

ORDINANCE NO. 20 -2024

AN ORDINANCE OF THE CITY OF BEREA, KENTUCKY, AWARDED A FRANCHISE FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE WITHIN THE CITY OF BEREA, KENTUCKY TO WASTE CONNECTIONS OF KY, INC.

WHEREAS, the City Council has found and determined that it is in the public interest of the Citizens of Berea to continue to utilize the private sector to collect and dispose of solid waste in the City, so that a public purpose would be served by requiring the solid waste collection operating within the City to be covered by the terms of the franchise herein, and

WHEREAS, the constitution of the Commonwealth of Kentucky, Section 163, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require certain franchisees operating within their boundaries to operate under franchise agreements and to grant such franchisees the right to use public properties on such conditions as seem proper, and further, KRS 82.082 authorizes the City to exercise such powers within its boundaries as are not in conflict with other state law; and

WHEREAS, in Ordinance 02-2004, the City Council provided for the creation of a franchise for the collection and disposal of solid waste within the City of Berea; and

WHEREAS, pursuant to said ordinance, the City of Berea entered into a Solid Waste Franchise Agreement and awarded such franchise which has now expired; and

WHEREAS, the City formulated a request for proposals for bids for a solid waste franchisee, and the City Council has determined that Waste Connections of KY, Inc., submitted the lowest and best bid for such franchise and should be awarded the franchise;

NOW, THEREFORE, be it ordained by the City Council of the City of Berea, Kentucky, as follows:

SECTION I

AWARD OF FRANCHISE. The franchise for furnishing and to furnish to the City of Berea, Kentucky, and to its citizens, residents, businesses, and industries, collection and disposal services for solid waste within the City of Berea, established in Ordinance 02-2004, shall be and is hereby awarded to Waste Connections of KY, Inc. (the Franchisee), and such franchisee shall be granted the right to go upon or under the streets, alleys, or other public ways or places of the City, to effect its franchise herein awarded. This franchise, granted herein by the City, shall only be exclusive for the services specified herein, and only to the extent permitted by applicable state and federal law, and the Franchisee accepts the risk, if any, that the City may lack the authority to grant an exclusive franchise. Any franchise granted hereunder may be extended to newly annexed territory upon the same terms and conditions herein, subject to approval of the state regulatory authorities if applicable. Franchisee shall execute a franchise contract with the City incorporating the terms of this Ordinance, the Request for Proposals for Residential and Commercial Waste Collection and Disposal, and Addendum #1, both dated July 2, 2024, and Waste Connection's Bid Form and Proposal (Basic Service Proposal) dated August 5, 2024.

SECTION II

TERM OF FRANCHISE; FRANCHISE DOCUMENTS. The franchise herein shall be for a term of five (5) years, beginning March 1, 2025, and may be extended for up to two (2) additional two (2) year terms up to a maximum term of nine (9) years. The franchise includes all terms of this ordinance, and all provisions of the Contract

Documents referred to in the Contract entered into by and between the Franchisee and the City pursuant to the terms hereof.

SECTION III

OPERATION AND MAINTENANCE. In the maintenance and operation of its collection and disposal system in the streets, alleys, and other public places and in the course of any new construction or addition to its facility, Franchisee shall proceed so as to cause the least possible inconvenience to the general public.

SECTION IV

FRANCHISE REQUIREMENTS. In addition to any other franchise requirements hereunder or made or adopted herein as provided, the following requirements shall apply to any franchise granted hereunder:

a) Franchise fee - In consideration of the granting and exercise of the franchise herein, and in further consideration of the grant to the Franchisee the right to make use of the public streets, alleys, or other public ways in the City, since such public properties are valuable properties acquired and maintained at great expense to the taxpayers of the City, and the grant to Franchisee of the right to use same is a valuable property right without which the Franchisee would be required to invest substantial capital in right of way costs and acquisitions, Franchisee shall pay to the City during the entire life of the franchise a sum equal to three percent (3%) of the franchisee's gross revenues received from collection and disposal services generated within the corporate limits, to be paid as set out in the Contract.

b) Any franchise payments to the City by Franchisee shall not be in lieu of any occupational, income, license, or property tax, or similar levy, assessment, fee or charge which would otherwise apply to be payable by Franchisee.

c) Franchisee shall file with the City Clerk of the City of Berea, Kentucky, and shall thereafter during the entire term of this franchise, maintain in full force and effect, a corporate surety bond or other adequate surety agreement in the amount and kind specified in the Contract and conditioned that in the event franchisee shall fail to comply with any one or more of the provisions of the franchise, then there shall be recoverable, jointly and severally, from the principal and surety, any damages or costs suffered or incurred by the City or by any customer of any action, or proceedings, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred to the principal amount of such bond; and said condition shall be a continuing obligation during the entire term of this franchise, and thereafter, until Franchisee shall have satisfied in full any and all obligations to the City and any of its customers hereunder, or other person or entity, which arise out of or pertaining to this franchise. Neither the provisions of this section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under any franchise issued pursuant to this ordinance.

d) Upon acceptance of such franchise, Franchisee shall file with the City Clerk of the City of Berea, Kentucky, and shall thereafter during the entire term of such franchise, maintain in full force and effect a Comprehensive General Liability Insurance policy with limits of not less than \$500,000.00 each occurrence and \$1,000,000.00

aggregate, for both bodily injury and property damage, and which shall insure Franchisee, and shall provide primary coverage for the City, its officers, boards, commissions, agents, and employees against liability for loss or damage occasioned by any activity or operation of Franchisee under such franchise and which shall contain and include a standard cross-liability endorsement thereto.

e) Franchisee shall indemnify and hold harmless, the City of Berea, Kentucky, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, costs, and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to actions of Franchisee in the exercise or the enjoyment of any privilege hereunder by Franchisee, of the granting thereof by the City.

f) Defense of litigation. Franchisee shall, at its sole risk and expense, upon demand of the City made by and through the City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or institute or had by third person or duly constituted authorities, against or affecting the City, its officers, boards, commissions,

agents, or employees, and arising out of or pertaining to action of Franchisee in the exercise or the enjoyment of such franchise, or the granting thereof by the City.

Franchisee shall pay, and satisfy, and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made, or issued against Franchisee, the City, its officers, boards, commissions, agents, or employees in any of these premise, and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking, or other assurance required hereunder, or otherwise; provided, that neither Franchisee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit or other proceeding, without first obtaining the written consent of the other.

g) Franchisee shall abide by all provisions of this franchise, and shall further agree that it will not, at any future time, set up as against the City the claim that the provisions of this franchise are unreasonable, arbitrary or void.

SECTION V

STANDARD OF SERVICE. The Franchisee shall provide the highest and best service in accordance with accepted standards of the industry.

SECTION VI

NO ASSIGNMENT OR DELEGATION. The franchise created hereby shall not be transferred, assigned, nor delegated without the written consent of the City.

SECTION VII

SERVICE AND RATES. Franchisee shall provide such services and shall charge such rates as are set out in the Contract, and the rates in said Contract may only be changed in the manner specified therein.

SECTION VIII

DISPOSAL OF SOLID WASTE. The solid waste collected by the Franchisee shall be disposed of in a manner complying with all city ordinances, state laws and regulations and all federal laws and regulations pertaining to the disposal of solid waste trash and garbage. No solid waste shall be burned, except in an incinerator complying with all city ordinances pertaining to incinerators, and complying with all applicable state laws and regulations and all federal laws and regulations.

SECTION IX

OTHER PROVIDERS SUBJECT TO ORDINANCE. Since the franchise granted to Waste Connections herein may be non-exclusive, in the event that other individuals, partnerships, corporations, or other entities provide collection and/or solid waste disposal services in the City of Berea, such individuals, partnerships, corporations, or other entities shall be subject to the following Sections of this Ordinance: III; IV (a), (b), and (d); V; and VIII.

SECTION X

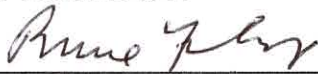
REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

FIRST READING: _____ September 17 _____, 2024.

SECOND READING AND ENACTMENT: _____ October 1 _____, 2024.

CITY OF BERE A, KENTUCKY

APPROVED BY:



Bruce Fraley, Mayor

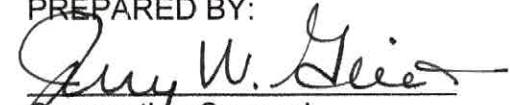
ATTEST:



Clerk of the City Council

Published this 2 day of October, 2024.

PREPARED BY:



Corporation Counsel