

ORDINANCE NO. 2001-08-02

AN ORDINANCE OF THE VILLAGE OF POINT VENTURE TEXAS, GRANTING TO LONGHORN DISPOSAL, A DIVISION OF WASTE MANAGEMENT OF TEXAS, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO OPERATE AND MAINTAIN TRASH AND REFUSE COLLECTION ROUTES WITHIN THE VILLAGE OF POINT VENTURE; PROVIDING A NON EXCLUSIVE FRANCHISE; PROVIDING FOR INSURANCE REQUIREMENTS, FRANCHISE FEES, EFFECTIVE DATES, SEVERABILITY AND OTHER PROVISIONS RELATED TO THE GRANT OF FRANCHISE.

WHEREAS, the Village of Point Venture (“Village”) is a municipal corporation organized under the laws of the State of Texas and, pursuant to the Texas Constitution and state law, possesses the power to protect and promote the public health, safety and welfare, to regulate the use of the Public rights-of –way and to issue and revoke licenses; and

WHEREAS, the Village owns or is the proprietor over public streets, rights-of –way, alleys, and other public property and acts as trustee and guardian for the benefit of Village citizens; and

WHEREAS, pursuant to the laws of the State of Texas, the Texas Legislature has recognized and established that an incorporated municipality may make a reasonable, lawful charge for the use of public rights-of-way within the municipality; and

WHEREAS, the Village Council has determined that the availability of refuse collection services in the Village will promote the public health, safety, and general welfare of the residents of the Village and would serve the public interest; and

WHEREAS, Longhorn Disposal, a Division of Waste Management of Texas, Inc., is now and has been engaged in waste removal services in the State of Texas; and

WHEREAS, the Village Council finds that the public interest will be served by granting of a non-exclusive franchise to Longhorn Disposal to provide waste removal services within the boundaries of the Village of Point Venture, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL
OF THE VILLAGE OF POINT VNETURE, TEXAS:**

**SECTION I
SHORT TITLE**

This Ordinance shall be known and cited as the “Longhorn Disposal Ordinance” Within this document it shall also be referred to as “this Franchise” or “the Franchise” or “this Ordinance.”

**SECTION II
DEFINITIONS**

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words, in the singular number include the plural number, 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 shall be given their common and ordinary meaning.

- a. “Village” is the Village of point Venture, a municipal corporation, in the State of Texas.
- b. “Council” shall mean the governing body of the Village of Point Venture.
- c. “Company” is Longhorn Disposal, a Division of Waste Management of Texas, Inc, authorized to do business in Texas, or its successor, transferee or assignee.
- d. “Waste Hauling Service” shall mean all waste removal services provided by the Company to a customer residing in the Village of Point Venture.
- e. “Gross Revenues” shall mean all revenues derived directly or indirectly by the Company, its affiliates, subsidiaries, parent, and any person in which the Company has a financial interest, from or in connection with the operation of a waste hauling service pursuant to this Ordinance. “Gross Revenues” shall not include any taxes on waste hauling services furnished by the Company imposed directly upon any customer by the state, Village or other governmental unit and collected by the Company on behalf of such governmental units.
- f. “Street “or “Alley” is a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel.
- g. “Sidewalk” is that portion of a street which is not improved and maintained for vehicular travel.

**SECTION III
GRANTING OF FRANCHISE**

There is hereby granted to Company for the full term of five years from the effective date of this Ordinance the right, privilege, and franchise to have, use and operated in

the entire area of the Village a waste hauling service; and to have, use and operate its vehicles in over, under, along, and across the present and future streets and alleys. This grant for use of Village streets and alleys, is nonexclusive and does not establish priority for use over other franchise holders, permit holders and the Village's or public's use of public property. The Company's use of Village streets and alleys shall be subject to and in accordance with the Village's policies and procedures governing said use.

SECTION IV
ACCEPTANCE OF FRANCHISE ORDINANCE BY COMPANY

The Company shall, within thirty (30) days from the date this Franchise takes effect, file with the Village Secretary of the Village a written, sworn statement signed in its name and behalf in substantially the following form:

To the Honorable Mayor of Point Venture:
Longhorn Disposal, A Division of Waste Management of Texas, Inc., for
Itself, successors and assigns, hereby accepts the attached Franchise and
Agrees to be bound b y all of its terms and provisions.

SECTION V
TIME IS OF THE ESSENCE

Whenever this Franchise Ordinance shall set forth any time for an act to be performed by or on behalf of the Company, such time shall be deemed of the essence.

SECTION VI
FRANCHISE FEE

- a. The Company shall pay quarterly to the Village a franchise fee in an amount equal to three percent (3%) of the Gross Revenues derived during the preceding quarter from or in connection with the operation of its waste hauling service within the Village pursuant to this Ordinance.
- b. The franchise fee and other costs or penalties assessed shall be paid quarterly to the Village on or before the last day of the month following the end of the quarterly period for which said payment is due A five percent (5%) penalty will be assessed if such delinquent amounts are not paid within 30 days from the date due. Thereafter, the delinquent amount will bear interest at the rate of the prime rate as established by the Village depository plus four percent (4%) per annum until paid. The franchise fee payment shall be delivered to the Village's Secretary, along with a franchise fee statement showing, in a form prescribed or approved by the Village Mayor, the calculations of the amount of such quarterly payment. This fee statement shall be certified by an officer of the Company.
- c. Should the Village question the accuracy of or request an explanation of any quarterly statement provided by the Company, Company shall, within fifteen days of receiving a written transmittal of such question or request, provide Village with

a written answer. Should such written answer not be satisfactory to the Village, Village shall have the right to review or audit the Company's franchise fee statements and statements of revenues and other books and records as they relate to Company's operations in Point Venture, and to recompute any amounts determined to be payable under this Ordinance; provided, however, that any such review or audit shall take place within thirty-six (36) months following the close of the fiscal year covered by such statement(s). Any additional amount due to the Village as a result of the Village's review or audit shall be paid within thirty (30) days following written notice to the Company by the Village.

SECTION VII **ENFORCEMENT**

The Village shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this ordinance is hereby declared to be a nuisance. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$200.00. Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a misdemeanor.

SECTION VIII **FRANCHISE REQUIRED**

No company providing waste hauling services shall be allowed to occupy or use the streets of the Village or be allowed to operate within the Village without a franchise.

SECTION IX **NOTICES**

All notices from Company to the Village pursuant to this franchise shall be to the Village Mayor, Village of Point Venture, 549 Venture Blvd. S., Point venture, Texas 78645. All notices to the company pursuant to this franchise shall be to P.O. Box 14644, Austin, Texas 78761. Company shall immediately notify Village of any change of address.

SECTION X **INSURANCE COVERAGE**

- a. The Company shall maintain throughout the term of the franchise, extended coverage and general liability insurance and automobile liability insurance with an insurance company licensed to do business in the State of Texas, insuring against claims for liability or damages. Extended coverage insurance under this section shall be a minimum of One Million and No/100 Dollars

(\$1,000,000.00) general aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence for the protection of the public in connection with:

- (1) Liability to persons or damages to property, in any way arising out of or through the acts or omissions of Company, its servants, agents or employees or to which Company's negligence shall in any way contribute; and
 - (2) Arising out of Company's operations and relationships with any independent contractor or subcontractor.
- b. The Company shall maintain throughout the term of this franchise workers compensation insurance to cover all employees engaged in activities related to this franchise and such insurance shall contain a waiver of subrogation as to any claim against the Village of Point Venture.
- c. The insurance policies obtained by the Company in compliance with this section shall be approved by the Village Attorney, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the Village Secretary during the term of the franchise, and shall be changed from time to time to reflect changing liability limits, as reasonably required by the Council. The Company shall immediately advise the Village Attorney of any significant litigation, actual or potential that may develop that would affect this insurance.
- d. All insurance policies maintained pursuant to this franchise shall contain the following conditions by endorsement:
- (1) The Village of Point Venture shall be named insured and the term "owner" or "Village of Point Venture" shall include all authorities, Boards, Bureaus, Councils, Commissions, Divisions, Departments, and offices of the Village and the individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the Village.
 - (2) Each policy shall require that thirty (30) days prior to the cancellation or material change in policies a notice thereof shall be given to the Village Mayor or Village by certified mail.
 - (3) Insurers shall have no right of recovery against the Village it being the intention that the insurance policies shall protect the Company and the Village and shall be primary coverage for all losses covered by the policies.
 - (4) The policy clause "Other Insurance" shall not apply to the Village of Point Venture where the Village is an insured on the policy.
 - (5) Companies issuing the insurance policies shall not have recourse against the Village of Point Venture for payment of any premiums or assessments which all are set at the sole risk of the company.
- e. If the Village Attorney of Point Venture determines that a certificate of insurance is acceptable evidence of insurance coverage, a copy of the endorsement required under the above item "c" shall be attached to the certificate of insurance.

SECTION XI
LEVEL OF SERVICE

- a. The company shall render efficient service and interrupt service only for a good cause. In the event that the contractor misses collection of solid waste from over five percent (5%) of its customers in the village on any collection day and such materials are not picked up within twenty four (24) hours of notice from the residents or the Village's representative, the contractor may be subject to a penalty of \$200.
- b. The company shall have a listed telephone number and have an employee on duty during reasonable business hours so that complaints, requests and adjustments may be received.
- c. In case of an emergency or disaster, the company shall, upon request of the Village, make available its collection equipment and services (if reasonably available at that time) to the Village for emergency use during the period of emergency or disaster. The cost of such services would be negotiated between the Village and the contractor.
- d. Trash hauling vehicles shall not leak liquids such as motor oil, antifreeze, transmission oil or hydraulic fluid onto the street, alleys or sidewalks of the Village. If such a leak occurs, the contractor shall be notified and will have 24 hours to clean up such spills before a fine is levied. Spills which have not been cleaned up within 24 hours may subject the contractor, at the Villages sole discretion, to a penalty of \$200 per day.
- e. Upon emptying any subscriber's individual trash containers, Company shall replace such empty containers in a location so as to not be on the paved portion of the Village streets.
- f. Upon termination of service to any subscriber, the company shall promptly remove all of its equipment from the premises of the subscriber upon his request and without cost to the subscriber.
- g. Customer's complaints, such as calls for missed pick-ups, shall be first directed to the contractor for resolution. In the event the contractor is unable to resolve a legitimate customer complaint within twenty-four (24) hours of notice from the resident or village representative, the contractor may be subject to a penalty of \$200.
- h. The company shall not operate in the village before sunrise or after sunset on the days of collection without prior approval from an authorized official of the village.

SECTION XII
INDEMNITY

The Company agrees to indemnify, defend, and save harmless the Village, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, or corporation, arising from the conduct of or management of the franchise or from any occurrence in connection with the franchise; 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 its agreement, or arising from any act or negligence of the Company, or any of its agents, contractors, subcontractors, 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.

SECTION XIII
NON WAIVER OF TERMS

The Company shall not be excused from complying with any of the terms and conditions of this franchise by any failure of the Village upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION XIV
RIGHT OF INDIVIDUALS

The Company shall not deny service, or otherwise discriminate against customers or any citizen on the basis of race, sex, color, religion or national origin.

SECTION XV
SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION XVI
FORFEITURE AND TERMINATION

- a. In addition to all other rights and powers retained by the Village under this franchise or otherwise, the Village reserves the right to declare this franchise forfeited and to terminate the franchise and all rights and privileges of the Company hereunder in the events of:
 1. Violation by Company of any material provision of the franchise or any material rule, order, regulation or determination of the Village made pursuant to the franchise;
 2. Attempt by Company to evade any material provision of the franchise or to practice any fraud or deceit upon the Village or the Company's customers;
 3. Village's decision to initiate a municipal waste hauling and removal service or to grant an exclusive franchise.
- b. In order for the Village to declare forfeiture under Subsections a. (1) and (2) above, Village shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the 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 Village shall cause to be served upon written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.
- c. The Council shall hear and consider the issue, shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the Company has occurred.
 - d. 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 of the Company forfeited and terminated, or the Council may grant to Company a period of time for compliance.

SECTION XVII **RECEIVERSHIP**

The Village shall have the right to cancel this franchise on 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 or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- a. Within one hundred twenty (120) days, after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of the Ordinance and remedied all defaults thereunder; and
- b. Such receiver or trustee, within one hundred twenty (120) days shall have executed and 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 Ordinance and the franchise granted to the Company.

SECTION XVIII **BANKRUPTCY**

The Council shall have the right to cancel this franchise immediately should the Company liquidate, become insolvent, bankrupt, make a transfer for the benefit of creditors, reorganize and enter into an arrangement for the benefit of creditors, or file a voluntary petition under any section or chapter of the National Bankruptcy act, as amended, or under any similar law or statute of the United States or state thereof; or should an involuntary petition in bankruptcy be filed against the Company and not be dismissed within one hundred twenty (120) days after the filing.

SECTION XIX **RENEWAL OF FRANCHISE**

This franchise may be renewed by the Village upon application of the Company pursuant to the procedure established as follows, and in accordance with the then applicable law;

- a. At least twelve (12) months prior to the expiration of the initial term of this franchise, Company shall inform the Village in writing of its intent to seek renewal of the franchise. Subsequent renewals shall be filed for as specified by the Village Council.
- b. After giving public notice, the Village shall proceed to determine whether the Company has satisfactorily performed its obligations under the franchise.
- c. If the Council finds that a renewal of the franchise with Company is within the public interest, Council may enter into a renewal of the franchise with Company under the then appropriate terms and conditions for an additional term of five (5) years. Subsequent renewal for five (5) year periods may be applied for by Company in accordance with procedures outlined in this Article.

SECTION XX
EFFECTIVE DATE

This Ordinance shall take effect immediately from and after the date of passage.

SECTION XXI
PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSES AND APPROVED this 6th day of August, 2001, by a 4 to 0 vote of the Village council of the Village of Point Venture, Texas.

VILLAGE OF POINT VENTURE

BY: _____
Terry Hickman, Mayor

ATTEST:

_____,
Charlotte Banasik, Village Secretary

