

ORDINANCE NO. 652-2023

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE NON-EXCLUSIVE FRANCHISE GRANTED TO WASTE PRO OF ALABAMA, INC., FOR THE PURPOSE OF PROVIDING COLLECTION AND DISPOSAL OF RESIDENTIAL REFUSE WITHIN THE CITY OF SPANISH FORT, ALABAMA

WHEREAS, Waste Pro of Alabama, Inc. (hereinafter referred to as Waste Pro), has requested a three-year extension of its Franchise Agreement beginning January 1, 2024, and expiring on December 31, 2026; and

WHEREAS, the City Council desires to grant Waste Pro's request to renew the franchise for an additional term of three years.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:

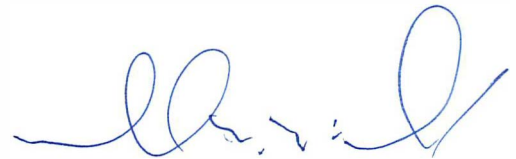
SECTION 1. The City Council hereby agrees to renew the terms of the franchise granted to Waste Pro for the collection and disposal of residential refuse and materials collection and recycling for a term of three years beginning on January 1, 2024, and expiring on December 31, 2026, in accordance with the terms of the franchise agreement between the parties, as the same has been amended. The City Council hereby authorizes the Mayor to execute the Amendment to the Franchise Agreement which is attached hereto as Exhibit 1, subject to any changes approved by the Mayor and City Attorney.

SECTION 2. Except as expressly amended in this Ordinance, all terms and conditions contained in Ordinance No. 549-2019, as amended, shall remain in full force and effect.

SECTION 3. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 4. This Ordinance shall become effective upon its adoption or as otherwise required by state law.

ADOPTED and APPROVED this 18th day of December, 2023.



Michael M. McMillan
Mayor

ATTEST:



Rebecca A. Gaines
City Clerk

2nd AMENDMENT TO THE FRANCHISE AGREEMENT GRANTING THE AUTHORITY TO
PROVIDE COLLECTION AND DISPOSAL OF
RESIDENTIAL REFUSE WITHIN THE CITY OF SPANISH FORT, ALABAMA

This amendment to that certain Agreement for the Collection and Disposal of Residential Refuse and Recyclable Materials Collection and Recycling (this "Amendment") is made as of this _____ day of _____, 2023, by and between Waste Pro of Alabama, Inc., {the "Franchisee"}, and the City of Spanish Fort, a municipal corporation, located in Baldwin County, Alabama (hereinafter called the "City").

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WITNESETH:

WHEREAS, pursuant to a Request for Proposals issued by the City in 2019, the Franchisee was awarded and the parties entered into that certain Agreement for the Collection and Disposal of Residential Refuse and Recyclable Material Collection and Recycling with a term effective as of January 1, 2020, to continue until December 31, 2022, and such agreement was extended until December 31, 2023 and would terminate unless otherwise extended by agreement of the parties {the "Agreement"};and

WHEREAS, in accordance with the terms and provisions of the Agreement and Applicable Law, the Franchisee has duly notified the City of its desire to renew the Agreement for an additional three-year period; and

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WHEREAS, the City has agreed to such renewal of the term of the Agreement and has taken all action necessary pursuant to Applicable Law or otherwise to authorize such renewal of the term of the Agreement and execute and deliver this Amendment; and

WHEREAS, in connection with such renewal of the term of the Agreement, the parties wish to amend the Agreement on the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual grants and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Section 2. Amendments. This Amendment shall be deemed to be an amendment to the Agreement and shall not be construed in any way a replacement or substitution, therefore. All of the terms and provisions of this Amendment are here by incorporated into the Agreement as if such terms and provisions were set forth therein in full. Subject to the foregoing and to the terms hereof, City and Franchisee hereby agree that the Agreement is hereby amended as follows:

- (a) Notwithstanding anything to the contrary set forth in the Agreement or any subsequent amendment thereof, the parties hereto acknowledge and agree that the term of the Agreement shall be extended for an additional three-year period beginning on January 1, 2024, and continuing through December 31, 2026, unless lawfully renewed, revoked or

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terminated as provided herein, which such term may be renewed or extended for additional one-year periods, subject to proper notification to the City by the Franchisee and approval by the City, in its sole discretion, as set forth in the Agreement.

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(b) Franchisee shall perform such services in accordance with the terms of the Agreement at the rates hereinafter set forth:

(i) One (1) time per week collection and disposal of refuse (190-gallon limit), including weekly collection and disposal of yard waste and two times per year of white goods (customers to call and schedule pick-up) and furnish and maintain a 95 gallon roller container per resident.

\$19.68 per Residential Unit/per month.

Approximately 2600 Residential Units/per month = \$51,168.00

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(ii) Franchisee shall be eligible to receive a rate adjustment each year on the anniversary of this agreement. The increase shall be based upon the percentage change in the Consumer Price Index for All Urban Consumers: Water and Sewer and Trash Collection Services. (CUUR0000SEHG). The percentage change will be calculated by looking at October of the current year compared to October of the prior year. The percentage change will be applied to the residential unit cost. In no year shall the increase exceed six percent (6%).

(iii) At this time, recycling collection and recycling will remain discontinued. The City reserves the right to reinstate recycling if Baldwin County Solid Waste establishes a recycling program.

Section 3. Reference to and Effect upon the Existing Agreement.

(i) Effectiveness: Recitals. This Amendment shall be effective only upon receipt by each of the City and the Franchisee of at least one fully executed copy of this Amendment. Upon the effectiveness of this Amendment, and on and after the date of such effectiveness, each reference in the Agreement to "this Agreement", this "Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the Agreement in any other related document shall mean and be a reference to the Agreement as amended hereby. The parties agree that the "whereas" recitals set forth above are true and correct and are hereby incorporated into this Amendment by reference.

(ii) Authority. The parties represent and warrant to the other party that (i) this Amendment has been duly and validly authorized, executed and delivered by it, and is a valid and binding agreement enforceable against it accordance with its terms; (ii) the persons executing this Amendment on behalf of the applicable party have been authorized and empowered to do so; (iii) each party has full power and authority to enter into and perform this Amendment in accordance with its terms. The parties acknowledge and agree that this Amendment shall inure to the benefit of and be enforceable by the parties hereto. The parties signing this Agreement on behalf of the City have been authorized to do so by specific action of the City Council adopted the ___ day of ___, 2023, in open meeting and of record in its official minutes.

(iii) Ratification and Confirmation Generally. Except as specifically amended above, the Agreement, as amended, shall remain in full force and effect and all of its respective terms and conditions are hereby ratified and confirmed.

Section 4. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 5. Counterparts. This Amendment may be executed in any number of separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Section 6. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

Section 7. Successors and Assigns. This Amendment shall be binding upon the City and the Franchisee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized representatives as of the date first above written,

WASTE PRO OF ALABAMA, INC.

By: _____
Its _____

CITY OF SPANISH FOR, ALABAMA

By: _____
Michael M. McMillan
Its Mayor

Attest: _____
Rebecca A. Gaines
City Clerk