

ORDINANCE NO. 64, FOURTH SERIES

AN ORDINANCE GRANTING A FRANCHISE EXTENSION TO WEST CENTRAL SANITATION, TO COLLECT AND HAUL RESIDENTIAL MUNICIPAL SOLID WASTE GENERATED BY RESIDENTIAL AND MULTI-RESIDENTIAL UNITS LOCATED WITHIN THE CITY OF REDWOOD FALLS, MINNESOTA.

THE CITY OF REDWOOD FALLS ORDAINS:

Section 1. Short Title. This Franchise Extension Ordinance shall be known and cited as the “West Central Sanitation, Solid Waste Franchise Extension Ordinance”.

Section 2. Purposes, Policy and Scope. It is declared to be the public policy of the City of Redwood Falls (“City”) to regulate solid waste management to:

1. Insure safe, efficient, economical and comprehensive solid waste service;
2. Eliminate overlapping service and thereby increase efficiency and decrease truck noise, street wear, energy waste, air pollution and public inconvenience;
3. Protect public health and the environment; and
4. Provide public service standards.

Section 3. Definitions. For purposes of this Franchise Extension Ordinance, the terms used herein are intended to have the same meaning as used in Redwood Falls City Code § 3.20. In addition, unless a different meaning is required by the context, the following definitions shall have the meanings stated:

“West Central Sanitation” is West Central Sanitation, its agents and employees, lawful successors, transferees or assigns.

“Effective Date” means the date on which the Ordinance becomes effective under Section 4.3.

“Mixed Municipal Solid Waste” means, for purposes of this Franchise Extension, garbage, refuse and other solid waste generated by Residential Customers, Multi-Residential Customers and City owned and operated facilities. “Mixed Municipal Solid Waste” does not mean, for purposes of this Franchise Extension, garbage, refuse and other solid waste generated by commercial, industrial and other community activities.

“Multi-Residential Customer” means a Multi-Residential Unit located in the City which produces mixed municipal solid waste. “Multi-residential unit” shall mean permanent buildings containing three or more residential units including condominiums, apartment houses, mobile-home parks, travel trailer parks and recreational vehicle parks.

“**Notice**” shall mean a writing served by a party or parties on another party or parties. Notice to West Central Sanitation must be mailed to: P.O. Box 796, 4089 Abbott Drive, Willmar, Minnesota 56201. Notice to City must be mailed to: City Administrator, City of Redwood Falls, P.O. Box 526, Redwood Falls, Minnesota 56283.

“**Residential Customer**” means a Residential Unit located in the City which produces mixed municipal solid waste. “Residential unit” shall mean a dwelling within the incorporated areas of the City occupied by a person or group of persons comprising not more than two families. A residential unit to which service must be rendered under the provisions of this Ordinance shall be either a single-family residential unit or a duplex residential unit.

“**Service**” means the collection, transportation and disposal of mixed municipal solid waste.

“**Volume-based rate**” is a mixed municipal solid waste collection and disposal charge based on the number of gallons or cubic yards and the weight of the mixed municipal solid waste.

Section 4. Grant of Franchise Extension Authority and General Provisions.

4.1 **Grant of Franchise Extension and Authority.** Subject to the terms and conditions contained herein, the City hereby grants to West Central Sanitation the exclusive right, privilege and franchise during the extended term of the franchise to collect and haul mixed municipal solid waste generated by Residential Customers located within the incorporated areas of the City and any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets of the City, and to do all things reasonably necessary or customary to accomplish these purposes, subject to other applicable ordinances, permit requirements, and to the further provisions of this ordinance. Multi-Residential Customers may elect to have their mixed municipal solid waste collected and disposed of pursuant to the terms of this Franchise Extension, or may contract with West Central Sanitation or any other refuse hauler licensed by the City and Redwood County to have their mixed municipal solid waste collected or disposed of in a manner provided by Redwood Falls City Code. West Central Sanitation does not receive exclusive franchise rights herein for the collection or disposal of solid waste which is not “mixed municipal solid waste” as defined herein.

4.2 **Franchise Extension Term.** The rights, privileges and franchise herein granted shall begin on the Effective Date, and shall be considered a continuing five (5) year franchise extension to the original franchise agreement that was entered into on September 22, 2014. This franchise extension agreement may be amended by mutual consent of both parties from time to time during the Franchise Extension Term. Nothing in this section restricts the City from suspending, modifying or revoking the franchise for cause pursuant to Section 9 of this Ordinance.

4.3 **Effective Date.** This franchise extension agreement is effective from and after its passage and publication. Written acceptance by West Central Sanitation must be filed with the City Clerk within thirty (30) days after publication of this Ordinance.

4.4 **Territorial Area Involved.** This franchise applies to any area within the corporate boundaries of the City, as it exists from time to time. In the event of annexation by the City, any new

territory shall become part of the area covered, provided, however, in the event any Residential and Multi-Residential Customer located within any such annexed territory is a party to a written contractual agreement with some other waste hauler, the rights and privileges granted to West Central Sanitation by this franchise extension agreement shall not apply to such a customer until the expiration or termination of any such agreement. Notwithstanding the foregoing, the City hereby reserves the right to redefine the area for which this franchise is granted.

4.5 **Reservation of Rights.** Nothing contained in this franchise extension agreement shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the lawful excise of the police power, rights granted by statute, charter or city code, and the right of eminent domain by City.

4.6 **Additional Regulations.** City reserves the right to enforce such additional rules and regulations as may from time to time be deemed necessary to the protect the interest, safety, and welfare of the public in relation to the subject matter of this Franchise Extension Ordinance.

4.7 **Publication Expense.** The expense of publication of this Franchise Extension Ordinance shall be paid by West Central Sanitation.

Section 5. Conditions under which Franchise Extension is Granted.

5.1 West Central Sanitation shall dispose of solid waste at the sanitary landfill site approved by Redwood County and comply with all applicable ordinances, laws, rules and regulations of the City, State of Minnesota and the United States of America.

5.2 West Central Sanitation shall provide and keep in force liability and other insurance in accordance with the following provisions:

A. Commercial General Liability Insurance Policy with minimum limits of \$1,500,000 combined single limit (CSL), with coverage pertaining to premises operations. In the event Combined Single Limits Coverage is not secured by the contractor, the following minimum limits apply:

- \$1,500,000 Aggregate
- \$1,500,000 Products and Completed Operations Aggregate
- \$1,500,000 Personal Injury and Advertising Injury
 - \$1,500,000 Each Occurrence
 - \$ 100,000 Fire Damage Limit
 - \$ 5,000 Medical Expense

The policy should be written on an “occurrence” basis and not a “claims-made” basis.

B. Automobile Liability Insurance including owned, non-owned, and hired vehicles in an amount not less than \$1,500,000 combined single limit (CSL) for total bodily injuries and/or damages arising from any one accident. If automobiles are not used, City must receive a letter from Contractor stating this.

C. Professional Liability Insurance (when required) in the minimum amount of \$1,500,000 combined single limit (CSL). In the event Combined Single Limits Coverage is not secured by the Contractor, the following minimum limits apply:

\$1,500,000 Aggregate
\$1,500,000 per Wrongful Act or Occurrence

D. Excess Umbrella Liability Policy in the amount of \$1,500,000 will be additionally required if any of the above policies have lower limits than stated.

E. Worker's Compensation Insurance in accordance with Minn. Stat. Chapter 176 statutory limits on all employees.

F. West Central Sanitation shall furnish the City with an original Certificate of Insurance listing the City as an "Additional Insured" in all coverage areas except Worker's Compensation.

Any insurance policy required under this section shall remain in full force and effect at all times relevant to this franchise extension agreement. West Central Sanitation shall file a current certificate of insurance with the City during the first full term of this agreement and for each term herein provided. Such policies shall contain a provision requiring the City be notified at least thirty (30) days prior to the expiration or cancellation of any insurance policy. Failure to carry the required insurance shall be grounds for cancellation of this franchise extension agreement with the City.

5.3 West Central Sanitation shall obtain and maintain the required licensure pursuant to Redwood Falls City Code § 3.20, subd. 5.A.

5.4 West Central Sanitation shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide good service.

5.5 West Central Sanitation shall respond promptly and effectively to any complaint on service.

5.6 West Central Sanitation shall provide a performance bond in the amount of \$50,000.00 with a surety licensed to do business in the State of Minnesota conditioned upon the full and faithful performance of this franchise extension agreement.

5.7 West Central Sanitation shall maintain an accurate and complete log of West Central Sanitation's collection and transportation activities indicating the daily route of each vehicle, points of collection, times of collection, driver of the vehicle, and times of disposal of the solid waste, residential household garbage or recyclable material at the sanitary landfill or temporary transfer station. West Central Sanitation shall also maintain landfill receipts from equipment which carries exclusively mixed municipal solid waste from Redwood Falls. West Central Sanitation shall promptly make available to the City Administrator upon request said log information and landfill receipts. West Central Sanitation shall provide landfill receipts to the Redwood County Planning and Zoning Office.

5.8 West Central Sanitation shall not transfer this franchise in any way or any interest therein, or transfer any ownership interest in franchise, including but not limited to the transfer of franchisee stock to any other person without prior written approval of the City. A pledge of this franchise or any interest in franchisee or its stock as financial security shall be considered as a transfer for purposes of this section. The City may attach whatever conditions it deems necessary to any transfers.

Section 6. Collection Service Requirements.

6.1 West Central Sanitation shall collect residential municipal solid waste generated by Residential and Multi-Residential Units pursuant to this franchise agreement at least weekly. Hours of collection shall be between the hours 7:00 a.m. and 6:00 p.m.

6.2 West Central Sanitation shall notify the City Administrator at least fifteen (15) days prior to any proposed change in schedule of pickup.

6.3 West Central Sanitation will not be required to provide collection services on the following days: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Day or other agreed upon federally observed holidays. If the schedule on file in the City Administrator's Office requires a collection on the above days, West Central Sanitation shall make the collection or pickup on the day following said holiday. Prior to January 1st of each year, West Central Sanitation shall provide an annual holiday collection schedule for use by City Staff.

6.4 In the event West Central Sanitation shall fail to make a solid waste pickup at any particular residence, as required, West Central Sanitation shall do so within 24 hours after notification by the resident or by the City.

6.5 West Central Sanitation shall provide and pay for all public service information (i.e. radio, newspaper, flyers and telephone book advertisement) regarding collection dates, retail locations special collection dates and a listed phone number for people to call West Central Sanitation for services.

6.6 West Central Sanitation and the City shall use a count of 2,049 Residential Customers and Multi-Residential Customers as the initial number of customers being serviced. Each month the number of customers will be adjusted based on the number of customers actually serviced by West Central Sanitation. West Central Sanitation agrees to discontinue service to a Residential Customer or Multi-Residential Customer on a temporary basis if the Customer will not reside in the residence for a period of more than 30 days.

Section 7. Consideration.

As additional consideration for the rights, privileges, and franchise extension granted herein, West Central Sanitation shall provide service as necessary for the collection and disposal of solid waste from all City owned and operated facilities, properties, parks and street containers, at no extra cost to the City. This includes but is not limited to: all dumpsters that are located at City Hall, Fire

Department, Library, Redwood Area Community Center, Liquor Lodge, Ramsey Park, Aquatic Center, Memorial Baseball Field, Electric Utilities, Water Treatment Plant, Airport, Animal Shelter and City Shop. Central Sanitation shall provide extra dumpsters and solid waste collection for the City’s annual community festivals and City owned construction projects at no extra charge. For City construction projects, West Central Sanitation shall collect a maximum of 150 yards of solid waste per year without charge to the City.

Section 8. Rates.

Unless and until otherwise changed by the direction of the Redwood Falls City Council, the rates for services rendered under this ordinance shall be as follows:

8.1 **Basic service fees.** West Central Sanitation will make available to Residential Customers and Multi-Residential Customers carts to be used for collection and disposal of mixed municipal solid waste. These carts will remain the property of West Central Sanitation but will be distributed to Customers without cost. The carts shall be in three different sizes: 35-gallon, 64-gallon and 96 gallon. Customers will be able to choose which size best serves their individual needs. Once the carts are delivered to Customers, West Central Sanitation shall charge each Residential and Multi-Residential Customer the following:

Service Level	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
35-Gallon	\$9.47	\$9.66	\$9.85	\$10.05	\$10.25
64-Gallon	\$11.94	\$12.18	\$12.42	\$12.67	\$12.92
96-Gallon	\$14.52	\$14.81	\$15.11	\$15.41	\$15.72
Valet Service	\$6.75	\$6.89	\$7.03	\$7.17	\$7.31
2 nd Cart of equal or smaller size	\$7.88	\$8.04	\$8.20	\$8.36	\$8.53
Drive-By Fee by Hauler	\$3.94	\$4.02	\$4.10	\$4.18	\$4.26

The rate changes described in this paragraph shall become effective on the first day of the next complete billing cycle which occurs after September 23 of each year this franchise extension agreement is in effect. The City shall assume the responsibility of billing and collecting said fees. The City will remit the resulting balance to West Central Sanitation within thirty (30) days.

8.2 Customer billing services will be provided by the City on a monthly basis with an additional monthly customer billing administration fee to be set by the Redwood Falls City Council and collected/retained by the City.

8.3 **Failure to Pay.** In the event that any Residential and Multi-Residential Customer fails to pay the City the basic service fees described in Section 8.1 or 8.2, the City shall notify West Central Sanitation and service to that customer shall be terminated. West Central Sanitation agrees to cooperate with the City in prosecution of its mandatory pickup ordinance. The basic service fees to be charged by West Central Sanitation may be changed only by the Redwood Falls City Council

when deemed necessary or expedient. West Central Sanitation shall submit any proposed fee changes to the City Administrator for transmittal to the City at least sixty (60) days prior to the proposed effective date of the fee changes.

Section 9. Termination or Suspension.

The Redwood Falls City Council may terminate or suspend upon notice and hearing this franchise extension for any of the following reasons:

9.1 Loss of the West Central Sanitation’s license to operate as a solid waste collector;

9.2 Failure of West Central Sanitation to render prompt and effective service to persons within its service area;

9.3 Failure of West Central Sanitation to comply with any provision of this franchise, Redwood Falls City Code § 3.20, or any applicable laws, rules and regulations of the State of Minnesota and the United States of America; or

9.4 Failure of West Central Sanitation to comply with any provision of the Redwood County Solid Waste Plan.

Section 10. Defense and indemnification.

10.1 **Terms.** West Central Sanitation will defend, indemnify, keep and hold the City free and harmless from any and all liability on account of injury to persons or damage to property caused during the performance of the rights, privileges and franchise herein granted.

10.2 **Litigation.** If a suit is brought against the City under circumstances where the agreement in this Section 10 to indemnify applies, West Central Sanitation at its sole cost and expense will defend the City in such suit if notice thereof is promptly given to West Central Sanitation within a reasonable period. If West Central Sanitation is required to indemnify and defend, it will thereafter have control of such litigation, but West Central Sanitation may not settle such litigation without the consent of the City, which consent will not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City; and West Central Sanitation, in defending any action on behalf of the City, is entitled to assert in any action every defense or immunity that the City could assert in its own behalf.

Section 11. Limitation on Applicability.

This Ordinance constitutes a franchise extension agreement between the City and West Central Sanitation. No provision of this franchise extension inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

Section 12. Previous franchises superseded.

This franchise extension supersedes and replaces any previous franchises granted to West Central Sanitation or its predecessors.

Section 13. Amendments.

This franchise extension agreement may be amended at any time by mutual consent of both parties. An amendatory Ordinance becomes effective upon the filing of the West Central Sanitation's written consent thereto.

Section 14. Severability.

If any portion of this franchise extension agreement is found to be unenforceable for any reason, the validity of the remaining provisions will not be affected.

Section 15. Summary approved.

The Council hereby determines that the text of the summary of this Ordinance prepared by Amy M. Busse, the City Attorney, marked "Official Summary of Ordinance No. 64, Fourth Series", a copy of which is attached hereto, clearly informs the public of the intent and effect of this Ordinance. The Council further determines that publication of the title and such summary will clearly inform the public of the intent and effect of the Ordinance.

Section 16. Posting and Filing.

The city clerk shall see that a copy of this Ordinance is available for inspection by any person during regular office hours at the office of the City Clerk.

Section 17. Publication Period.

The City Clerk shall publish the title of this Ordinance and the Official Summary in the official newspaper with notice that a printed copy of the Ordinance is available for inspection by any person during regular office hours at the office of the City Clerk.

Adopted by the Council this _____ day of _____, 2019.

Tom Quackenbush
Mayor

Attest:

Keith Muetzel
City Administrator

ACCEPTED: This Franchise Extension is accepted and West Central Sanitation agrees to be bound by its terms and conditions.

West Central Sanitation

Dated: _____

By: _____

Don Williamson
Its President

First Reading: September 3, 2019
10-day Notice:
Second Reading:
Publication: