

TOWN OF BARTONVILLE
ORDINANCE NO. 555-13
SOLID WASTE COLLECTION AND RECYCLING SERVICES

AN ORDINANCE OF THE TOWN OF BARTONVILLE, TEXAS, GRANTING AN EXCLUSIVE FRANCHISE FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION AND RECYCLING SERVICES TO PROGRESSIVE WASTE SOLUTIONS; PROVIDING RIGHTS, DUTIES AND OBLIGATIONS OF THE TOWN AND PROGRESSIVE WASTE SOLUTIONS; AUTHORIZING THE MAYOR TO EXECUTE A SOLID WASTE COLLECTION AND DISPOSAL AGREEMENT; REQUIRING USE OF THE FRANCHISE SERVICES EXCLUSIVELY BY ALL CITIZENS WHO WISH TO UTILIZE THE SERVICES OF A SOLID WASTE COLLECTION AND DISPOSAL COMPANY; PROHIBITING SOLID WASTE COLLECTION AND DISPOSAL BY COMPANIES NOT FRANCHISED BY THE TOWN; PROVIDING A PENALTY FOR COMPANIES OPERATING WITHOUT A FRANCHISE AGREEMENT; AND SETTING A FRANCHISE FEE IN THE AMOUNT OF SIX PERCENT (6%) OF GROSS COLLECTIONS; PROVIDING A PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) PER OFFENSE; PROVIDING SAVINGS; PROVIDING SEVERABILITY; PROVIDING FOR ENROLLMENT AND ENGROSSMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bartonville, Texas, is a Type "A" General Law Municipality located in Denton County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the collection of municipal solid waste is a governmental function performed for protection of the public health, safety and general welfare; and

WHEREAS, it is more efficient for the Town to contract with a waste services provider for collection of residential municipal solid waste; and

WHEREAS, the Town Council of the Town of Bartonville, desires to enter into a Solid Waste Collection and Recycling Agreement for the collection of residential municipal solid waste and recycling materials with Progressive Waste Solutions; and

WHEREAS, the Town and Progressive Waste Solutions (the "Company") have agreed that a franchise should be granted, permitting the Company the use of public streets, highways, and thoroughfares within the Town of Bartonville for the purposes of performing such services;

WHEREAS, the Town Council of the Town of Bartonville desires to grant an exclusive franchise agreement with Progressive Waste Solutions for an initial term of five years in accordance with the Solid Waste Collection and Recycling Agreement ("Agreement"); and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARTONVILLE, TEXAS, THAT:

SECTION 1.

All of the facts recited in the preamble to this Ordinance are hereby found by the Town Council to be true and correct and are incorporated by reference herein and expressly made a part hereof for all purposes.

SECTION 2.

The Town of Bartonville hereby grants to Progressive Waste Solutions, its successors and assigns, the right, privilege and franchise for the term of five (5) years, with the option to extend for two (2) three-year terms, to use the public streets, highways and/or thoroughfares within the Town for the purpose of the collection and removal of solid waste and recycling materials. The right so granted includes the right to use said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth, consistent with local ordinances and local laws and with the permission of and supervision by the Town.

SECTION 3.

Progressive Waste Solutions shall remit on a monthly basis a street use fee of six (6%) percent of the gross revenue collected from customers within the Town limits of Bartonville. The Town reserves the right to audit Company's records at any time with seven (7) days prior notice.

SECTION 4.

No assignment of this franchise shall be valid or binding unless the assignment is in writing approved by the Town of Bartonville.

SECTION 5.

The rights, duties and obligations of the Town and Progressive Waste Solutions (the "Company") shall be as provided for in a Solid Waste Collection and Recycling Agreement (the "Agreement"), which is attached and incorporated herein as Exhibit "A", between the Town and the Company. In the event of a conflict between the Agreement and this ordinance, the provisions of this ordinance shall prevail.

SECTION 6.

The Town Council of the Town of Bartonville authorizes the Mayor to execute the Agreement with Progressive Waste Solutions to provide residential and commercial solid waste collection and recycling services in accordance with the terms and conditions of the attached Agreement.

SECTION 7.

The solid waste collection and recycling services contracted for by the Town of Bartonville from Progressive Waste Solutions referenced in the Agreement shall be utilized exclusively by all citizens who wish to obtain the services of a solid waste collection and disposal company. The collection and disposal of solid waste and recycling materials within the incorporated limits of the Town of Bartonville by any company not franchised by this Ordinance is hereby prohibited. Nothing contained in this ordinance should be construed as to prohibit residents from properly disposing of their own residential solid waste or recycling materials.

SECTION 8.

Any person, firm or corporation who shall violate any provision of this section, or who shall fail to comply with any provision hereof, within the corporate limits of Town of Bartonville shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five dollars (\$500.00), each day any violation or noncompliance continues shall constitute a separate and distinct offense.

SECTION 9.

This Ordinance shall be cumulative of all provisions of Ordinances of the Town of Bartonville, Texas except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event the conflicting provisions of such Ordinances are hereby repealed.

SECTION 10.

It is hereby declared to be the intention of the Town Council of The Town of Bartonville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance, since the same would have been enacted by the Town Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 11.

All rights and remedies of the Town of Bartonville are expressly saved as to any and all violations of the provisions of any Ordinances affecting solid waste collection and recycling, which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 12.

The Town Secretary of the Town of Bartonville is hereby directed to engross and enroll this Ordinance by copying the exact Caption and the Effective Date clause in the minutes of the

Town Council of the Town of Bartonville and by filing this Ordinance in the Ordinance records of the Town.

SECTION 13.

The Town Secretary of the Town of Bartonville is hereby directed to publish in the Official Newspaper of the Town of Bartonville the Caption and the Effective Date of this Ordinance for two (2) days.

SECTION 14.

This Ordinance shall be in full force and effect on January 21, 2014 at 12:01 a.m.

AND IT IS SO ORDAINED.

PASSED AND APPROVED by a vote of 3 to 0 this the 30th day of June 2013.

APPROVED:



Ron Robertson, Mayor

(Seal)



ATTEST:



Tammy Dixon, Town Secretary

EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF
MUNICIPAL SOLID WASTE, CONSTRUCTION AND DEMOLITION WASTE, AND
RECYCLABLE MATERIALS
IN THE TOWN OF BARTONVILLE, TEXAS

JANUARY 1, 2014

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING, RECYCLING AND DISPOSAL OF
MUNICIPAL SOLID WASTE, CONSTRUCTION AND DEMOLITION WASTE AND
RECYCLABLE MATERIALS
IN THE TOWN OF BARTONVILLE, TEXAS**

STATE OF TEXAS

COUNTY OF DENTON

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of January 1, 2014, by and between Progressive Waste Solutions of TX, Inc., a Texas Corporation (the "Service Provider"), and the Town of Bartonville, Texas (the "Town").

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials (as such terms are defined herein) within the Town's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the Town hereby agree as follows:

SECTION 1. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Bulky Item - Any item not measuring in excess of either forty-eight (48) inches in length or one-hundred (100) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches, and other similar household items.

Bundles - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers, and tree trimmings.

Business Day - Any day that is not a Saturday, a Sunday, or other day on which banks are required or authorized by law to be closed in the Town.

Commercial Unit - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not

limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste, Recyclable Materials or Bulky Items.

Container - Any receptacle, including, but not limited to, dumpsters, Roll-Offs and Roll-Outs, provided to the Town by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Containers are designed to hold between thirty (30) gallons and forty (40) cubic yards of Solid Waste.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

Handicapped Residential Unit - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste or Recyclable Materials at the curbside, and that generates and accumulates Municipal Solid Waste and Recyclable Materials. The identities of the members of a Handicapped Residential Unit shall be certified by the Town Manager and agreed to by the Service Provider.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Memorial Day
- (3) Independence Day (July 4th)
- (4) Labor Day
- (5) Thanksgiving Day
- (6) Christmas Day (December 25th).

Industrial Unit - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste, Construction and Demolition Waste, or Recyclable Materials during, or as a result of, its operations.

Landfill - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

Multi-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste and Recyclable Materials.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural

operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

Recyclable Materials -

- (a) Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags or other paper;
- (b) Glass bottles and jars (excluding mirrors, windows, ceramics and other glass products);
- (c) Metal cans composed of tin, steel or aluminum (excluding scrap metal); and
- (d) Plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5 and #7.

Recycling Container – A Container with sixty-five (65) gallons of capacity and provided by the Service Provider for the collection of Recyclable Materials.

Residential Unit - Any residential dwelling that is either a Single-Family Residential Units or a Multi-Family Residential Units.

Roll-Off - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Roll-Out - A Container with ninety-five (95) gallons of capacity.

Single-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste and Recyclable Materials.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(34) whether such waste is mixed with or constitutes Recyclable Materials.

Temporary Dumpster - A Container with either six (6) cubic yards or eight (8) cubic yards of capacity.

White Good - Any item not measuring in excess of either three (3) cubic feet in size or one-hundred (100) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling, recycling and disposal of Municipal Solid Waste,

Construction and Demolition Waste and Recyclable Materials, the exclusive franchise, license and privilege to collect, haul and recycle or dispose of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials over, upon, along and across the Town's present and future streets, alleys, bridges and public properties. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the Town shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the Town fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the Town against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages arising from the Town's failure to enforce this Agreement.

SECTION 3. OPERATIONS.

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and recycle or dispose of all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials (as provided herein) (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "**Services**").

B. **Nature of Operations.** The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and recycling or disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials, the title to all Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials collected, hauled and recycled or disposed of by the Service Provider over, upon, along and across the Town's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.

For the Services provided to Single-Family Residential Units under this Section 4, the Service Provider shall charge each Single-Family Residential Unit located within the City's corporate limits and billed by the City for water and sewer services the applicable monthly rate(s) contained in Attachment "A".

A. **Single-Family Residential Units.** The Service Provider will collect Municipal Solid Waste from Single-Family Residential Units once per week; **provided**, that (i) such Municipal Solid Waste is placed in Roll-Outs provided by the Service Provider, and (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day.

B. Optional Recyclable Materials Collections. Upon written request from a Single-Family Residential Unit, the Service Provider shall provide such Single-Family Residential Unit with a Recycling Container and will collect Recyclable Materials from such Single-Family Residential Unit once per week; provided, that (i) such Recyclable Materials are placed in the Recycling Container provided by the Service Provider, and (ii) such Recycling Container is placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day. The Service Provider shall be compensated for the Services provided under this Section 4.B. at the rates contained in Attachment "A".

C. Excess or Misplaced Municipal Solid Waste. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider. Municipal Solid Waste and Recyclable Materials in excess of the Containers' limits, or placed outside or adjacent to the Containers, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion. If the excess or misplaced Municipal Solid Waste and/or Recyclable Materials continues, the Town shall require the Single-Family Residential Unit to utilize an additional Container so that the excess or misplaced Municipal Solid Waste and/or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment "A".

D. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their Containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need. The Town shall be solely responsible for all other modifications and accommodations required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder to Single-Family Residential Units.

SECTION 5. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Commercial, Industrial and Multi-Family Residential Units as needed each week, as provided for in Attachment "A". The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Municipal Solid Waste and Recyclable Materials placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment "A". The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the

Services herein contracted and that the Commercial, Industrial or Multi-Family Residential Unit assumes all liabilities for damage to pavement or road surface. For the Services provided to Commercial, Industrial and Multi-Family Residential Units under this Section 5, the Service Provider shall charge each Commercial, Industrial and Multi-Family Residential Unit located within the City's corporate limits and billed by the City for water and sewer services the applicable rate(s) contained in Attachment "A".

SECTION 6. SPECIAL COLLECTIONS AND SERVICES.

A. Municipal Locations. The Service Provider will provide, at no cost to the Town, up to an aggregate number of five (5) Roll-Outs to collect Municipal Solid Waste at certain municipal locations within the Town once per week.

B. Spring Clean-Up. The Service Provider will provide, at no cost to the Town, on one (1) day each calendar year of this Agreement either (i) four (4) Roll-Offs, with one free haul of each Roll-Off or (ii) up to six (6) hours of use of two (2) rear-load trucks (each with a driver and one (1) helper), to collect Municipal Solid Waste at the Town's annual spring clean-up; provided, that the Town gives the Service Provider reasonable prior written notice of the date of such spring clean-up.

C. Annual Recycling Event. The Service Provider will provide, at no cost to the Town, up to five (5) Roll-Outs each calendar year to collect Recyclable Materials at the Town's annual recycling event.

SECTION 7. BULKY ITEMS AND BUNDLES.

A. Pre-Arranged Collections. The Service Provider will collect Bulky Items and Bundles from Single-Family Residential Units once per week, as designated by the Service Provider; provided, that the Bulky Items and/or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed three (3) cubic yards in total volume or have any individual item exceeding one-hundred (100) pounds in weight. The Service Provider shall only be responsible for collecting, hauling and recycling or disposing of Bulky Items and Bundles from those Single-Family Residential Units that have complied with Sections 1 and 7.A. hereof. White Goods containing refrigerants will not be collected by the Service Provider unless such White Goods have been certified in writing by a professional technician to have had all such refrigerants removed.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 7.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste, White Goods or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off or Temporary Dumpster Services.

SECTION 8. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 9. RATES AND FEES.

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are listed in Attachment "A". These rates and fees apply to the City and all Commercial, Industrial and Residential Units that are located within the City's corporate limits and billed by the City for water and sewer services.

SECTION 10. RATE ADJUSTMENT.

A. CPI-U Adjustment. On each anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase the rates set forth in Attachment "A", attached hereto (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 10.A. The amount of the increase under this Section 10.A. shall be equal to the percentage that the CPI-U has increased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., at any time during the term of this Agreement, the Service Provider may petition the Town for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein, including, but not limited to, changes in the cost of disposal and changes in the cost of diesel fuel. At the time of any such petition, the Service Provider shall provide the Town with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The Town shall not unreasonably withhold, condition or delay its consent to any requested rate increase. In the event the Town fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the Town.

C. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of

such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

SECTION 11. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling, recycling or disposal of any Hazardous Waste, animal or human, dead animals, auto parts or used tires from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition Waste, auto parts or used tires by utilizing the Service Provider's Roll-Off or Temporary Dumpster Services.

SECTION 12. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on January 1, 2014 and concluding on December 31, 2018. At the expiration of the term of this Agreement, the Agreement may be extended for successive periods of five (5) years upon the mutual written agreement of the parties.

SECTION 13. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Service Provider without the prior written consent of the Town; provided, however, that the Service Provider may assign this Agreement to any direct or indirect affiliate or subsidiary of the Service Provider or to any person or entity succeeding to all or substantially all of the Service Provider's assets (whether by operation of law, merger, consolidation or otherwise) without the Town's consent.

SECTION 14. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The Town shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the Town also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 15. PROCESSING, BILLING AND FEES.

A. Billings for Single-Family Residential Unit Services. On a quarterly basis, the Service Provider agrees to bill and collect the rates and fees charged in Attachment "A", attached hereto from all Single-Family Residential Units possessing active water meters within the Town's corporate limits, as well as from all other Single-Family Residential Units requiring the collection, hauling, recycling and disposal of Municipal Solid Waste and Recyclable Materials within the Town's corporate limits (the "Residential Billing"), plus any applicable sales, use or service taxes.

B. Billings for Commercial, Industrial and Multi-Family Residential Unit Services. On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged in Attachment "A", attached hereto, from all Commercial, Industrial and Multi-Family Residential Units possessing active water meters within the City's corporate limits as well as from all other Commercial, Industrial and Multi-Family Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste within the City's corporate limits (the "Commercial Billing"), plus any applicable sales, use or service taxes.

C. Billings for Roll-Off, Temporary Dumpster and Compactor Services. The Service Provider will bill and collect the rates charged in Attachment "A", attached hereto, from all Residential, Commercial and Industrial Units for services performed with respect to Roll-Offs, Temporary Dumpsters and compactors (the "Additional Service Billing"), plus any applicable sales, use or service taxes.

D. Franchise Fee. On a monthly basis, the Service Provider shall remit to the City an amount equal to (i) six (6%) of the gross receipts collected from the Residential Billing during the immediately preceding month, plus (ii) six percent (6%) of the gross receipts collected from the Commercial Billing during the immediately preceding month, plus (iii) six percent (6%) of the gross receipts collected from the Additional Service Billing during the immediately preceding month (clauses (i) through (iii) collectively referred to as the "Franchise Fee"). The Franchise Fee shall be remitted to the City in arrears on or before the last day of each month, commencing on February 28, 2014.

E. Taxes. In addition to the amounts billed and collected by the Service Provider hereunder, the Service Provider shall also be responsible for billing, collecting and remitting/paying any and all sales, use and service taxes assessed or payable in connection with the Services.

SECTION 16. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste, Construction and Demolition Waste, or Recyclable Materials not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider may report the location of such conditions

to the Town so that the Town can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials. Should excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials continue to be placed outside of the Containers, the Town shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment "A". attached hereto, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container as directed in Sections 4 and 5 hereof, or is otherwise in violation of the Town's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials and will notify the Town within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Municipal Solid Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the Town is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials has not been removed from such Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the Town from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste, Construction and Demolition Waste or Recyclable Materials on the day a collection order is issued by the Town; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the Town, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such

original non-collection or late collection so long as the Service Provider makes such collection within such time.

SECTION 18. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following business day.

SECTION 19. CUSTOMER SERVICE.

The Service Provider agrees to field all inquiries and complaints from Commercial, Industrial and Residential Units relating to the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials. The Service Provider and the Town agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints.

SECTION 20. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 20.

SECTION 21. VEHICLES AND EQUIPMENT.

Vehicles used by the Service Provider for the collection, hauling, recycling and disposal of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials shall be protected at all times while in transit to prevent the blowing or scattering of Municipal Solid Waste, Construction and Demolition Waste and Recyclable Materials onto the Town's public streets, or properties adjacent thereto, and such vehicles shall be clearly marked with the Service Provider's name in letters and numbers not less than two (2) inches in height. All collection vehicles used by the Service Provider shall be washed and deodorized once per week.

SECTION 22. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 23. PERSONNEL AND PERFORMANCE STANDARDS.

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 24. INSURANCE COVERAGE.

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
(1) Worker's Compensation	Statutory
(2) Employer's Liability	\$500,000
(3) Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 in the aggregate, combined single limit for Bodily Injury and Property Damage Liability
(4) Automobile Liability	\$2,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability
(5) Pollution Legal Liability	\$2,000,000 each loss
(6) Excess or Umbrella	\$5,000,000 per occurrence

To the extent permitted by law, any or all of the insurance coverage required by this Section 24 may be provided under a plan(s) of self-insurance, including coverage provided by the Service Provider's parent corporation. Upon the Town's request, the Service Provider shall furnish the Town with a certificate of insurance verifying the insurance coverage required by this Section 24.

SECTION 25. INDEMNITY.

To the extent covered by applicable insurance, the Service Provider assumes all risks of loss or injury to property or persons caused by its performance of the Services. The Service Provider agrees to indemnify and hold harmless the Town and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the Town, its agents, directors, employees, officers and servants.

SECTION 26. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 27. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 28. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 29. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation

or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute and agree that mailing of process or other papers in connection with any such action or proceeding to the addresses of the parties listed below, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

SECTION 30. NOTICES.

Any notices required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at the address set forth below:

If to the Town:

Town of Bartonville
1941 East Jeter Road
Bartonville, TX 76226
Attn: Town Administrator

If to the Service Provider:

Progressive Waste Solutions of TX, Inc.
P.O. Box 249
Justin, TX 76247
Attn: Division Manager

With a Copy to:

IESI Corporation
2301 Eagle Parkway, Suite 200
Ft. Worth, TX 76177
Attn: Legal Department

or such other addresses as the parties may hereafter specify by written notice and delivered in accordance herewith.

SECTION 31. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 32. ACCEPTANCE.

PASSED AND APPROVED BY THE TOWN OF BARTONVILLE COMMISSION MEETING
AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING
LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 30
DAY OF JULY, 2013.

PROGRESSIVE WASTE SOLUTIONS
OF TX, INC.

By: _____
John Gustafson, Vice President

TOWN OF BARTONVILLE

By: _____
Name: RON ROBERTSON
Title: MAYOR



Fanny Dixon
Fanny Dixon
Town Secretary