or that are made at a location which will not cause the disturbance of persons occupying the premises or neighboring property, may be made at anytime. Other exceptions to collection hours shall be effected only upon the mutual agreement of the Customer and only when such exception will not result in the disturbance of occupants of the property served or of neighboring properties, or when the Company reasonably determines an exception necessary due to unusual circumstances. The frequency of collection shall be as provided in the Agreement and Customer Account contracts.

4.3 Holidays - The Company shall observe holidays as provided in the Agreement.

4.4 Complaints - Requirements for receiving and responding to complaints shall be as provided in the Agreement.

SECTION 5. Vehicles To Be Covered and Identified. All vehicles used by Company for the collection and transportation of refuse shall be covered at all times while loaded and in transit to prevent the blowing or scattering of refuse onto the public streets or properties adjacent thereto, and such vehicles shall be clearly marked with the Company's name in letters not less than two (2) inches in height.

SECTION 6. Regulation of Containers. The Company may rent or lease containers to any Customer within the corporate limits of the City for refuse storage and collection purposes subject to the following requirements:

- (1) All containers shall be constructed and maintained according to good industry practice;
- (2) All containers shall be equipped with suitable covers to prevent blowing or scattering of refuse while being transported for disposal of their contents;
- (3) All containers, save and except those being used for the purpose of collecting and storing rubble, building and scrap construction materials, shall be equipped with covers suitable to prevent blowing or scattering of refuse and access to the container by animals while the container is at the site designated by the Customer;

- (4) All containers shall be periodically cleaned, maintained, serviced and kept in a reasonably good state of repair: to prevent the unreasonable accumulation of refuse residues; to avoid excessive odor and harborage for rodents and flies resulting from excessive residues remaining after collection of containers; and
- (5) All containers shall be clearly marked with Company's name and telephone number in letters not less than two (2) inches in height. It is further understood and agreed that Company will lease or rent such containers at terms which are fair, reasonable and within the terms and rates authorized from time to time by the City Council.

SECTION 7. Disposal of Refuse. The Company will deliver all Refuse and Waste collected by it within the City, except for materials which the Company may select for recovery and recycling, to such location as may be designated by Company in the Agreement. No other location may be used for the disposal of such refuse without the written approval and consent of City. All rules and regulations governing hours of operation, disposal practices and materials at the disposal site will be observed and followed by the Company while engaged in the disposal of refuse.

SECTION 8. Franchise and Rental Fees.

8.1 Franchise Fee - The streets, rights-of-way, and public easements to be used by the Company in the operation of its business within the boundaries of the City as such boundaries now exist and exist from time to time during the term of this Franchise, are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and the City will incur costs to regulate and administer this Franchise. In consideration of such benefits, costs and expenses, the Company shall through the term of this Franchise pay to the City ten percent (10%) of the Company's total gross revenues received from Customers pursuant to this Franchise (exclusive of Sales Tax).

8.1.1 Fees Paid Monthly - The franchise fee for all services other than monthly curbside service to Residential Units shall be payable by the Company monthly to the City. Such franchise fee shall be delivered to the City Secretary or successor in function together with a statement indicating the derivation and calculation of such payment. Each such monthly payment shall be due on the 15th day of the month following the calendar month in which the revenues are received by the Company and shall be based upon the Company's gross receipts during that calendar month. As an example, the May 15 payment shall be based upon the Company's gross receipts during the month of April. For purposes of verifying the amount of such fee, the books of the Company shall at all reasonable times be subject to inspection by the duly authorized representatives of the City. Additionally, the Company shall file annually with the City Secretary, no later than four (4) months after the end of the Company's fiscal year, a statement of revenues attributable to the operations of the Company within the City. This statement shall present, in a form prescribed or approved by the Council, a detailed breakdown of gross revenues. This annual statement shall be subject to audit by the City.

The City will bill Residential Units for monthly curbside service and will deduct the ten percent (10%) franchise fee from the rates charged by the Company and collected by the City for monthly curbside service to Residential Units.

8.1.2 No Other Rental Fees - The franchise fee shall be in lieu of any and all other city imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, city sales tax, and such other charges for services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, installations and systems, fixtures, and other facilities of the Company and all other property of the Company and its activities, or any part thereof, in the City which relate to the operations of the Company pursuant to this Franchise.

8.1.3 Credit for Fees Paid - Should the City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay any such licenses, charges, fees, rentals, easement or franchise taxes or charges.

SECTION 9. Collection and Disposal Rates.

9.1 Council May Set Rates - The City Council may, from time to time in its discretion, establish the rates and charges, or the maximum rates and charges, for the collection and disposal of Refuse and Waste, whether regular or special collection, within the City.

9.1.1 Contract Rates - The rates charged by the Company for services provided pursuant to this Franchise shall be determined by contract with the Customer and such rates and charges shall not be greater than the rates approved by the City Council from time to time. Such rates are subject to periodic adjustment.

9.1.2 Residential Units. The Residential Unit rate shall be established by the Agreement.

9.1.3 Recycling. The rates for recycling shall be established by the Agreement.

9.2 Special Collection Rates - The charges for special collection and services provided to a Customer pursuant to this Franchise shall be established by contract between the Company and

the Customer, save and except to the extent, if any, provided otherwise in the Agreement. Such rates shall not exceed the maximum rates authorized by the City Council.

9.3 Disposal Costs - The refuse collection charges provided by Sections 9.1 and 9.2 above shall include all disposal costs.

SECTION 10. Adjustment of Rates. The Company may, at any time and from time to time during the term of this Franchise, submit a written request for an adjustment of the rates, or maximum rates, if any, established by the City for collection and disposal services performed under this Franchise. The City, upon consideration of the circumstances surrounding any such written request, may approve or disapprove the same, and shall provide written notice of such determination to Company.

SECTION 11. Compliance With Law. The Company shall conduct its operations under this Franchise in compliance with the material provisions of all applicable local, state and federal laws, rules and regulations, this Franchise and the Agreement.

SECTION 12. Insurance Provided by Company. The Company shall maintain throughout the term of the Franchise property damage coverage, general liability insurance, automobile liability insurance for any vehicles owned or operated by Company, worker compensation and such other insurance as is required by and provided in the Agreement.

12.1.1 Additional Insured - The City shall be an additional insured and the term "owner" and "City" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the City and the individual members, officers, employees and agents thereof in their official capacities and/or while acting on behalf of the City;

12.1.2 No City Liability - Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect the Company and the City and shall be primary coverage for all losses covered by the policies;

12.1.3 Other Insurance Clause - The policy clause "Other Insurance" shall not apply to the City where the City is insured on the policy;

12.1.4 No Recourse - Companies issuing the insurance policies shall not have recourse against the City for payment of any premium or assessment.

SECTION 13. Indemnification and Hold Harmless. The Company agrees to indemnify, defend, and save harmless the city, its agents officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity, arising from the Company's operations and services, or arising from any act of negligence of the Company, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Company in the

performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Franchise. The City shall promptly notify the Company of any claim or cause of action which may be asserted against the City relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend and save harmless the City. The Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses and consultants as it deems necessary to defend against the claim or cause of action. The Company by and through the City Attorney, may be granted the right to take, in the event the Company and the City are Co-Defendants in a suit, upon express written approval of the City Attorney of the City, total or partial lead responsibility for the defense of any claim or cause of action. In the event that the City is in control, either totally or partially, of such defense, the Company shall pay all expenses incurred by the City in providing the defense. It is understood that it is not the intention of either the City or the Company to create any liability, right, or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Company.

SECTION 14. Forfeiture and Termination of Franchise.

14.1 Material Breach - In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a material breach of the terms and conditions hereof. A material breach by Company shall include, but shall not be limited to, the following:

14.1.1 Fees - Failure to pay the fees set out in Section 8.0;

14.1.2 Telephone Listing - Failure to keep and maintain a telephone listing and office or answering service that is available by telephone without long distance charge as provided in the Agreement.

14.1.3 Failure to Provide Services - Failure to materially provide the services provided for in this Franchise;

14.1.4 Misrepresentation - Material misrepresentation of fact in the application for or negotiation of this Franchise; or

14.1.5 Conviction - Conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the award of this Franchise.

14.1.6 Operation Information - Material misrepresentation of fact knowingly made to the City with respect to or regarding Company's operations, management, revenues, services or reports required pursuant to this Franchise.

14.1.7. Foreclosure— Foreclosure or judicial sale, or the leasing of all or a substantial part, of the property and assets of the Company dedicated to and used for the purposes of providing service pursuant to this Franchise, without the prior approval of

Council as required in Section 16.

14.1.8. Bankruptcy or Receivership – Occurrence of events that allows the City to cancel this Franchise as authorized by Section 17, Receivership and Bankruptcy.

14.1.9. Termination of the Agreement – Termination of the Agreement due to Company's default pursuant to the procedures for termination due to default under the Agreement.

14.2 Economic Hardship - Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

14.3 Forfeiture and Proceedings - Any unwarranted and intentional neglect, failure or refusal of the Company to comply with any material provision of this Franchise within thirty (30) days after written notice from City setting forth the specific provision and noncompliance, said notice to be mailed to Company at its principal place of business by certified mail, return receipt requested, shall be deemed a breach of this Franchise, and the City Council, upon notice to Company and hearing, may, for good cause declare this Franchise forfeited and exclude Company from further use of the streets of the City under this Franchise, and the Company shall thereupon surrender all rights in and under this Franchise.

14.3.1 Proceedings - In order for the City to declare a forfeiture pursuant to Sections 14.1.1, 14.1.2, or 14.3, the City shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If such violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Council may take under consideration the issue of termination of the Franchise. The City shall cause to be served upon Company, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Notice shall be given of the meeting and issue which the Council is to consider.

14.3.2 Hearing - The Council shall hear and consider the issue, hear any person interested therein, and shall determine whether or not any violation by the Company has occurred.

14.3.3 Forfeiture - If the Council shall determine that the violation by the Company was the fault of Company and within its control, the Council may declare the Franchise forfeited and terminated, or the Council may grant to Company a period of time for compliance.

SECTION 15. Transfer, Sale or Conveyance by Company. The Company shall not transfer, assign, sell or convey this Franchise without the prior approval of the Council expressed by ordinance; provided that this section shall not apply to vehicles, replacements, maintenance, upgrades or modifications of equipment, machinery, containers and buildings by Company for the purpose of maintaining and continuing its operation within the City. Company shall not contract for another to perform any material part of the services Company is authorized to provide pursuant to this Franchise without the express written approval of the City Council.

SECTION 16. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the assets and property of the Company used for and dedicated to providing service pursuant to this Franchise, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place and the provision of this Franchise governing the consent of the Council to such change in control of the Company shall apply. Upon the foreclosure or judicial sale, or the leasing of all or a substantial part, of the property and assets of the Company dedicated to and used for the purposes of providing service pursuant to this Franchise, without the prior approval of Council, the Council may, upon hearing and notice, terminate this Franchise.

SECTION 17. Receivership and Bankruptcy.

17. I Cancellation Option - The Council shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, other action or proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, unless:

17.1.1 Trustee Compliance - Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; or

17.1.2 Trustee Agreement - Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Company.

SECTION 18. Retention of City Police Powers. The City retains and reserves all of its police powers and the rights, privileges, and immunities that it now has under the law to regulate, patrol and police the streets and public ways within the City, and the granting of this Franchise shall in no way interfere with the improvements to, or maintenance of, any street, alley or public way, and the rights of the City to use said streets, alleys and public ways.

SECTION 19. Amendments Of City Ordinances and Regulations. The City reserves the right and power, pursuant to its police power, after due notice to Company, to modify, amend, alter, change or eliminate any rules, regulations, fees, charges and rates of the City, and to impose such additional conditions, that are not inconsistent with the rights granted by this Franchise, upon the Company and all persons, firms or entities of the same class as the Company, as may be reasonably necessary in the discretion of the City Council to preserve and protect the public, health, safety and welfare and/or insure adequate service to the public.

SECTION 20. Taxes. The Company shall promptly pay all lawful ad valorem taxes, levies and assessments, if any, that are imposed upon the Company. Absent an administrative or judicial challenge, or appeal, the failure to pay any such tax, levy or assessment shall be a breach of this Franchise.

SECTION 21. Acceptance By Company. Within thirty (30) days after the passage of this Franchise, the Company shall file with the City its acceptance of the terms and provisions of this

Franchise. The acceptance shall be in writing on the Company's letterhead and provide as follows:

City of Kyle
100 W. Center St.
Kyle, Texas 78640-0040

ATTENTION: City Secretary

Texas Disposal Systems, Inc. (the "Company"), acting by and through the undersigned officer who is acting within his official capacity and authority, hereby accepts the franchise to operate and provide recycling, refuse and waste collection and disposal services within the City as said franchise is set forth and provided in Ordinance No. 1078 (the "Ordinance"). The Company agrees to be bound and governed by each term, provision and condition of the Ordinance, to accept and to give the benefits provided by the Ordinance and to perform each service and duty set forth and provided for in the Ordinance in a businesslike and reasonable manner and in compliance with the Franchise.

Texas Disposal Systems, Inc.

By: _____
Name: _____
Title: _____

SECTION 22. Public Necessity. The Council hereby finds and declares that the public welfare, convenience and necessity require the service which is to be furnished by the Company.

SECTION 23. Affirmative Action by Company.

23.1 Applicable Law - Company shall adhere to affirmative action practices within the City and Company shall adhere to all federal, state and local rules and laws pertaining to discrimination, equal employment and affirmative action.

23.1.1 Equal Employment - Company shall provide equal employment opportunity to minorities, women and the disabled at all levels and in all phases of operation. In addition, the Company shall promulgate an affirmative action policy which shall cover, in addition to employment, training, purchasing, and the employment of subcontractors. Company shall establish affirmative action goals and timetables to achieve its affirmative action policies. These goals shall reflect the percentage of minorities, women and disabled within the City.

23.1.2 Plan and Policy - Company shall at all times provide the City with a copy of its current affirmative action policy and its affirmative action goals and timetables.

23.1.3 Compliance - Company shall make all reasonable efforts to comply with its affirmative action commitments.

SECTION 24. Severability. If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid or unconstitutional the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

SECTION 25. Captions and Headings. The use of captions or headings for the various sections of this Ordinance are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

SECTION 26. No Suspension of Laws. All provisions of the ordinances of the City as now existing or as may be amended from time to time and all provisions of the statutes of the State of Texas applicable to general law cities shall be a part of this Franchise as fully as if the same had been expressly stated herein, and said City retains and may exercise all of the governmental and police powers and all other rights and powers not directly inconsistent with the terms, conditions, and provisions of this Franchise.

SECTION 27. Peaceful Enjoyment. From and after the effective date of this ordinance, the City and the Company shall be and are hereby authorized and entitled to act in reliance upon the terms, conditions and provisions of this Franchise and, subject thereto, the Company shall collect rates for service, operate and conduct its business and work within the City, and enjoy the benefits and privileges of this Franchise during the term hereof; provided that Company shall fully comply with the terms, provisions and conditions of the Agreement and the City shall provide oversight and supervision of such contract performance.

SECTION 28. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance was passed was held after a public hearing on the subject of this Franchise, and said meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, as required by the Open Meetings Act, Chapter 551, Texas Government Code.

SECTION 29. Conflict with Agreement. In the event of a conflict between any term, provision or condition of Section 4 or Section 9 of this Franchise and the Agreement, the terms, provisions and conditions of the Agreement shall govern and control to the fullest extent the same are not inconsistent with applicable law. The grant of this non-exclusive Franchise shall not be deemed to conflict with the provisions of the Agreement providing the Agreement is an exclusive contract for services. State law authorizes the Agreement to be an exclusive contract for services. Save and except as provided above in this Section 29, this Franchise and the Agreement shall be read in a manner to give effect to both if the conflict is not clear, and if the conflict is clear the terms, provisions and conditions of this Franchise shall govern and control.

SECTION 30. Endorsements and Records. The City Secretary is directed to make endorsements as appropriate over her/his official hand and the seal of the City on the form provided at the conclusion of this Franchise, for the public record and convenience of the citizens, of the date upon which this Franchise is finally passed and adopted and, if the Company accepts the Franchise, the date of such acceptance.

SECTION 31. Anti-Boycott Verification – For purposes of Chapter 2270 of the Texas Government Code, Company represents and warrants that, at the time of execution and delivery of this Agreement, neither Company, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, boycotts Israel or will boycott Israel during the term of this Agreement. For purposes of Chapter 2270 of the Texas Government Code, the Company represents and warrant that, at the time of execution and delivery of this Addendum, neither the Company, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of the same, boycotts Israel or will boycott Israel during the term of this Addendum. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycotts Israel” and “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Company understand “affiliate” to mean an entity that controls, is controlled by, or is under common control with Company and exists to make a profit.

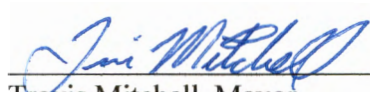
PASSED AND APPROVED on this the 4th day of February, 2020.

FINALLY PASSED AND APPROVED on this the 18th day of February, 2020.

ATTEST:

The City of Kyle, Texas


Jennifer A. Vetrano, City Secretary


Travis Mitchell, Mayor