

## ORDINANCE NO. 1328

### **AN ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO CANBY DISPOSAL COMPANY TO PROVIDE SOLID WASTE, RECYCLABLE MATERIALS AND YARD DEBRIS COLLECTION SERVICE WITHIN THE CITY OF CANBY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby and Canby Disposal Company currently cooperate under an exclusive franchise agreement as set forth in Ordinance #793, approved in 1986, and further amended by Ordinance #951 in 1995, wherein Canby Disposal Company provides solid waste, recyclable materials and yard debris collection service for the City of Canby; and

**WHEREAS**, the City and Canby Disposal Company have negotiated an updated exclusive Franchise Agreement to provide solid waste, recyclable materials and yard debris collection service to customers within the City of Canby, Oregon; and

**WHEREAS**, the City has evaluated the technical, legal and financial capability of Canby Disposal Company to continue to operate the collection service; and

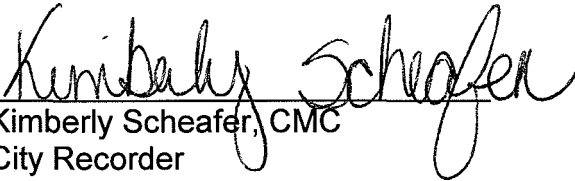
**WHEREAS**, the City Council finds based on its assessment of community needs that the proposed exclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated franchise agreement as requested, consistent with the terms and conditions of Exhibit "A"; now therefore

### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City hereby grants to Canby Disposal Company of Canby, Oregon, an exclusive franchise on the terms and conditions in the attached Exhibit "A", for a ten (10) year rolling or continuing term from the effective date of July 1, 2010, to operate and maintain a solid waste, recyclable materials and yard debris collection service in the City of Canby.

Section 2. In order to avoid a break in the continuity of the collection services currently provided by Canby Disposal company, and to better promote the safety, health and welfare of the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall take effect on July 1, 2010 as directed by the Canby City Council.


**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, June 2, 2010 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, June 16, 2010, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

  
Kimberly Scheafer, CMC  
City Recorder

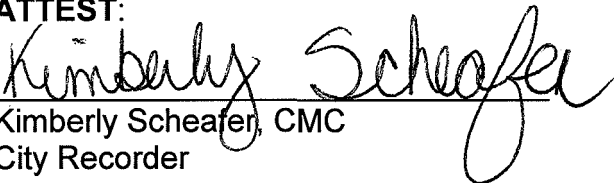
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on June 16, 2010, by the following vote:

YEAS 5

NAYS 0

  
Melody Thompson, Mayor

**ATTEST:**

  
Kimberly Scheafer, CMC  
City Recorder

Franchise Agreement  
Between  
City of Canby, Oregon  
and  
Canby Disposal  
for  
Solid Waste, Recyclable Materials  
and Yard Debris Collection Services

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**Exhibits**

- 1 CITY FACILITIES
- 2 RATES FOR RATE PERIOD JULY 1, 2010 THROUGH JUNE 30, 2011
- 3 NOTARY CERTIFICATION

1 **FRANCHISE AGREEMENT BETWEEN**

2 **THE CITY OF CANBY, OREGON**

3 **AND**

4 **CANBY DISPOSAL FOR SOLID WASTE, RECYCLABLE MATERIALS,**

5 **AND YARD DEBRIS COLLECTION SERVICES**

6 This Franchise Agreement (Agreement) is entered into this \_\_\_\_ day of  
7 \_\_\_\_\_2010, by and between the City of Canby, Oregon (City) and Canby  
8 Disposal (Company) for the collection, transportation, and disposal of solid waste and  
9 the collection, transportation, and processing of recyclable materials and yard debris.

10 **RECITALS**

11 This Agreement is entered into with reference to the following facts and circumstances:

12 WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of the 1993  
13 Oregon Revised Statutes (ORS), has declared that it is a matter of statewide concern for  
14 local agencies to make adequate provisions for solid waste handling and the  
15 opportunity to recycle within their jurisdictions; and,

16 WHEREAS, the City Council of City has determined that the public health, safety, and  
17 well-being require that an exclusive franchise be awarded to a qualified company for  
18 the collection, transportation, and disposal of solid waste and the collection,  
19 transportation, and processing of recyclable materials, and yard debris; and,

20 WHEREAS, City and Company are mindful of the provisions of the laws governing the  
21 safe collection, transfer, and disposal of solid waste, ORS 459 and ORS 459A, the  
22 Resource Conservation and Recovery Act (RCRA), and the Comprehensive  
23 Environmental Response, Compensation and Liability Act ("CERCLA"); and,

24 WHEREAS, City and Company desire to leave no doubts as to their respective roles,  
25 and by entering into this Agreement, City is not thereby becoming a "generator" or an  
26 "arranger" as those terms are used in CERCLA § 107(a)(3), and it is Company, not City,  
27 which is "arranging for" the collection, removal, transportation, and disposal of solid  
28 waste which may contain hazardous substances; and,



1 WHEREAS, the City Council of City declares its intention of maintaining reasonable  
2 rates and quality service related to the collection, transportation, and disposal of solid  
3 waste, the collection, transportation, and processing of recyclable materials and yard  
4 debris, and other services; and,

5 WHEREAS, City and Company (Parties) hereto desire to enter said Agreement.

6 NOW, THEREFORE, in consideration of the premises above stated and the terms,  
7 conditions, covenants and agreements contained herein, the Parties do hereby agree as  
8 follows:



1   **1.5   Approved Transfer Station**

2       “Approved Transfer Station” means the Canby Transfer and Recycling, Inc., and  
3       is located in Canby, Oregon and which was selected by Company and approved  
4       by the City, unless the City designates a different transfer station in accordance  
5       with Section 3.3 or accepts the Company’s proposal for an alternative transfer  
6       station in accordance with Section 5.8.4.

7   **1.6   Billings**

8       "Billings" means any and all statements of charges for services rendered,  
9       howsoever made, described or designated by City or Company, or made by  
10      others for City or Company, to owners or occupants of property, including  
11      residential premises and commercial premises, served by Company for the  
12      collection of solid waste, recyclable materials, or yard debris.

13   **1.7   Cart**

14      “Cart” means a plastic receptacle, that has a capacity ranging from 20- to 96-  
15      gallons, hinged lid, and wheels and that is lifted and emptied by an automated or  
16      semi-automated collection vehicle.

17   **1.8   City**

18      "City" means City of Canby, Oregon, a municipal corporation, and all the  
19      territory lying within the municipal boundaries of City as presently existing or as  
20      such boundaries may be modified during the term of this agreement, and is  
21      hereby designated as an allocated service area pursuant to ORS 459A.085(3).

22   **1.9   Collection**

23      “Collection” (or variations thereof) means a service providing for collection of  
24      solid waste, recyclable materials, and/or yard debris.

25   **1.10   Commencement Date**

26      "Commencement Date" means the date specified in Section 3.1.1 when collection,  
27      transportation, processing, and disposal services required by this Agreement  
28      shall be provided by Company.

1   **1.11 Commercial Premises**

2       "Commercial Premises" means commercial and industrial property upon which  
3       business activity is conducted, including, but not limited to, retail sales, services,  
4       wholesale operations, manufacturing and industrial operations, but excluding  
5       businesses conducted upon residential premises which are permitted under  
6       applicable zoning regulations and are not the primary use of the property.

7   **1.12 Commingled**

8       "Commingled" means a mix of recyclable materials.

9   **1.13 Company**

10       "Company" means Canby Disposal Company, a corporation organized and  
11       operating under the laws of the State of Oregon and its officers, directors,  
12       employees, agents, and subcontractors.

13   **1.14 Company's Compensation**

14       "Company's Compensation" means the revenue received by the Company in  
15       return for providing services in accordance with this Agreement as described in  
16       Article 7.

17   **1.15 Container**

18       "Container" means a receptacle with capacity of approximately one to eight  
19       cubic yards, with a hinged lid, and with wheels.

20   **1.16 Curbside**

21       "Curbside" means the placement of receptacle(s) for pickup no more than three  
22       feet from any traveled street or alleyway, or as designated by City, provided that  
23       the Company can safely and feasibly provide service to such location.

24   **1.17 Disposal**

25       "Disposal" (or variations thereof) means the ultimate disposition of solid waste  
26       collected by Company at the approved disposal site in full regulatory  
27       compliance.

1   **1.18   Disposal Site**

2       "Disposal Site" means land and facilities used for the disposal, handling or  
3       transfer of, or energy recovery, material recovery and recycling from solid  
4       wastes, including but not limited to dumps, landfills, sludge lagoons, sludge  
5       treatment facilities, disposal sites for septic tank pumping or cesspool cleaning  
6       service, Transfer Stations, energy recovery facilities, incinerators for solid waste  
7       delivered by the public or by a collection service, composting plants and land  
8       and facilities previously used for solid waste disposal at a land disposal site; but  
9       the term does not include a facility authorized by a permit issued under ORS  
10      466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid  
11      waste; a facility subject to the permit requirements of ORS 468B.050 or 468B.053;  
12      a site which is used by the owner or person in control of the premises to dispose  
13      of soil, rock, concrete or other similar non-decomposable material, unless the  
14      site is used by the public either directly or through a collection service; or a site  
15      operated by a wrecker issued a certificate under ORS 822.110.

16   **1.19   Drop Box**

17      "Drop Box" means any storage receptacle ranging from 10 to 40 cubic yards  
18      which is designed for storage and collection of solid waste, recyclable materials,  
19      or yard debris. A drop box may be an open-top container or an enclosed  
20      container with a compaction unit.

21   **1.20   Effective Date**

22      "Effective Date" means the date on which the latter of the two parties signs the  
23      Agreement and the date on which Company may begin to take actions and incur  
24      costs in preparation to provide collection, transportation, processing, and  
25      disposal services required by this Agreement.

26   **1.21   Environmental Laws**

27      "Environmental Laws" means all federal and state statutes and regulations, and  
28      county, local and City ordinances concerning public health, safety and the  
29      environment including, by way of example and not limitation, the  
30      Comprehensive Environmental Response, Compensation and Liability Act of  
31      1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC  
32      §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic

1 Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and  
2 Health Act, 29 USC §651 et seq.; the Oregon Solid waste Management Act, ORS  
3 Chapter 459; the Oregon Reuse and Recycling Act, ORS 459A; the Oregon  
4 Employment Safety and Health Act, ORS Chapter 654; and the Oregon Workers'  
5 Compensation Act, ORS 656, as currently in force or as hereafter amended, and  
6 all rules and regulations promulgated there under.

7 **1.22 Exchange**

8 "Exchange" means a mutual act of giving or taking of one item or service for  
9 another. This includes any transaction into which money enters either as the  
10 consideration or as the basis of measure.

11 **1.23 Facility**

12 "Facility" means any plant or site, owned or leased and maintained, operated or  
13 used by Company for purposes of performing under this Agreement.

14 **1.24 Fair Market Value**

15 "Fair Market Value" means the cash price (or its equivalent in terms of savings on  
16 collection and disposal fees) that is at least equal to the cost of collection and  
17 disposal of a recyclable materials or group of recyclable materials, that would be  
18 purchased or exchanged between the collector of said recyclable material or  
19 group of recyclable materials and the generator of said recyclable material or  
20 group of recyclable materials.

21 **1.25 Fiscal Year**

22 "Fiscal Year" means a 12-month period commencing July 1 and concluding June  
23 31 of the subsequent year.

24 **1.26 Franchise**

25 "Franchise" includes a franchise, certificate, contract or license issued by a local  
26 government unit authorizing a person to provide solid waste, recyclable  
27 materials, and yard debris collection and management services.

1 **1.27 Franchise fee**

2 "Franchise fee" means the fee paid by Company to City for the right to hold the  
3 franchise for solid waste, recyclable materials, and yard debris collection services  
4 that are granted by this Agreement.

5 **1.28 Generator**

6 "Generator" means any person whose act or process produces solid waste,  
7 recyclable materials, or yard debris or whose act first causes solid waste,  
8 recyclable materials, or yard debris to become subject to regulation.

9 **1.29 Gross revenues**

10 "Gross revenues" means any and all revenue or compensation in any form  
11 actually remitted by customers to the Company for the collection and  
12 transportation of solid waste, recyclable materials, and yard debris pursuant to  
13 this Agreement excepting, however, disposal fees for drop box services. Gross  
14 revenues shall be determined in accordance with generally accepted accounting  
15 principles and shall include actual monthly customer fees received for collection  
16 of solid waste, recyclable materials, and yard debris, without deductions for  
17 franchise fees.

18 **1.30 Hazardous Substance**

19 "Hazardous Substance" shall mean any of the following: (a) any substances  
20 defined, regulated or listed (directly or by reference) as "hazardous substances",  
21 "hazardous materials", "hazardous wastes", "toxic waste", "pollutant" or "toxic  
22 substances" or similarly identified as hazardous to human health or the  
23 environment, in or pursuant to (i) the Comprehensive Environmental Response,  
24 Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the  
25 Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource  
26 Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act,  
27 33 USC §1251 et seq.; (v) the Oregon Hazardous Waste and Hazardous Materials  
28 II Act, ORS 466.005; and (vi) the Clean Air Act, 42 USC §7901 et seq.; (b) any  
29 amendments, rules or regulations promulgated there under to such enumerated  
30 statutes or acts currently existing or hereafter enacted; and (c) any other  
31 hazardous or toxic substance, material, chemical, waste or pollutant identified as  
32 hazardous or toxic or regulated under any other applicable federal, state or local

1 environmental laws currently existing or hereinafter enacted, including, without  
2 limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum,  
3 natural gas and synthetic fuel products, and by-products.

4 **1.31 Hazardous Waste**

5 "Hazardous Waste" has the meaning given that term in ORS 466.005.

6 **1.32 Holidays**

7 "Holidays" are defined as New Year's Day, Independence Day, Thanksgiving  
8 Day, and Christmas Day.

9 **1.33 Household Hazardous Waste**

10 "Household Hazardous Waste" means any discarded, useless or unwanted  
11 chemical, material, substance or product that is or may be hazardous or toxic to  
12 the public or the environment and is commonly used in or around households  
13 and is generated by the household. "Household Hazardous Waste" may include,  
14 but is not limited to, some cleaners, solvents, pesticides, and automotive and  
15 paint products.

16 **1.34 Infectious Waste**

17 "Infectious Waste" means biological waste including medical waste described as:

18 (a) Blood and blood products, excretions, exudates, secretions, suctioning and  
19 other body fluids that cannot be directly discarded into a municipal sewer  
20 system, including solid or liquid wastes from renal dialysis and waste  
21 materials reasonably contaminated with blood or bloody fluids.

22 (b) Cultures and stocks of etiologic agent and associated biologicals, including  
23 specimen cultures and disks and devices used to transfer, inoculate and mix  
24 cultures, wastes from production of biologicals and serums and discarded  
25 live and attenuated vaccines; but does not include throat or urine cultures.

26 (c) Sharps that have been removed from their original sterile containers,  
27 including needles, I.V. tubing with needles attached, scalpel blades, lancets,  
28 glass tubes that could be broken during handling, and syringes.



1 (d) Pathological waste, including biopsy materials and all human tissues,  
2 anatomical parts that emanate from surgery, obstetrical procedures, autopsy  
3 and laboratory procedures and animal carcasses exposed to pathogens in  
4 research, the bedding of the animals and other waste from such animals.  
5 Pathological waste does not include formaldehyde or other preservative  
6 agents.

7 **1.35 Legislation**

8 "Legislation" means any code, ordinance, resolution or any other  
9 forms/enactment of the governing body of City, currently existing or may  
10 hereafter be adopted, constituting law or regulation governing the operation of  
11 Company.

12 **1.36 Missed Pick-up**

13 "Missed Pick-Up" means failure of Company to pick up solid waste, recyclable  
14 materials, or yard debris that has been set out by the customer in accordance  
15 with this Agreement, and at the prescribed level of service, as mutually agreed  
16 upon by the customer and Company.

17 **1.37 Multi-Family Dwelling Unit**

18 "Multi-family Dwelling Unit" means any Premises with five dwelling units or  
19 more used for residential purposes (not including hotels or motels), irrespective  
20 of whether residence therein is transient or permanent.

21 **1.38 Non-Putrescible Solid Waste**

22 "Non-Putrescible Solid Waste" means inoperable vehicles; vehicle parts; tires;  
23 residential, commercial, and industrial construction and demolition debris;  
24 plastic; glass; cardboard; and wastepaper.

25 **1.39 ORS**

26 "ORS" means the 2009 Oregon Revised Statutes.

1   **1.40   Owner**

2       "Owner" means the Person holding the legal title to the real property constituting  
3       the premises to which solid waste, recyclable materials, or yard debris collection  
4       service is to be provided under this Agreement.

5   **1.41   Party or Parties**

6       "Party" or "Parties" refers to the City and Company, individually or together.

7   **1.42   Person**

8       "Person" means the United States, the state or a public or private corporation,  
9       local government unit, public agency, individual, partnership, association, firm,  
10      trust, estate or any other legal entity.

11  **1.43   Premises**

12      "Premises" means any land, or building, in the City where solid waste, recyclable  
13      materials, or yard debris is generated or accumulated.

14  **1.44   Principal Recyclable Materials**

15      "Principal Recyclable Materials" means those recyclable materials designated  
16      from time to time by the State of Oregon Department of Environmental Quality.

17  **1.45   Processing**

18      "Processing" (or variations thereof) means to prepare, treat, or convert through  
19      some special method.

20  **1.46   Purchase**

21      "Purchase" means the legal transmission of legal title to property from one  
22      person to another through a voluntary act or agreement, with compensation in  
23      the form of money or other consideration, by a buyer to a seller of the property.

24  **1.47   Processing Site**

25      "Processing Site" means any plant or site used for the purpose of sorting,  
26      cleansing, treating or reconstituting recyclable materials or yard debris for the  
27      purpose of making such material available to end-use markets or for reuse.

1 **1.48 Putrescible Solid Waste**

2 "Putrescible Solid Waste" means solid waste or waste material, including bones;  
3 meat and meat scraps; fat; grease; fish and fish scraps; food containers  
4 contaminated with food wastes; particles or residues; vegetable and fruit food  
5 wastes; manure; dead fowl; dead animals or similar organic wastes, that are  
6 capable of causing offensive odors, creating a health hazard, or attracting or  
7 providing food for vectors.

8 **1.49 Rate Period**

9 "Rate Period" means the 12-month period commencing July 1 and concluding  
10 June 30 of the next year with the exception that the first rate period will be a 12-  
11 month period commencing July 1, 2010 and concluding on June 30, 2011.

12 **1.50 Rates**

13 "Rates" means the unit to be charged customers by Company for providing solid  
14 waste collection and disposal, recyclable materials collection and processing  
15 services, and yard debris collection and processing services. Rates may be  
16 adjusted from time to time in accordance with this Agreement.

17 **1.51 Receptacles**

18 "Receptacles" means any and all types of solid waste, recyclable materials, and  
19 yard debris receptacles including cans, bags, bins, carts, containers, drop boxes,  
20 and compactors or any other means of containment of solid waste, recyclable  
21 materials, or yard debris.

22 **1.52 Recycling**

23 "Recycling" means any process by which solid waste materials are transformed  
24 into new products where the solid waste materials may lose their identity.

25 **1.53 Recyclable Material**

26 "Recyclable Material" means any material or group of materials that can be  
27 collected and sold for recycling at a net cost equal to or less than the cost of  
28 collection and disposal of the same material. Recyclable materials are a subset of  
29 solid waste.

1   **1.54   Residential Premises**

2           "Residential Premises" means property used for residential purposes, irrespective  
3           of whether such dwelling units are rental units or are owner occupied.

4   **1.55   Single-Family Dwelling Unit**

5           "Single-Family Dwelling Unit" means each residential premises used for or  
6           designated as a single-family residential dwelling, including each unit of a  
7           duplex, triplex, fourplex, or town house in all cases in which there is separate or  
8           individual solid waste and recyclable materials collection service using cans or  
9           carts.

10   **1.56   Solid waste**

11           "Solid waste" means all useless, unwanted, or discarded putrescible solid waste  
12           and non-putrescible solid waste, including, but not limited to, garbage, rubbish,  
13           refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool  
14           pumpings or other sludge, useless or discarded commercial and industrial,  
15           demolition and construction materials, discarded or abandoned vehicles or parts  
16           thereof, discarded home and industrial appliances, manure, vegetable or animal  
17           solid and semisolid materials, dead animals and infectious waste as defined in  
18           ORS 459.386. "Solid waste" does not include:

19           (a) Hazardous waste as defined in ORS 466.005.

20           (b) Materials used for fertilizer or for other productive purposes or which are  
21                 salvageable as such materials on land in agricultural operations in the  
22                 growing or harvesting of crops and the raising of fowl or animals. This  
23                 exception does not apply to the keeping of animals on land which has been  
24                 zoned for residential non-agricultural purposes.

25           (c) Septic tank and cesspool pumping or chemical toilet waste.

26   **1.57   Source Separated**

27           "Source Separated" means the segregation, by the generator, of materials  
28           designated for separate collection for some form of recycling, composting,  
29           recovery, or reuse.

1 **1.58 Subcontractors**

2 "Subcontractor" means a party who has entered into a contract, express or  
3 implied, with the Company for the performance of an act that is necessary for the  
4 Company's fulfillment of its obligations under this Agreement.

5 **1.59 Term**

6 "Term" means the Term of this Agreement, including extension periods if  
7 granted, as provided for in Article 3.

8 **1.60 Transfer Station**

9 "Transfer Station" means a fixed or mobile facility other than a collection vehicle  
10 where solid waste, recyclable materials, and/or yard debris is deposited  
11 temporarily after being removed from the site of generation but before being  
12 transported to a final disposal or processing location.

13 **1.61 Yard debris**

14 "Yard debris" includes grass clippings, leaves, hedge trimmings and similar  
15 vegetative waste generated from residential premises or landscaping activities,  
16 but does not include stumps or similar bulky wood materials. Yard debris is a  
17 subset of solid waste.

1 **ARTICLE 2**  
2 **REPRESENTATIONS AND WARRANTIES OF COMPANY**

3 **2.1 Company Status**

4 Company is a duly organized, validly existing company in good standing under  
5 the laws of the State of Oregon. It is qualified to transact business in the State of  
6 Oregon and has the power to own its properties and to carry on its business as  
7 now owned and operated and as required by this Agreement.

8 **2.2 Company Authorization**

9 Company has the authority to enter into and perform its obligations under this  
10 Agreement. If appropriate or necessary, the Board of Directors of Company has  
11 taken all actions required by law, its articles of incorporation, its bylaws or  
12 otherwise to authorize the execution of this Agreement.

13 **2.3 Agreement Duly Executed**

14 The persons signing this Agreement on behalf of Company have been duly  
15 authorized by Company to do so, and this Agreement has been duly executed  
16 and delivered by Company in accordance with the authorization of its Board of  
17 Directors or shareholders, if necessary, and is enforceable against Company in  
18 accordance with its terms.

19 **2.4 No Conflict with Applicable Law or Other Documents**

20 Neither the execution nor delivery by Company of this Agreement nor the  
21 performance by Company of its obligations hereunder:

- 22 a) Conflicts with, violates, or will result in a violation of any existing  
23 applicable law; or
- 24 b) Conflicts with, violates, or will result in a breach or default under any  
25 term or condition of any existing judgment, order or decree of any court,  
26 administrative agency or other governmental authority, or of any existing  
27 agreement or instrument to which Company is a party, or by which  
28 Company or any of Company's properties or assets is bound; or

1 c) Will result in the creation or imposition of any lien, charge, or  
2 encumbrance of any nature whatsoever upon any of the properties or  
3 assets of Company that will interfere materially with Company's  
4 performance hereunder.

5 **2.5 No Litigation**

6 There is no action, suit, proceeding or action at law or equity, or to the best of  
7 Company's knowledge, any investigation before or by any court or  
8 governmental entity, pending or threatened against Company or otherwise  
9 affecting Company, wherein an unfavorable decision, ruling or finding, in any  
10 single case or in the aggregate, would materially adversely affect Company's  
11 performance hereunder, or which in any way, would adversely affect the validity  
12 or enforceability of this Agreement, or which would have a material adverse  
13 effect on the financial condition of Company.

14 **2.6 No Material Change in Financial Ability**

15 Company has sufficient financial resources to perform all aspects of its  
16 obligations hereunder. There has been no material adverse change in Company's  
17 financial circumstances since the date of the most recent financial statements.

18 **2.7 Expertise**

19 Company has the expert, professional, and technical capability to perform all of  
20 its obligations under this Agreement.

21 **2.8 Company's Investigation**

22 Company has made an independent investigation (satisfactory to it) of the  
23 conditions and circumstances surrounding the Agreement and the work to be  
24 performed by Company under the Agreement, and enters into this Agreement  
25 on the basis of that independent investigation.

1 **ARTICLE 3**  
2 **TERM AND SCOPE OF FRANCHISE**

3 **3.1 Term of Agreement**

4 **3.1.1 Effective Date and Commencement Date**

5 The Effective Date of this Agreement shall be the date the later of the parties  
6 executes Agreement.

7 **3.1.2 Term of Agreement**

8 The term of this Agreement shall be considered as a continuing or rolling ten (10)  
9 year franchise, commencing at 12:01 a.m. July 1, 2010 subject to termination as  
10 follows:

11 Unless grounds exist for termination of the franchise under Article 12, this  
12 franchise shall be considered as a continuing or rolling ten (10) year term. That  
13 is, beginning on July 1 of each year, the franchise will be consider renewed for an  
14 additional ten (10) year term, unless at least thirty (30) days prior to July 1 of any  
15 year the City notifies the Company of its intent to terminate the franchise. Upon  
16 giving such notice of termination, the Company shall have a franchise which will  
17 terminate ten (10) years from the date of the City's notification.

18 In the event the Company desires to terminate service given under the  
19 terms of this franchise, then it shall give not less than two (2) years notice of its  
20 intent to terminate service and obligations under the franchise.

21 **3.1.3 Conditions to Effectiveness of Agreement**

22 The obligation of City to permit this Agreement to become effective and to  
23 perform its undertakings provided for in this Agreement is subject to the  
24 satisfaction of each and all of the conditions set out below, each of which may be  
25 waived in whole or in part by City, upon City's expressed written consent.  
26 Waivers are limited to those expressed in writing, and are in the sole and  
27 exclusive discretion of City.



- 1 a) Accuracy of Representations. Representations and warranties made by  
2 Company throughout this Agreement are accurate, true, and correct on  
3 and as of the effective date of this Agreement.
- 4 b) Absence of Litigation. There is no litigation pending or threatened in any  
5 court challenging the award of this franchise to Company or the execution  
6 of this Agreement or seeking to restrain or enjoin its performance.
- 7 c) Furnishing of Insurance. Company has furnished evidence of the  
8 insurance required by Article 10.
- 9 d) Effectiveness of City Council Action. City Ordinance No. 1328 which  
10 approves this Agreement shall have become effective pursuant to the State  
11 of Oregon law prior to the effective date.

12 **3.2 Franchise**

13 **3.2.1 Grant and Acceptance of Franchise**

14 Subject to Section 3.2.2, the City hereby grants to Company the exclusive  
15 franchise, right and privilege to collect and transport solid waste, recyclable  
16 materials, and yard debris accumulating in the City "allocated service area", as  
17 defined in Section 1.8 above, that is required to be accumulated and offered for  
18 collection to Company in accordance with this Agreement and such rules and  
19 regulations set forth by ordinances of City that are not inconsistent with this  
20 Agreement.

21 **3.2.2 Scope of Franchise**

22 The Franchise for the collection and transportation of solid waste, recyclable  
23 materials, and yard debris granted to Company shall be exclusive except as to  
24 the categories of solid waste, recyclable materials, and yard debris listed in this  
25 Section.

- 26 a) Solid waste, recyclable materials, or yard debris removed from any  
27 premises by the generator, and transported personally by the owner or  
28 occupant of such premises (or by his or her full-time employees) to any  
29 processing facility or disposal site with the exception that the owner of an  
30 apartment may not remove and transport materials generated by a tenant;

- 1           b) Solid waste, recyclable materials, or yard debris that is hauled by a  
2 contractor or City as an incidental activity associated with work  
3 performed by the company for a resident or business or work performed  
4 by City such as, but limited to, a construction and demolition debris  
5 hauled by a company that is hired to remodel a home, or yard debris  
6 hauled by a landscaper that services a commercial business.
  
- 7           c) Recyclable materials and yard debris generated by commercial premises,  
8 including City facilities, which are collected by a person (or company)  
9 through a private arrangement with the generator and the generator is  
10 compensated for the materials collected;
  
- 11          d) Source separated, principal recyclable materials as defined in ORS 459A  
12 and the rules promulgated there under, which have been purchased or  
13 exchanged for fair market value, unless said principal recyclable materials  
14 create a public nuisance;
  
- 15          e) Reusable beverage containers as defined in ORS 459A unless mixed with  
16 solid waste;
  
- 17          f) By-products of sewage treatment, including sludge, sludge ash, grit and  
18 screenings;
  
- 19          g) Recyclable materials removed from any premises with permission from  
20 generator by charitable or non-profit organizations; and,
  
- 21          h) Abandoned cars removed from any premises by a licensed towing  
22 company authorized to do so by City.

23           **3.2.3 Limitations**

24           This grant to Company of an exclusive franchise, right and privilege to collect,  
25 transport, and dispose of solid waste, and collect, transport, and process  
26 recyclable materials and yard debris shall be interpreted to be consistent with  
27 state and federal laws, now in effect and adopted during the term of the  
28 Agreement; and the scope of this exclusive Franchise shall be limited by current  
29 and developing state and federal laws with regard to solid waste, recyclable  
30 materials, and yard debris handling, exclusive Franchise, solid waste flow  
31 control, and related doctrines. In the event that future interpretations of current

1 law, enactment or developing legal trends limit the ability of City to lawfully  
2 provide for the scope of franchise services as specifically set forth herein,  
3 Company agrees that the scope of the Franchise will be limited to those services  
4 and materials which may be lawfully provided for under this Agreement, and  
5 that City shall not be responsible for any lost profits claimed by Company to  
6 arise out of further limitations of the scope of the Agreement set forth herein. In  
7 such an event, it shall be the responsibility of Company to minimize the financial  
8 impact to other services being provided as much as possible.

#### 9 **3.2.4 Acceptance of Franchise**

10 Company hereby accepts the franchise on the terms and conditions set forth in  
11 this Agreement, and all such ordinances adopted by City that are not  
12 inconsistent with this Agreement.

### 13 **3.3 City's Right to Direct Changes**

14 City may direct Company to modify the manner in which it performs existing  
15 services. Pilot programs and innovative services that may entail new collection  
16 methods, different kinds of services and/or new requirements for generators are  
17 included among the kinds of changes that City may direct. Company may seek  
18 an adjustment in its Company's compensation in accordance with Section 7.5 and  
19 7.6 for providing such additional or modified services.

### 20 **3.4 Ownership of Solid waste**

21 Once solid waste, recyclable materials or yard debris is placed in receptacles and  
22 properly placed at the designated collection location, ownership and the right to  
23 possession of such material shall transfer directly from the generator to  
24 Company by operation of this Agreement. Subject to the provisions of this  
25 Agreement, Company shall have the right to retain any benefit resulting from its  
26 right to retain, recycle, process, dispose of, or reuse the solid waste, recyclable  
27 materials, and yard debris which it collects. Solid waste, recyclable materials,  
28 yard debris, or any part thereof, which is disposed of at a disposal site or facility  
29 (whether landfill, transformation facility, transfer station, processing facility or  
30 material recovery facility) shall become the property of the owner or operator of  
31 the disposal site(s) or facility once deposited there by Company. City may obtain  
32 ownership or possession of solid waste, recyclable materials, or yard debris

1 placed for collection upon written notice of its intent to do so, however, nothing  
2 in this Agreement shall be construed as giving rise to any inference that City has  
3 such ownership or possession unless such written notice has been given to  
4 Company. If the City exercises its right to own or possess some or all of  
5 materials placed for Collection, the City's right to materials shall be handled as a  
6 City-directed change in accordance with Section 3.3, and the Company's  
7 compensation shall be adjusted to reflect changes in costs incurred by the  
8 Company.

9

1 **ARTICLE 4**  
2 **FRANCHISE FEE AND OTHER SURCHARGES**

3 **4.1 City Franchise Fee**

4 **4.1.1 Franchise Fee Amount**

5 In consideration of the exclusive Franchise provided in Section 3.2 of this  
6 Agreement, Company shall pay to City **three (3) percent** (or another amount as  
7 provided in Section 4.1.3) of the gross revenues collected by Company from  
8 services provided in City for the period of the first year beginning July 1, 2010  
9 through June 30, 2011.

10 Beginning on July 1, 2011, company shall pay to City **five (5) percent** (or another  
11 amount as provided in Section 4.1.3) of the gross revenues collected by Company  
12 from services provided in City.

13 **4.1.2 Time and Method of Payment**

14 On or before the last day of the month following the end of each calendar  
15 quarter, Company shall calculate and pay the franchise fee due to City for  
16 revenues received during the preceding calendar quarter and provide written  
17 statement of the gross revenues received for each month during the quarter and  
18 the Company's calculation of the franchise fee payment. The City shall review  
19 the Company's franchise fee statement and may request, and Company shall  
20 provide, supporting documents related to the statement provided. If the City  
21 identifies adjustments to the statement or calculations, the City shall notify  
22 Company no later than 30 calendar days after receipt of franchise fee payment  
23 and shall seek an explanation for any apparent differences. If the franchise fee is  
24 not paid on or before the last day of the month following the end of each  
25 calendar quarter, Company shall pay to City a late payment fee in an amount  
26 equal to 2% of the amount owing for that month; plus an additional 2% owing on  
27 any unpaid balance for each additional 30-calendar-day period the fee remains  
28 unpaid. In the event of a dispute between the City and Company, the Company  
29 shall pay all fees due in accordance with Article 4 accompanied by a statement  
30 indicating such payment is made under protest and identifying the date the  
31 related claim was filed. If the Company prevails in the dispute settlement, the  
32 City shall pay Company any fees paid under protest plus interest, where the

1 annual interest rate shall be calculated using the most-recently published average  
2 daily interest rate for the Oregon Local Government Investment Pool (LGIP)  
3 published by the Oregon State Treasurer's office. If the Company does not  
4 prevail in the dispute settlement, the City shall retain the fees paid under protest.

5 **4.1.3 Adjustment to Franchise fee**

6 City may adjust the amount of the franchise fee annually. Such adjustment shall  
7 be reflected in the rates that Company is allowed to charge and collect from  
8 customers in accordance with Article 7 any such adjustment shall occur on the  
9 first day of any rate period affected by the change in the fees.

1 **ARTICLE 5**  
2 **DIRECT SERVICES**

3 **5.1 Solid Waste Collection**

4 **5.1.1 General**

5 The work to be performed by Company pursuant to this Agreement shall  
6 include, but not be limited to, the furnishing of all labor, supervision, equipment,  
7 materials, supplies, and all other items necessary to perform the services  
8 required. The enumeration of, and specification of requirements for, particular  
9 items of labor or equipment shall not relieve Company of the duty to furnish all  
10 others, as may be required, whether enumerated elsewhere in the Agreement or  
11 not.

12 The work to be performed by Company pursuant to this Agreement shall be  
13 accomplished in a thorough and professional manner so that the residents and  
14 businesses within City are provided reliable, courteous, and high-quality solid  
15 waste, recyclable materials, and yard debris collection services at all times. The  
16 enumeration of, and specification of requirements for, particular aspects of  
17 service quality shall not relieve Company of the duty of accomplishing all other  
18 aspects in the manner provided in this section, whether such other aspects are  
19 enumerated elsewhere in the Agreement or not.

20 Company agrees to actively identify receptacles collected from commercial  
21 properties containing significant quantities of recyclable materials or yard debris  
22 and offer the generator commercial recyclable materials or yard debris collection  
23 service.

24 **5.1.2 Single-Family Dwelling Unit**

25 Company shall collect solid waste (at the service level subscribed to and paid for  
26 by its customers) from the receptacles that have been delivered for collection to  
27 the curbside by the generator. The Company shall offer residential customers  
28 the choice of the following service levels:

- 29
  - Weekly 20-, 35-, 65-, or 95-gallon (or similar sizes) cart collection  
30 service

- 1           • Monthly 35-gallon (or similar size) cart collection service
- 2           • On-call, 35-gallon cart collection service for customers that do not
- 3           subscribe to weekly or monthly solid waste collection service.
- 4           • Extra 35-gallon can or bag collection service (on the day of regularly
- 5           scheduled solid waste collection) from customers that subscribe to
- 6           regular service

7           The Company shall provide receptacles to all customers that subscribe to weekly  
8           cart service. The Company shall use semi-automated or automated collection  
9           vehicles to perform the collection services, unless another method is approved by  
10          City. City approval will not be unreasonably withheld. Notwithstanding the  
11          foregoing, Company shall collect solid waste from the side or back yard of those  
12          single-family dwelling units that qualify as handicapped as defined by City or  
13          that pay the approved rate for backyard service, provided that such customers  
14          place the solid waste cart in a location that is visible from the street.

### 15          **5.1.3 Commercial and Multi-Family Dwelling Units**

16          Company shall collect solid waste from all commercial premises and multi-  
17          family dwelling unit premises as frequently as scheduled by the customer, but  
18          not less than once per week. Company shall collect solid waste from receptacles  
19          at a location selected by the customer and approved by the Company and City,  
20          provided that in the case of a dispute, the City shall designate the collection  
21          location. Company shall allow each commercial and multi-family customer to  
22          select a collection service methodology that best suits the needs of its premises.  
23          Specifically, the Company shall offer the following collection service  
24          methodologies to commercial properties and multi-family dwelling unit  
25          premises:

#### 26          **A. Cart or Container Service**

27          Company shall allow each commercial premises or multi-family dwelling unit  
28          premises to use carts or containers for solid waste collection. Company shall  
29          provide each customer with a choice of one or more carts with capacities ranging  
30          from 35 to 95 gallons (or similar sizes) or containers with capacity ranging from 1  
31          to 8 cubic yards (or similar sizes).



1           **B.     Drop Box and Compactor Service**

2           Company shall allow a customer to use a drop box or compactor for solid waste  
3           collection to meet the customer’s disposal needs. In such case, Company shall  
4           provide customer with a choice of receptacle capacities ranging from 10 to 40  
5           cubic yards. Company shall offer customers the option to purchase or lease  
6           compactors through either the Company or an outside vendor. Company shall  
7           collect solid waste at the subscribed service level from Company-provided solid  
8           waste receptacles in compliance with any and all local ordinances in existence as  
9           of the effective date of this Agreement.

10          Special consideration shall be given when determining the pick up area for  
11          commercial, and/or multi-family dwelling unit accounts to ensure that the flow  
12          of traffic is not impeded by collection operations and that it does not result in  
13          aesthetic degradation of an area. Additionally, if in City's opinion the location of  
14          an existing pickup area is inappropriate, City may require the customer to  
15          relocate the pickup area.

16           **5.1.4 City Facilities**

17          Company shall collect solid waste from City facilities as described in Section 5.9  
18          and shall provide all receptacles necessary for such collection.

19   **5.2     Recyclable Materials Collection**

20           **5.2.1 General**

21          Company shall offer all customers source separated recyclable materials  
22          collection services. For purposes of this section, recyclable materials shall  
23          include, at a minimum, newspapers and magazines, scrap paper (cereal &  
24          cracker boxes, labels from steel cans, milk cartons and drink boxes, office paper,  
25          opened mail, paper bags, paper egg cartons, shoe boxes, shredded paper, soft  
26          drink boxes, wrapping paper), phone books, cardboard, plastic bottles with neck  
27          or screw top (detergent bottles, lotion bottles, milk jugs, shampoo bottles, water  
28          & juice bottles), metals (aerosol cans, metal cans, lids, metal coat hangers, metal  
29          pie plates, trays, other metal products as long as they fit inside cart, otherwise  
30          call for other arrangements), glass bottles and jars (clean, labels are ok), and  
31          motor oil (in an unbreakable container with a screw top lid such as a milk or  
32          water jug).

1           **5.2.2 Single-Family Dwelling Unit**

2           Company shall collect source separated recyclable materials weekly from  
3           customers that have subscribed to solid waste collection service, as well as  
4           monthly and on-call customers, and such service shall include collection of  
5           commingled recyclable materials except glass which shall be separately collected.  
6           Company shall provide such customers 95-gallon carts (or similar size) for  
7           commingled recyclable materials and a 14-gallon (or similar size) bin for glass  
8           collection. Company shall collect recyclable materials placed curbside by the  
9           customer for collection in Company-provided receptacles in accordance with  
10          instructions provided by the Company. Recyclable materials collection shall be  
11          on the same day of the week as solid waste collection service. Notwithstanding  
12          the foregoing, Company shall collect recyclable materials from the side or back  
13          yard of those single-family dwelling units that qualify as handicapped as defined  
14          by City, provided that such customers place the recyclable materials cart in a  
15          location that is visible from the street.

16          **5.2.3 Commercial and Multi-Family Dwelling Unit**

17          Company shall collect recyclable materials at the subscribed service level from  
18          Company-provided receptacles.

19          Company shall collect recyclable materials from commercial premises and multi-  
20          family dwelling unit premises as frequently as scheduled by customer, but not  
21          less than once per week. Company shall allow commercial customers to select a  
22          collection service method that best suits the needs of its premises. Specifically,  
23          the Company shall offer the following choices to commercial customers:

24          **A. Cart or Container Service**

25          Company shall allow commercial and multi-family dwelling unit customers to  
26          use cart(s) or container(s) for source separated recyclable materials collection,  
27          and Company shall collect commingled recyclable materials with the exception  
28          of glass that shall be separately collected. Company shall provide each customer  
29          with a choice of one or more carts with capacities of 35 or 95 gallons (or similar  
30          sizes), or containers with capacity of four cubic yards (or similar sizes).

1           **B.     Drop Box and Compactor Service**

2           Company shall allow commercial and multi-family dwelling unit customers to  
3           use a drop Box or compactor for source separated recyclable materials collection  
4           to meet customer’s permanent needs, and Company shall collect commingled  
5           recyclable materials with the exception of glass that shall be separately collected.  
6           In such case, Company shall provide customers with a choice of receptacle  
7           capacities ranging from 10 to 40 cubic yards. Company shall offer customers the  
8           option to purchase or lease compactors through Company or an outside vendor.

9           **5.2.4   City Facilities**

10          Company shall collect all source separated recyclable materials from City  
11          facilities as described in Section 5.9, and shall provide all receptacles necessary  
12          for such collection. Company shall collect commingled recyclable materials with  
13          the exception of glass that shall be separately collected

14   **5.3     Yard Debris Collection**

15          **5.3.1   General**

16          Company shall offer all customers yard debris collection services.

17          **5.3.2   Single-Family Dwelling Unit**

18          Company shall collect source separated yard debris from single-family dwelling  
19          units weekly throughout the year round if the customer subscribes to and pays  
20          for such service. Company shall provide each customer with a 65-gallon (or  
21          similar size) cart. Company shall provide weekly curbside collection of green  
22          waste on the same day as solid waste collection from the service area's single-  
23          family dwelling units. Company shall use semi-automated or automated  
24          collection vehicles, unless another method is approved by City. City approval  
25          will not be unreasonably withheld. Notwithstanding the foregoing, Company  
26          shall collect yard debris from the side or back yard of those single-family  
27          dwelling units that qualify as handicapped as defined by City, provided that  
28          such customers place the yard debris cart in a location that is visible from the  
29          street.

30          Company shall collect source separated yard debris from customers that do not  
31          subscribe to weekly yard debris collection services on an on-call basis as

1 requested by the customer. In such cases, customers shall place source separated  
2 yard debris curbside in 65-gallon carts for collection and Company shall collect  
3 the yard debris and bill the customer for the service.

4 Company shall collect source separated yard debris, from customers that  
5 subscribe to regular yard debris collection service, in excess of that placed in the  
6 customer's 65-gallon cart. In such cases, the customers shall place the extra yard  
7 debris curbside in a 35-gallon can or compostable paper bag for collection on the  
8 day of regularly scheduled yard debris collection, and Company shall collect the  
9 yard debris and bill the customer for the extra service.

### 10 **5.3.3 Commercial and Multi-family Dwelling Unit**

11 Company shall collect source separated yard debris from commercial properties  
12 and multi-family dwelling units if the customer subscribes to and pays for such  
13 service. Collection shall be performed as frequently as scheduled by customer,  
14 but not less than every other week.

15 Company shall allow commercial and Multi-family dwelling unit customers to  
16 select a collection service method that best suits the needs of its premises.  
17 Specifically, the Company shall offer the following choices to commercial and  
18 multi-family dwelling unit customers:

#### 19 **A. Cart or Container Service**

20 Company shall allow commercial premises and multi-family dwelling unit  
21 premises to use cart(s) or container(s) for source separated yard debris collection.  
22 Company shall provide each customer with a 65-gallon cart (or similar sizes).

#### 23 **B. Drop Box and Compactor Service**

24 Company shall allow premises to use a drop box or compactor for source  
25 separated yard debris collection to meet customer's needs. In such case,  
26 Company shall provide premises with a choice of receptacle capacities ranging  
27 from 10 to 40 cubic yards. Company shall offer customers the option to purchase  
28 or lease compactors through Company or an outside vendor.

1           **5.3.4 City Facilities**

2           Company shall collect source separated yard debris from City facilities in  
3           accordance with Section 5.9, and shall provide all receptacles necessary for such  
4           collection.

5           **5.4 Operations**

6           **5.4.1 Schedules**

7           To preserve peace and quiet, no solid waste, recyclable materials, or yard debris  
8           shall be collected between 6:00 p.m. and 7:00 a.m., except for those commercial or  
9           institutional customers which the City Administrator and the Company have  
10          mutually agreed can be serviced outside of these hours. The Company shall  
11          collect solid waste, recyclable materials and yard debris Monday through Friday  
12          from residential premises and may collect solid waste, recyclable materials and  
13          yard debris from commercial premises Monday through Saturday.

14          Company, at its sole discretion, may choose not to provide collection services on  
15          a holiday. In such event, Company shall provide collection services on the day  
16          following the holiday. The Company shall provide the City and customers  
17          notice of holiday-related changes in collection schedules at least 10 days prior to  
18          the change; but in no case, shall Company notify customers earlier than 30 days  
19          prior to the change.

20          Company shall be prepared to review its operations plan outlining the collection  
21          routes, intervals of collection and collection times for all solid waste, recyclable  
22          materials, and yard debris collected under this Agreement with City once  
23          annually upon 30-day written notice requesting said review. More frequent  
24          reviews may be required if the City determines operations are not satisfactory  
25          based on documented observations or reports or complaints. If the City  
26          determines that operations are inadequate, the Company shall revise the  
27          operations plan, incorporating any City-requested changes into a revised plan,  
28          and review the revised operations plan with City within 30 calendar days from  
29          the date City provides Company written request to revise the operations plan.

30          When notified of a missed pick-up by the customer within two business days of  
31          the regular scheduled collection day, Company shall collect the solid waste,  
32          recyclable materials, or yard debris on or before 5:00 p.m. of the business day

1 following receipt of the complaint. For residential service, a business day shall  
2 mean Monday through Friday, excluding holidays.

3 **5.4.2 Vehicles**

4 **A. General.** Company shall provide collection vehicles sufficient in number  
5 and capacity to efficiently perform the work required by the Agreement in strict  
6 accordance with its terms. Company shall have available on collection days  
7 sufficient back-up vehicles for each type of collection vehicle (e.g., cart service  
8 and container service) used to perform collection services, and respond to  
9 complaints and emergencies.

10 **B. Specifications.** All vehicles used by Company in providing solid waste,  
11 recyclable materials, and yard debris collection services shall be registered with  
12 the State of Oregon Department of Motor Vehicles. All such vehicles shall have  
13 bodies designed to prevent leakage, spillage, or overflow.

14 **C. Vehicle Identification.** The Company's name, local telephone number,  
15 and a unique vehicle identification number designated by Company for each  
16 vehicle shall be prominently displayed on all vehicles, in letters and numbers at  
17 least 2.5 inches high. Company shall not place City's name and/or any City  
18 logos on Company vehicles.

19 **D. Cleaning and Maintenance**

20 1) Company shall maintain all of its properties, vehicles, facilities, and  
21 equipment used in providing service under this Agreement in a  
22 good, safe, neat, clean, and operable condition at all times.

23 2) Vehicles used in the collection of solid waste, recyclable materials,  
24 and yard debris shall be painted, thoroughly washed, and  
25 thoroughly steam cleaned on a regular basis so as to present a clean  
26 appearance. Upon reasonable notice, City may inspect vehicles at  
27 any time to determine compliance with this Agreement. Company  
28 shall repaint or refurbish to the reasonable satisfaction of City all  
29 vehicles used in the collection of solid waste, recyclable materials,  
30 and yard debris within 30 calendar days' notice from the City, if the  
31 City reasonably determines their appearance warrants painting.  
32 Company shall also make vehicles available to the Clackamas

1 County Health Department and State of Oregon Department of  
2 Transportation for inspection, at any frequency it requests.

- 3 3) Company shall inspect each vehicle daily to ensure that all  
4 equipment is operating properly. Vehicles that are not operating  
5 properly shall be removed from service until repaired and  
6 operating properly.

7 **E. Operation.** Vehicles shall be operated in compliance with the State of  
8 Oregon Vehicle Code, and all applicable safety and local ordinances. Company  
9 shall not load vehicles in excess of the manufacturer's recommendations or  
10 limitations imposed by state or local weight restrictions on vehicles.

11 Equipment shall comply with United States Environmental Protection Agency  
12 (US EPA) noise emission regulations, and other applicable noise control  
13 regulations, and shall incorporate noise control features throughout the entire  
14 vehicle. Noise levels of equipment used for collection shall comply with City  
15 ordinance.

16 Subject to Section 10.1, Company shall be responsible for any damage resulting  
17 from or directly attributable to any of its operations.

### 18 **5.4.3 Receptacles**

#### 19 **A. Single-Family Dwelling Unit Solid Waste Receptacles**

20 Company shall provide each single-family dwelling unit that pays for the basic  
21 collection service package, as well as monthly and on-call customers, with a 20-  
22 gallon, 35-gallon, 65-gallon, or 95-gallon cart (or similar size carts) for solid waste  
23 collection. Single-family dwelling unit customers shall be given an opportunity  
24 to select the initial cart size prior to the commencement date, and to change their  
25 receptacle size once each year at no charge for the receptacle exchange. Carts  
26 must have a useful life of 10 years as evidenced by manufacturer's warranty or  
27 other documentation acceptable to City.

#### 28 **B. Single-Family Dwelling Unit Recyclable Materials Receptacles**

29 Company shall provide each single-family dwelling unit that pays for the basic  
30 collection service package, as well as monthly and on-call customers, with a 95-  
31 gallon cart (or similar size cart) for the collection of commingled recyclable

1 materials and a 14-gallon receptacle for the collection of glass. Additional 95-  
2 gallon carts and/or 14-gallon receptacles will be provided at no charge upon  
3 customer request and demonstration of need.

4 **C. Single-Family Dwelling Unit Residential Yard Debris Receptacles**

5 Company shall provide one 65-gallon cart (or similar size cart) for collection of  
6 yard debris to each single-family dwelling unit that pays for solid waste  
7 collection free of charge. Each additional cart shall be charged at the rate of \$5.00  
8 per month. Carts must have a useful life of 10 years as evidenced by  
9 manufacturer's warranty or other documentation acceptable to City.

10 **D. Non-Residential Receptacles**

11 Company shall provide customers appropriate receptacles to collect solid waste,  
12 recyclable materials, and yard debris at multi-family dwelling unit premises and  
13 commercial premises upon customer request. Company shall offer such  
14 customers 65-gallon and 95-gallon carts; containers with capacity of 1 to 8 cubic  
15 yards; or drop boxes with capacity of 10 to 40 cubic yards. The kind, size, and  
16 number of receptacles furnished to a particular customer shall be as determined  
17 mutually by the customer and Company. Receptacles which are serviced by  
18 front-loading collection vehicles shall have attached lids. All receptacles with a  
19 capacity of one cubic yard or more shall meet applicable regulations for solid  
20 waste container safety, shall have reflective markings (unless the receptacle is  
21 normally located in an enclosure), shall be maintained in good repair with neatly  
22 and uniformly painted surfaces, and shall prominently display the name and  
23 telephone number of Company.

24 **E. Removal of Receptacles**

25 Upon termination of the franchise agreement, early or otherwise, the Company  
26 shall remain the owner of all receptacles. The Company shall be responsible for  
27 removing all receptacles in service from premises and reusing or recycling such  
28 receptacles.

29 **F. Cart Requirements**

30 **1. Specifications.** Company will provide collection services with carts having  
31 the specifications, design and performance standards described in this



1 Section 5.4.3.F and meet requirements of applicable law with respect to  
2 stability. Carts must have a useful life of 10 years as evidenced by  
3 manufacturer's warranty or other documentation acceptable to City.

4 **2. Materials Identification and Decals.** Carts or their lids must be in bright,  
5 readily identifiable colors to facilitate customer's ready recognition of solid  
6 waste, recyclable materials, and yard debris, subject to City approval as  
7 described in this Section 5.4.3.F.

8 **3. Secure Inventory Storage.** Company will provide a secure location for  
9 inventory storage.

10 **4. Cart Design Requirements**

11  
12 **a. Cart Lid.** Each cart must be provided with a lid that continuously  
13 overlaps and comes in contact with the cart body or otherwise  
14 causes an interface with the cart body that simultaneously:

- 15 • Prevents the intrusion of rainwater, rodents, birds, and flies;
- 16 • Prevents the emission of odors;
- 17 • Enables the free and complete flow of material from the cart  
18 during the dump cycle without interference with the material  
19 already deposited in the truck body or the truck body itself and  
20 its lifting mechanism;
- 21 • Permits users of the cart to conveniently and easily open and  
22 shut the lid throughout the serviceable life of the cart;
- 23 • The lid handle must be an integrally molded part of the lid;
- 24 • The lid (and body) must be of design and weight that prevents  
25 an empty cart from tilting backward when flipping the lid open;  
26 and,
- 27 • The lid must be hinged to the cart body in such a manner so as  
28 to enable the lid to be fully opened, free of tension, to a position  
29 whereby it may rest against the backside of the cart body.

1           **b. Cart Colors.** The lids of the solid waste, recyclable materials and  
2           yard debris carts must be differentiated by color. The colors must  
3           be colorfast and resistant to fading as a result of weathering or  
4           ultraviolet degradation. Solid waste cart lids must be green.  
5           Recyclable materials cart lids must be gray. Yard debris cart lids  
6           must be brown. Company may propose other colors for carts lids  
7           or carts, which are subject to approval by the City.

8           **c. Identification Markings.**  
9           In addition to the requirements in Section 5.4.3.F.2, an arrow (at  
10           at least 3 inches by 5 inches) hot stamped in white color must be  
11           placed on the lid, indicating the direction of cart placement.

12           The words SOLID WASTE, RECYCLABLE MATERIALS OR YARD  
13           DEBRIS or other similar words approved by City must be hot  
14           stamped in white color on the lids, front or sides of the cart, as  
15           appropriate, in characters no less than two inches.

16           The Company's name and telephone number must be hot stamped  
17           in white color on the lids, front or sides of the cart, as appropriate  
18           in characters no less than two inches.

19           **5. Cart Performance Requirements**

20           **a. General.** All Carts must be designed and manufactured to meet  
21           the minimum performance requirements described below.

22           **b. Cart Load Capacity.** Depending on the capacity, the carts must  
23           have a minimum load capacity as noted below without cart  
24           distortion, damage, or reduction in maneuverability or any other  
25           service.

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Cart Size (Gallons)	Minimum Load Capacity (pounds)
90-101	200
60-68	130
30-35	70

c. **Cart Durability.** At a minimum, carts must meet the following durability requirements to satisfy its intended use and performance, for the term:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and be designed to be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of cart bodies must remain impervious to any damage, that would interfere with the cart’s intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

1           d.    **Chemical Resistant.** Carts must resist damage from common  
2 household or residential products and chemicals. Carts, also, must  
3 resist damage from human and animal urine and feces.

4           e.    **Stability and Maneuverability.** The carts must be stable and self-  
5 balancing in the upright position, when either empty or loaded to  
6 its maximum design capacity with an evenly distributed load, and  
7 with the lid in either a closed or an open position.

8           The carts must be capable of maintaining its upright position in  
9 sustained or gusting winds of up to 25 miles per hour as applied  
10 from any direction.

11           The carts must be capable of being easily moved and maneuvered,  
12 with an evenly distributed load equal in weight to its maximum  
13 design capacity on a level, sloped or stepped surface.

14           f.    **Lid Performance.** Cart lid assemblies must meet the following  
15 minimum requirements:

16           • Prevent damage to the cart body, the lid itself or any component  
17 parts through repeated opening and closing of the lid by  
18 residents or in the dumping process as intended;

19           • Remain closed in winds up to 25 miles per hour from any  
20 direction. All lid hinges must remain fully functional and  
21 continually hold the lid in the original designed and intended  
22 positions when either opened or closed or any position between  
23 the two extremes; and,

24           • Lid must be designed and constructed such that it prevents  
25 physical injury to the user while opening and closing the cart.

1           g.     **Reparability.** Minor cracks, holes, and other damages to hinges,  
2                   wheels, axle, hardware, and other component parts must be readily  
3                   repairable by the Company personnel. Company must repair or  
4                   restore damaged carts to their full functionality to meet the design  
5                   and performance requirements as set for in this Agreement.

6           **5.4.4 Litter Abatement**

7           **A. Minimization of Spills.** Company shall use due care to prevent solid  
8                   waste, recyclable materials, yard debris, or fluids from leaking, being spilled,  
9                   and/or scattered during the collection or transportation process. If any solid  
10                  waste, recyclable material, yard debris or fluids leak or are spilled during  
11                  collection, Company shall promptly clean up all such materials. Each collection  
12                  vehicle shall carry a broom and shovel at all times for this purpose.

13           Company shall not transfer loads from one vehicle to another on any public  
14                  street, unless it is necessary to do so because of mechanical failure or accidental  
15                  damage to a vehicle, without prior written approval by City.

16           **B. Clean Up.** During the collection or transportation process, Company shall  
17                  clean up litter in the immediate vicinity of any solid waste, recyclable materials,  
18                  and yard debris storage area (including the areas where collection containers are  
19                  stored for collection). Company shall discuss instances of repeated spillage not  
20                  caused by Company directly with the generator responsible and will report such  
21                  instances to City. City will attempt to rectify such situations with the generator if  
22                  Company has already attempted to do so without success.

23           **5.4.5 Collection Standards**

24           **A. Servicing Receptacles.** Company shall pick up and return each receptacle to  
25                  the location where the owner or occupant properly placed the receptacle for  
26                  collection. Company shall place the receptacles upright with lids properly

1 secured. Company shall use due care when handling receptacles. Company  
2 shall not throw, roughly handle, damage, or break receptacles.

3 Company, at the request of customers, shall provide special services  
4 including: unlocking receptacles; accessing receptacle enclosures with a key;  
5 or pulling or pushing receptacles to the collection vehicle. Company shall  
6 charge customers for extra services in accordance with City-approved rates.

7 **B. Allocation of City Materials.** Solid waste, recyclable materials, and yard  
8 debris collected in the City, which are combined with materials collected from  
9 other jurisdictions, shall be allocated by Company to the City's collection  
10 program based on volume or tonnage using a method approved by the City.

11 **C. Instructions to Customer.** Company shall instruct customers as to any  
12 preparation of solid waste, recyclable materials, or yard debris and the proper  
13 placement of receptacles. If customers are not adhering to Company's  
14 instructions, Company shall notify such customers. In cases of extreme or  
15 repeated failure to comply with the instructions, Company may decline to  
16 pick-up the solid waste, recyclable materials, or yard debris provided that  
17 Company leaves a tag at least two inches by six inches (2" x 6") in size on the  
18 receptacle indicating the reason for refusing to collect the material. Such tag  
19 shall also identify the steps generator must take to recommence collection  
20 service. If recyclable materials contain 5% or greater (measured by volume)  
21 of solid waste or yard debris contain 1% or greater (measured by volume) of  
22 solid waste, Company shall not collect materials and shall leave a notice for  
23 the customer identifying reason for non-collection. Company shall report to  
24 the City on a monthly basis any warning notices issued to customers, and  
25 may terminate recyclable materials and yard debris collection service upon  
26 written notification of the City if, after 10 business days, high contamination  
27 levels continue, unless instructed otherwise by the City.

28 **D. Care of Private Property.** Company shall not damage private property.  
29 Company shall ensure that its employees: (i) close all gates opened in making  
30 collections, unless otherwise directed by the generator, (ii) do not cross  
31 landscaped areas, and (iii) do not climb or jump over hedges and fences.

32 City shall refer complaints about damage to private property to Company.  
33 Company shall repair all damage to private property caused by its  
34 employees. Company shall repair any damages to public property caused by  
35 its employees to its previous condition. In the event of repeat occurrences of

1 property damage, the Company shall pay liquidated damages in accordance  
2 with Section 12.3.2.

3 E. **Noise.** All collection operations shall be conducted as quietly as possible and  
4 shall conform to applicable federal, state, county and City noise level  
5 regulations. Company will promptly resolve any complaints of noise during  
6 the morning or evening hours of the day to the satisfaction of the City.

#### 7 **5.4.6 Personnel**

8 Company shall furnish all qualified drivers, mechanical, supervisory, clerical,  
9 management, and other personnel as necessary to provide the services required  
10 by this Agreement in a satisfactory, safe, economical, and efficient manner. All  
11 drivers shall be trained and qualified in the operation of vehicles they operate  
12 and must possess a valid license, of the appropriate class, issued by the State of  
13 Oregon Department of Motor Vehicles.

14 Company also agrees to establish and vigorously enforce an educational  
15 program that will train Company's employees in the identification of hazardous  
16 waste and infectious waste. Company's employees shall not knowingly place  
17 such hazardous waste in the collection vehicles or dispose of such hazardous  
18 wastes and infectious waste at the disposal site, processing facilities, or transfer  
19 facilities.

20 Company shall train its employees in customer courtesy and shall instruct  
21 collection crews to perform the work quietly. Company shall use its best efforts  
22 to assure that all employees present a neat appearance and conduct themselves  
23 in a courteous manner.

24 Company shall provide suitable operations, health, and safety training for all of  
25 its employees who use or operate equipment or who are otherwise directly  
26 involved in collection or other related operations.

#### 27 **5.4.7 Identification Required**

28 Company shall provide its employees and subcontractors with identification for  
29 all individuals who may make face-to-face contact with residents or businesses in  
30 City.

1           **5.4.8 Fees and Gratuities**

2           Company shall not, nor shall it permit any agent, employee, or subcontractors  
3           employed by it, to request, solicit, demand, or accept, either directly or  
4           indirectly, any compensation or gratuity for the collection and transportation of  
5           solid waste, recyclable materials, or yard debris. Compensation or gratuity shall  
6           exclude holiday gifts.

7           **5.4.9 Non-Discrimination**

8           Company shall not discriminate in the provision of service or the employment of  
9           persons engaged in performance of this Agreement on account of race, color,  
10          religion, sex, age, physical handicap, or medical condition in violation of any  
11          applicable federal or state law.

12          **5.4.10 Change in Collection Schedule**

13          Company shall notify the City at least 30 calendar days prior to, and residential  
14          customers not later than 2 weeks prior to, any change in the residential collection  
15          schedule which results in a change in the day on which solid waste, recyclable  
16          materials, and yard debris collection occurs. Company will not permit any  
17          customer to go longer than the customer's scheduled service frequency in  
18          connection with a collection schedule change. City's approval of any change in  
19          residential collection is required prior to such change, and such approval will not  
20          be withheld unreasonably.

21          **5.4.11 Report of Accumulation of Solid Waste; Unauthorized Dumping**

22          Company shall direct its drivers to note (1) the addresses of any premises at  
23          which they observe that solid waste, recyclable materials, or yard debris is  
24          accumulating and is not being delivered for collection; and (2) the address, or  
25          other location description, at which solid waste, recyclable materials, or yard  
26          debris has been dumped in an apparently unauthorized manner. Company shall  
27          deliver the address or description to City within two business days of such  
28          observation.

29   **5.5 Contingency Plan**

30          Company shall submit to City on or before the commencement date of the  
31          Agreement, a written contingency plan demonstrating Company's arrangements



1 to provide vehicles and personnel and to maintain uninterrupted service during  
2 breakdowns, and in case of natural disaster or other emergency (not including a  
3 labor dispute), including the events described in Section 12.4.

## 4 **5.6 Recyclable Materials and Yard Debris Processing**

### 5 **5.6.1 Processing**

6 Company agrees to transport and deliver all recyclable materials and yard debris  
7 it collects in the City to the approved processing sites. Company shall arrange  
8 for separate processing of commingled recyclable materials and glass. Company  
9 shall arrange for disposal of residue from the recyclable materials and yard  
10 debris at a disposal site selected by Company.

11 Company shall pay all costs associated with transporting recyclable materials  
12 and yard debris to the processing site(s) as well as any processing costs. The  
13 processing sites selected by Company shall be approved by the City at least 90  
14 days prior to use of such sites.

15 Company shall keep all existing permits and approvals necessary for use of the  
16 processing site(s) in full regulatory compliance. Company shall, upon request,  
17 provide copies of notices of violation or permits to the City.

18 If Company elects to use a processing site that is different from the approved  
19 processing site, it shall secure prior written approval from the City. The City  
20 shall not compensate the Company for any increased transportation and  
21 processing costs associated with the use of processing site(s) different from the  
22 approved processing site(s).

### 23 **5.6.2 Transfer**

24 If the Company (i) transports recyclable materials or yard debris to a transfer  
25 station where the materials will be unloaded from collection vehicles and loaded  
26 into large-capacity vehicles and transported to the processing site(s) or (ii) pulls  
27 two or more Collection trailers in tandem with one truck, and the Company is  
28 unable to do so then the Company shall be responsible for making other  
29 transportation arrangements. In such event, Company shall not be compensated  
30 for any additional costs. If the Company plans to change its transfer method,  
31 Company shall obtain written approval from the City prior to making the

1 change. The City shall approve the transfer method and the facility(ies)  
2 Company proposes to use.

3 All costs associated with transporting recyclable materials and yard debris to the  
4 transfer station as well as any transfer costs shall be paid by Company.  
5 Company agrees to use approved transfer station and such site approval shall be  
6 obtained from the City at least 90 days prior to use of such site, unless an  
7 emergency exists and an immediate location is necessary to dispose of the  
8 materials collected.

#### 9 **5.6.4 Marketing**

10 The Company shall be responsible for marketing or arranging for marketing of  
11 recyclable materials and yard debris it collects in the City. With respect to yard  
12 debris, Company shall make, or arrange for making of, end products (e.g.  
13 compost) or develop end uses for materials that maximize the recovery rate as  
14 calculated in accordance with Chapter 459A of ORS. Company shall not use  
15 yard debris for the purposes of alternative daily cover (ADC) or for  
16 transformation fuel, unless prior written approval is obtained from the City.

17 Upon request, Company shall provide proof to the City that all recyclable  
18 materials and yard debris collected are marketed for recycling or reuse in such a  
19 manner that maximize the City's recovery rate as calculated in accordance with  
20 Chapter 459A of ORS. All residual material from the processing activities that is  
21 not marketed for use shall be accounted for as disposal tonnage at a permitted  
22 disposal site. No recyclable materials or yard debris shall be transported to a  
23 domestic or foreign location if solid waste disposal of such material is its  
24 intended use for landfill disposal.

#### 25 **5.6.5 Disposal of Recyclable Materials and Yard Debris Prohibited**

26 Recyclable materials and yard debris may not be disposed of in lieu of recycling  
27 the material, without the expressed written approval of the City. If Company  
28 believes that it cannot divert the recyclable material or yard debris from disposal,  
29 then it shall prepare a written request for approval to dispose of such material.  
30 Such request shall contain the basis for its belief, describe the Company's efforts  
31 to arrange for the diversion from disposal of such material, the period required  
32 for such disposal, the incremental costs or cost savings resulting from such

1 disposal, and any additional information supporting the Company's request.  
2 The City shall consider the Company's request and inform Company in writing  
3 of its decision within 30 calendar days. If the City approves such request, any  
4 difference in the cost of such disposal compared to diversion shall be adjustment  
5 in accordance with Section 7.5.

6  
7 **5.6.6 Record Keeping**

8 Company shall maintain accurate records of the quantities of recyclable materials  
9 and yard debris transported to the transfer station and/or approved processing  
10 sites and will cooperate with City in any audits or investigations of such  
11 quantities.

12 **5.7 Disposal of Solid Waste**

13 **5.7.1 Disposal**

14 Company shall select a disposal site and secure sufficient capacity to dispose of  
15 all solid waste collected under this Agreement. The disposal site selected by  
16 Company shall be approved by the City at least 90 days prior to use of such site,  
17 unless an emergency exists and an immediate location is necessary to dispose of  
18 the materials collected.

19 Company shall keep all existing permits and approvals necessary for use of the  
20 disposal site in full regulatory compliance. Company shall, upon request,  
21 provide copies of notices of violation or permits to the City.

22 Company shall transport to and dispose of all solid waste collected in the City at  
23 the approved disposal location. Company shall pay all costs associated with the  
24 transporting and disposing of solid waste. Disposal costs shall include all  
25 regulatory fees and other surcharges.

26 If the disposal site becomes unable to accept and dispose of City's solid waste for  
27 reasons outside the Company's control, the Company shall, with the prior  
28 approval of City, to the extent it is legally able to do so, transport and dispose of  
29 City's solid waste at another disposal site that results in the lowest possible  
30 transportation and disposal cost.

1 Company may dispose of residue from recyclable materials or yard debris at any  
2 disposal site selected by the Company.

### 3 **5.7.2 Transfer**

4 Company may use an approved transfer station to handle solid waste collected  
5 in the City in accordance with Section 5.6.2

### 6 **5.7.3 City Right to Select Disposal Site**

7 The Company shall select the approved disposal site subject to the City's  
8 approval. The City reserves the right to direct Company to a disposal site other  
9 than that selected by Company if the approved disposal location specified on the  
10 effective date is not owned or operated by the Company or by a company  
11 affiliated with the Company. In such case, Company shall be released from its  
12 indemnification obligation in Section 10.1 and 10.2 as it relates to actions or  
13 negligence of the owner and operator of the City-selected disposal site, and the  
14 City shall adjust Company's compensation in accordance with procedures for a  
15 City-directed change in scope in accordance with Section 3.3. City shall provide  
16 written notice to Company not less than 90 days before effective date of the  
17 change.

### 18 **5.7.4 Company Right to Propose Alternative Sites**

19 The Company has the right to propose an alternative disposal site, recyclable  
20 material processing site, yard debris processing site or transfer station. In such  
21 case the Company shall make a formal written request to the City and shall  
22 provide the City with all operational and cost data to support any adjustment to  
23 the rates. The City reserves the right, at its sole discretion, to accept or reject the  
24 Company's proposed site. If the City rejects the Company's proposed site there  
25 shall be no change to the approved disposal site, approved recyclable material  
26 processing site, approved yard debris processing site or approved transfer  
27 station. If the City accepts the Company's proposal, the Company's proposed  
28 disposal site, recyclable material processing site, yard debris processing site or  
29 transfer station shall become the new approved sites or transfer station. In such  
30 case, any and all requirements, indemnifications etc. associated with the then  
31 current approved disposal site, approved recyclable material processing site,  
32 approved yard debris processing site or approved transfer station shall apply to

1 and/or be required of the new approved sites or transfer station.

2 **5.7.5 Record Keeping**

3 Company shall maintain accurate records of the quantities of solid waste  
4 transported to the transfer station and/or disposal site and will cooperate with  
5 City in any audits or investigations of such quantities.

6 **5.8 Service Exceptions; Hazardous Waste Notifications**

7 **5.8.1 Hazardous Waste Inspection and Reporting**

8 Company reserves the right and has the duty under law to inspect solid waste,  
9 recyclable materials, and yard debris placed in receptacles for collection and to  
10 reject solid waste, recyclable materials, and yard debris observed to be  
11 contaminated with hazardous waste and the right not to collect hazardous waste  
12 deposited with solid waste, recyclable materials, or yard debris. Company shall  
13 notify all agencies with jurisdiction, if appropriate, including the State of Oregon  
14 DEQ and local emergency response providers and the national response center  
15 of reportable quantities of hazardous waste found or observed in solid waste,  
16 recyclable materials, and yard debris anywhere within City. In addition to other  
17 required notifications, if Company observes any substances which it or its  
18 employees reasonably believe or suspect to contain hazardous wastes unlawfully  
19 disposed of or released on any City property, including storm drains, streets or  
20 other public rights of way, Company will immediately notify the City  
21 Administrator or the City Administrator's designee.

22 **5.8.2 Generator Notification**

23 When solid waste, recyclable materials, or yard debris is not collected from any  
24 residential generator, Company shall notify the generator in writing, at the time  
25 collection is not made, through the use of a "tag" (at least two inches by six  
26 inches in size) or otherwise, of the reasons why the collection was not made.  
27 When solid waste, recyclable materials or yard debris is not collected from any  
28 commercial generator, Company shall notify customer by phone of the reasons  
29 why the collection was not made.

1           **5.8.3 Hazardous Waste Diversion Records**

2           Company shall maintain records showing the types and quantities, if any, of  
3           hazardous waste found in solid waste, recyclable materials and yard debris and  
4           which was inadvertently collected from service recipients within City, but  
5           diverted from disposal.

6           **5.9 Collection from City Facilities at no charge to City.**

7           Company shall collect solid waste, recyclable materials and yard debris from  
8           City locations at the service levels and collection frequency identified in Exhibit  
9           1. Such collection shall occur at least once per week or more frequently as  
10          requested by the City. Company shall provide and maintain collection  
11          receptacles for the City's use.

12          Company may integrate collection of solid waste, recyclable materials and yard  
13          debris from City facilities with other collection services, provided that Company  
14          attributes estimated tonnage collected from City facilities separately from other  
15          customers.

16          Company shall provide the above services required by this Section at no charge  
17          to the City.

18          Company shall collect and dispose of biosolids generated by the Waste Water  
19          Treatment Plant at no charge to the City for up to the first 150 tons collected in a  
20          calendar year. Any biosolids collected above the initial 150 tons within the  
21          calendar year may be billed to the City by the Company at its usual and  
22          customary rate.

23          Collection of solid waste, recyclable materials or yard debris involving additional  
24          public work projects around the City such as building demolition materials,  
25          street or other construction materials generated at sites located away from the  
26          City Shops may be billed to the City by the Company at its usual and customary  
27          rate.

28          **5.10 Annual Cleanup Day**

29          Company shall sponsor an Annual Cleanup Day event for residents during a  
30          week in April or May of each year. The Company will not charge a fee for  
31          picking up extra or additional items that local customers place in containers or

1 leave at the curb during the scheduled days of the Cleanup. Company will  
2 provide a written notice to customers at least thirty (30) day of the event.

3 No paint or hazardous waste will be picked up curbside during the event.

4 City and Company may jointly review this annual cleanup process and make  
5 recommended changes when needed to address issues associated with the  
6 amount, type and containment of waste disposed of on the annual cleanup day.

7 **5.11 Motor Oil Collection**

8 On a weekly basis, Company shall collect from single-family dwelling units and  
9 multi-family dwelling units used motor oil placed curbside for collection in  
10 customer-provided containers. Company shall not be required to collect more  
11 than two gallons of used motor oil per individual dwelling unit per week.  
12 Company shall recycle, or arrange for recycling, all used motor oil collected.

13 **5.12 Infectious Waste Collection**

14 Company shall collect, transport, process, and dispose of infectious waste from  
15 residential and commercial premises. The collection frequency and method of  
16 collection shall be mutually agreed upon by the Company and the generator.





1 service (i.e., frequency of collection, size of receptacle, and location of receptacle)  
2 being provided to such customer by Company. Company shall distribute new  
3 route books to its drivers as needed to reflect changes in customer service levels  
4 that are consistent with billings. Route supervisors shall periodically check the  
5 routes to ensure that drivers are providing service in accordance with their route  
6 books, which are to be consistent with billings.

7 For inspection by the City upon request, Company shall maintain copies of said  
8 billings for a period of five years after the date of service and copies of receipts  
9 for a period of two years after the date of service, each in chronological order.  
10 Company may, at its option, maintain those records in computer form, on  
11 microfiche, or in any other manner, provided that the records can be preserved  
12 and retrieved for inspection and verification in a timely manner.

## 13 **6.2 Customer Service**

### 14 **6.2.1 Company Office**

15 The Company's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m.,  
16 Monday through Friday, exclusive of holidays. A responsible and qualified  
17 representative of Company shall be available during office hours for  
18 communication with the public. Company shall maintain a local or toll-free  
19 telephone number for use by customers. Company's telephone system shall be  
20 adequate to handle the volume of calls typically experienced on the busiest days.  
21 Company shall have a representative, answering the telephone or voice-mail  
22 service available at said after-hours telephone number.

### 23 **6.2.2 Complaint Documentation and Response**

24 The City and Company shall instruct persons with service complaints to direct  
25 complaints to Company. Company shall log all complaints received by  
26 telephone and said log shall include the date and time the complaint was  
27 received, name, address and telephone number of caller, description of  
28 complaint, employee recording complaint and the action taken by Company to  
29 respond to and remedy complaint.

30 All written customer complaints and inquiries shall be date-stamped when  
31 received and shall be initially responded to within one business day of receipt.

1 Company shall log action taken by Company to respond to and remedy the  
2 complaint.

3 Daily logs of complaints concerning collection of solid waste, recyclable  
4 materials, and yard debris shall be retained for a minimum of 24 months and  
5 shall be available for review by City during business hours and at no cost. City  
6 shall, at any time during regular Company business hours, have access to  
7 Company's customer service department for purposes that may include  
8 monitoring the quality of customer service or researching customer complaints.

### 9 **6.2.3 Resolution of Customer Complaints**

10 A customer dissatisfied with Company's decision regarding a complaint may ask  
11 City to review the complaint. Company shall provide the customer with the  
12 telephone number of the City Liaison, as designated in accordance with Section  
13 6.2.4. The City Liaison shall contact Company's Government Liaison (as  
14 designated in accordance with Section 6.2.4) to request additional information  
15 and ask Company to respond to the complaint. Company shall attempt to cure  
16 the complaint and notify City Liaison by telephone or in writing of resolution.

17 If the customer is still dissatisfied, the matter may be referred to the City  
18 Administrator. The decision of City Administrator or his/her designee shall be  
19 final on any matter. Nothing in this Section is intended to affect the remedies of  
20 third parties against Company.

### 21 **6.2.4 Liaisons**

22 Upon execution of this Agreement, Company shall designate in writing a  
23 "Government Liaison" who shall be responsible for working with City  
24 Administrator and/or City's designated representative(s) to resolve customer  
25 complaints. City shall designate in writing a "City Liaison" who shall be  
26 responsible for working with Company and/or Company's designated  
27 representative to resolve customer complaints. The parties shall inform each  
28 other of changes in these representations within two business days of the change.

1    **6.3    Public Education**

2    **6.3.1    Education Requirements**

3    Company public education program shall focus on providing information to  
4    customers to comply with requirements of ORS 459A.010(2)(c), which generally  
5    requires a public education program to inform solid waste generators of the  
6    manner and benefits of reducing, reusing, recycling and composting material  
7    and to promote use of recycling services. At a minimum, the Company shall  
8    provide the following public education:

9    **A.    Service Initiation.** Education materials shall be distributed to all residents  
10    and businesses prior to the commencement of services describing the  
11    collection services offered by the Company and rates for such services, and  
12    soliciting customer’s preferences regarding receptacle size and collection  
13    frequency for solid waste, recyclable materials, and yard debris. These  
14    educational materials shall also educate customers about source reduction,  
15    reuse, and recycling opportunities.

16    **B.    New customer education.** Education materials shall be provided to all new  
17    collection service customers that include recyclable materials collection  
18    notification and education packets that include, at a minimum, the materials  
19    collected, the schedule for collection, the way to prepare materials for  
20    collection and the reasons persons should separate recyclable materials and  
21    yard debris for separate collection. The educational and promotional  
22    materials provided to commercial collection customers should be targeted to  
23    meet the needs of various types of businesses and should include reasons to  
24    recycle, including economic benefits, common barriers to recycling and  
25    solutions, additional resources for commercial generators of solid waste and  
26    other information designed to assist and encourage recycling efforts. The  
27    educational and promotional materials provided to commercial collection  
28    customers shall encourage each commercial collection customer to have a  
29    goal to achieve 50 percent recovery from its solid waste stream.

30    **C.    Annual promotion.** Education materials at least annually to all collection  
31    service customers, of the information under subsection B above.

1 D. **Other promotion.** Education materials or events targeting of community and  
2 media events to promote recycling.

3 **6.3.2 Format of Promotional Materials**

4 Company's educational media may include newsletters, flyers, door hangers,  
5 notification tags, and direct contact. Materials shall be printed on paper  
6 containing the highest levels of recycled content material as is reasonably  
7 practical with a minimum requirement of 30% post-consumer content based on  
8 Federal standards.

9 **6.3.3 Cooperation with County Efforts**

10 From time to time, Clackamas County prepares public education information  
11 that includes data on the City's programs and provides education and technical  
12 assistance to residents and businesses in the City. The Company shall cooperate  
13 with Clackamas County by: (i) providing, upon the County's request,  
14 information regarding the collection, processing, and disposal services provided  
15 in the City, and (ii) responding to County inquiries or requests related to specific  
16 customers.

17 **6.4 Waste Generation and Characterization Studies**

18 Company acknowledges that City must perform solid waste generation and  
19 disposal characterization studies periodically to comply with ORS 459A.035.  
20 Company agrees to participate and cooperate with City and its agents and to  
21 accomplish studies and data collection and prepare reports, as needed, to  
22 determine weights and volumes of Solid waste and characterize solid waste  
23 generated, disposed, diverted or otherwise handled or processed.

**ARTICLE 7**  
**COMPANY'S COMPENSATION AND RATES**

**7.1 Company's Compensation**

The Company's compensation for performance of all its obligations under this Agreement shall be the actual gross rate revenues remitted to Company by customers less fees due to the City and County in accordance with Article 4. Company's compensation provided for in this Article shall be the full, entire, and complete compensation due to Company pursuant to this Agreement for all labor, equipment, materials and supplies, processing and disposal fees, taxes, insurance, bonds, overhead, operations, profit and all other things necessary to perform all the services in the manner required by this Agreement.

If Company's costs are more than the actual gross rate revenues retained by Company, Company shall not be compensated for the difference in costs and revenues. If Company's costs are less than the actual gross rate revenues retained by the Company, Company shall retain the difference. In addition, calculations of rates shall not be adjusted for variances of actual costs or revenues during prior periods of time.

**7.2 Rates**

Under this Agreement, Company shall have the right and obligation to charge and collect from customers, rates that are approved by the City. The rates, which are contained in Exhibit 2, are set by City Council Resolution and are effective July 1, 2010. The Company shall bill customers and collect payments in accordance with the rates set forth in Exhibit 2 and pursuant to Section 6.1.

The rates shall be fixed, as per Exhibit 2, for rate period one, commencing July 1, 2010 and ending June 30, 2011, and shall not be adjusted to reflect either increases or decreases in costs from those anticipated by Company. The rates shall be adjusted annually, with City Council approval, commencing July 1, 2011 through the remaining term of this Agreement including any extension periods, as described in Section 7.3.

The City reserves the right to adjust rate relationships in the future provided that the Company is made whole in terms of gross revenues.

1    **7.3    Annual Adjustment of Rates**

2           **7.3.1    Annual Adjustment**

3           Subject to the terms herein, the Company shall be entitled to an annual  
4           adjustment of all rates. Each rate includes an operating component and tipping  
5           fee component, which are annually adjusted. The City Council shall make a  
6           good faith effort to approve adjusted rates by May 15 of each year, and such  
7           rates shall be effective on each July 1. If rate adjustments are not approved by  
8           May 15, then prior rates remain in effect until such adjustment is made.

9           The first adjustment is scheduled to take effect July 1, 2011 subject to City  
10          Council approval. Each rate is annually adjusted as specified in Section 7.3.2  
11          through 7.3.4.

12          **7.3.2    Adjustment of the Operating Component**

13          The operating component of the rates specified in Exhibit 2 shall be adjusted  
14          annually, using the method below, to reflect 80% of the change in the All Urban  
15          Consumers Index Half1 (CPI-U) compiled and published by the U.S. Department  
16          of Labor, Bureau of Labor Statistics or its successor agency, using the following  
17          parameters, or by 5%, whichever is less.

18                    CPI-U Parameters:

- 19                    • Area - Portland - Salem, OR - WA
- 20                    • Item - All Items
- 21                    • Base Period - Current 1982-84=100
- 22                    • Not seasonally adjusted
- 23                    • Periodicity - Semi-annual

24          Step 1: Calculate the Change in Half1 CPI-U as follows:

$$25 \qquad \text{Change in Half1 CPI-U} = ((\text{Most current Half1 CPI-U} - \text{previous 12-}$$

$$26 \qquad \text{month Half 1 CPI-U}) / \text{previous 12-month Half1 CPI-U}) \times 0.80) \text{ or}$$

$$27 \qquad 0.05, \text{ whichever is less}$$

28          Step 2: Calculate the Adjusted Operating Component as follows:

$$29 \qquad \text{Adjusted Operating Component} = \text{Then-current Operating}$$

$$30 \qquad \text{Component} \times (1 + \text{the Change in Half1 CPI-U as calculated in Step 1}$$

$$31 \qquad \text{above})$$

1 The Operating Component shall be rounded to the nearest cent.  
2

3 For example, assuming:  
4

- 5 1. Most-recently published Half1 CPI-U (Half1 2003) = 186.0
  - 6 2. Half1 CPI-U published 12 months prior (Half1 2002) = 183.5
  - 7 3. Then-current Operating Component = \$5.00
- 8

9 Change in Half1 CPI-U =  $((186.0 - 183.5)/183.5) \times 0.80 = 0.0109$ ,  
10 which is less than 0.05; therefore, the Change in Half1 CPI-U is  
11 0.0109  
12

13 Adjusted Operating Component =  $\$5.00 \times (1 + 0.0109) = \$5.05$

14 If the CPI-U is discontinued or revised during the term by the United States  
15 Department of Labor, such other government index or computation with which  
16 it is replaced shall be used in order to obtain substantially the same result as  
17 would be obtained if the CPI-U had not been discontinued or revised.

### 18 **7.3.3 Adjustment of the Tipping Fee Component**

19 The solid waste disposal and yard debris processing tipping fee component of  
20 each rate will be adjusted to reflect any percentage change in the per-ton tipping  
21 fees charged at the approved transfer station and the approved yard debris  
22 processing site, as appropriate. There shall be no adjustment to the recyclable  
23 materials processing tipping fee component of each rate over the term of the  
24 Agreement. The tipping fee component adjustment shall equal:  
25

$$\begin{array}{l} \text{Adjusted Tipping} \\ \text{Fee Component} \end{array} = \begin{array}{l} \text{Then-current Tipping Fee Component} \times (\text{Current} \\ \text{Approved Tipping Fee} / \text{Prior Approved Tipping} \\ \text{Fee}) \end{array}$$

26 For example, assuming:  
27

- 28 1. Then-current Tipping Fee Component = \$1.50, which includes a solid  
29 waste disposal component = \$1.00 and Yard debris processing  
30 component = \$0.50
- 31 2. Current approved tipping fee for the approved disposal location =  
32 \$30.00 per ton
- 33 3. Prior approved tipping fee for the approved disposal location = \$28.80  
per ton

4. Current approved tipping fee for the approved yard debris processing location = \$5.00 per ton
5. Prior approved tipping fee for the approved yard debris processing location = \$4.75 per ton
6. Adjusted tipping fee component =  $\$1.00 \times (\$30.00 / \$28.80) + \$0.50 \times (\$5.00 / \$4.75) = \$1.04 + \$0.53 = \$1.57$

The adjusted tipping fee component shall be rounded to the nearest cent.

The prior approved tipping fee is the fee last used to set rates. As of the effective date of this agreement, the approved transfer station tipping fee is \$70.50 per ton; and the approved processing site location tipping fee for yard debris is \$9.50 per compacted yard. These fees shall be used as the prior approved tipping fee for the first adjustment of the tipping fee components.

### 7.3.4 Calculation of Adjusted Rates

Adjusted Rates shall be calculated as follows:

$$\text{Adjusted Rate} = \text{Adjusted Operating Component} + \text{Adjusted Tipping Fee Component}$$

For example, assuming:

1. The rate being adjusted is a residential solid waste collection rate
2. Adjusted operating component = \$5.05 (as calculated in Section 7.3.2)
3. Adjusted tipping fee component = \$1.57 (as calculated in Section 7.3.3)

$$\text{Adjusted collection rate} = \$5.05 + \$1.57 = \$6.62$$

## 7.4 Annual Rate Application Process

On or before April 1 of each rate Period, Company shall submit an application requesting the rate adjustment for the following rate period. The application shall present each rate for the then-current rate period and calculation of each adjusted rate for the following rate period. The application shall include all supporting documentation for calculation of the adjusted rates including CPI-U and tipping fee data.

The Company's rate application shall be reviewed by the City. The City Council shall adjust rates to reflect the adjustments made in accordance with Section 7.3.



1 The City Council shall act in good faith to approve such rate adjustments by May  
2 15 of each year so that approved rates take effect at the commencement of the  
3 rate Period. Notwithstanding the provisions of Section 7.3, the adjusted rates  
4 will not take effect until the City Council has approved such rates.

5 If the Company submits its rate application on or before April 1, and the City  
6 does not adjust rates to be effective on or before July 1 of a rate period, the City  
7 shall include a surcharge on the rates that shall be effective for the remainder of  
8 the rate period to recover revenues lost by the Company, if any. If the effective  
9 date of the rates is September 1 or later, the City shall adjust the rates to recoup  
10 lost revenues, if any, as well as interest due the Company on lost revenues,  
11 where interest shall be calculated using the most-recently published average  
12 daily interest rate for the Oregon Local Government Investment Pool (LGIP)  
13 published by the Oregon State Treasurer's office. To determine the amount of  
14 lost revenues, if any, the City and Company shall meet and confer to determine  
15 the effect the delay in adopting rates has on the Company's revenue. The  
16 assessment of the revenue impact shall consider the Company's billing cycle  
17 (e.g., impact to Customers billed in advance and to Customers billed in arrears),  
18 the ability of Company to delay issuance of bills, the payment cycle of  
19 Customers, and other variables.

20 If the Company does not submit the application by April 1, rates may not be  
21 adjusted by May 15. In such case, all rates shall be adjusted to be effective the  
22 first of the month of the next billing cycle following approval by the City  
23 Council. If the Company does not submit the application by April 1, no  
24 retroactive adjustment will be made to allow the Company to recover revenues  
25 that it would have collected, had the rate adjustment been implemented in  
26 accordance with the prescribed schedule.

27 **7.5 Special Rate Review**

28 **7.5.1 Eligible Items**

29 The Company is entitled to apply to the City for consideration of a special rate  
30 review, or the City may initiate such a review, should one or more events listed  
31 in this section occur. If the occurrence of such event or combination of events,  
32 has a material effect on the Company's cost of service of \$25,000 or more  
33 annually, the City shall be obligated to perform a special Rate review; however,

1 if the occurrence of such event(s) has less than a \$25,000 effect on the Company's  
2 annual cost of service, the City shall not be obligated to conduct the review.  
3

- 4 1. Documented significant changes in the cost to provide services required in  
5 this Agreement as a result of an agreed-upon, City-directed change in  
6 scope, as provided for under Section 3.3.
- 7 2. Flood, earthquake, other acts of nature, war, civil insurrection, riots, or  
8 other similar catastrophic events beyond the control of Company.
- 9 3. Change in law after the effective date that: (1) was not reasonably known  
10 to the Company before the effective date, and (2) the Company  
11 substantiates such claim.
- 12 4. The number and type of customers differs significantly from the number  
13 and type of customers being serviced by the Company on the date this  
14 Agreement is executed, and Company submits an application for a special  
15 rate review for this reason no later than September 1, 2010.
- 16 5. The calculated change in Half1 CPI-U in accordance with Step 1 of Section  
17 7.3.2 is equal to or greater than 0.05.
- 18 6. Fuel price increases that result in a direct increase of more than 3% in the  
19 Company's cost of providing services required by this Agreement.

#### 20 **7.5.2 Ineligible Items**

21 The Company will not be compensated over the term for:  
22

- 23 1. Increases in the cost of solid waste, recyclable materials, or yard debris  
24 collection, transportation, processing, or disposal costs in excess of the  
25 increases provided through the annual adjustment mechanism described in  
26 Section 7.3 unless cost increases are related to eligible items listed in Section  
27 7.5.1.
- 28 2. Increases in the cost of solid waste, recyclable materials, or yard debris  
29 collection, transportation, processing, or disposal costs that may be impacted  
30 by change in approved disposal location, approved transfer station, or  
31 approved processing site operating conditions, unless such change is initiated  
32 by or at the direction of the City.
- 33 3. Decreases in revenues from the sale of recyclable materials or yard debris.

- 1 4. Growth or decline in the number of customers or their subscription levels;  
2 however, the Company shall be entitled to bill all customers at the rates set  
3 forth herein and retain all rate revenues net fees due to City collected from  
4 its customers for collection services provided under this Agreement.
- 5 5. Changes in the number of accounts related to receptacle sizes or frequency of  
6 collection; however, the Company shall be entitled to bill all customers at the  
7 rates set forth herein and retain all rate revenues net fees due to City  
8 collected from Company's customers for collection services provided under  
9 this Agreement.
- 10 6. Change in the tonnage or composition of solid waste, recyclable materials, or  
11 yard debris.

12 **7.5.3 Review of Costs**

13 If the Company or the City requests a special rate review, the City shall have the  
14 right to review any or all financial and operating records of Company and  
15 related-party entities. The cost of the special rate review incurred by the City  
16 and its agents shall be recovered through the rates if the City approves that  
17 requested rate adjustment. The Company shall pay the City for costs associated  
18 with the review incurred by the City and its agents if the City does not approve  
19 the requested rate adjustment or if said review is initiated by the City.

20 **7.5.4 Submittal of Request**

21 If the Company is requesting a special rate review, the Company must submit its  
22 request for a special review of rates, and cost and operational data, in a form and  
23 manner specified by the City, at least 90-days before the proposed effective date  
24 of any rate adjustment.

25 If City is requesting a special rate review, the City shall notify the Company at  
26 least five months before the proposed effective date of any rate adjustment.  
27 Upon such notification, Company shall, within 30 calendar days, submit  
28 reasonable cost and operational data as requested by the City, in a form and  
29 manner specified by the City.

30 A request for special rate review shall include a proposal on whether the rate  
31 adjustment resulting from the special rate review will be an adjustment in  
32 addition to or in lieu of the annual rate adjustment to be performed in  
33 accordance with Section 7.3.

1           **7.5.5 Burden of Justification**

2           Company shall bear the burden of justifying to the City by substantial evidence  
3           any entitlement to current, as well as increased rates under this Section 7.5. If the  
4           City determines that the Company has not met its burden, the Company may  
5           request one hearing to produce additional evidence. Upon such request, the City  
6           shall permit said additional hearing. In the event the City denies Company's  
7           request, Company shall have the right to present its claim in a court of  
8           competent jurisdiction.

9           **7.5.6 Grant of Request**

10          Based on evidence the Company submits, the City Council may grant some, all  
11          or none of the requested increase and approve adjusted rates.

12         **7.6 Rates for Changes in Scope**

13          In the event either the City or Company requests a change in scope in accordance  
14          with Section 3.3, the Company shall furnish the City with projected operational  
15          and cost data for the change in scope to support any adjustment to rates. For the  
16          purposes of analyzing cost impacts of changes in scope, the Company's profit  
17          shall be calculated using an operating ratio of 88% of actual reasonable and  
18          necessary costs net of disposal expenses and franchise fees. The City reserves the  
19          right to require that the Company supply any additional cost data or other  
20          information it may reasonably need to ascertain the appropriate rate adjustment,  
21          if any, for the change in scope. The City shall review this operational and cost  
22          data, and the City Council shall establish rates for the change in scope, if  
23          warranted.

24          The granting of any change in scope shall be contingent upon City approval and  
25          establishment of new rates. The City shall adjust rates, in good faith, coincident  
26          with any adjustment made pursuant to this Section so that the change in scope  
27          and the corresponding rates become effective on the same date.

28         **7.7 Notice of Rate Adjustments**

29          The Company shall provide all customers with advance written notice of  
30          approved rate changes, in the form of a bill insert at least 30 calendar days before  
31          the effective date of such changes.

1    **7.8    Market Test of Rates**

2           The City shall have the right to conduct a market test of the rates that Company  
3           charges customers in comparison with rates charged customers in cities and  
4           counties in the surrounding area of similar size and with similar collection  
5           programs provided that such comparison includes adjustments to rates to reflect  
6           differences related to local fees (including franchise fees) and the City pays for  
7           the market test analysis. If the Company's rates are not ranked comparable to  
8           these communities, the City shall have the right to conduct a detailed,  
9           comprehensive operational and financial review of the Company's operations to  
10          determine the reasonableness of Company's compensation requirement and  
11          make reasonable reductions to the Company's compensation based on such  
12          review, if the City determines the Company's compensation is not reasonable.  
13          The Company shall cooperate with the City's operational and financial review.  
14          The adjustment to compensation shall be conducted in a manner equivalent to  
15          the special rate review procedures described in Section 7.5.

16          In the event the City conducts a market test of the rates that the Company  
17          charges in comparison with rates charged other cities and counties as set forth in  
18          the paragraph above, and the Company's rates are not ranked comparable, the  
19          Company shall reimburse the City for its costs in conducting the market test.

20



1 constraints, and Company performance. City and Company may each select  
2 additional topics for discussion at any hearing.

3 Not later than 60 calendar days after the conclusion of each collection services  
4 and performance review hearing, City may issue a report. As a result of the  
5 review, City may require Company to provide expanded or new services within  
6 a reasonable time and for reasonable rates and compensation, as determined in  
7 the City Council's good faith legislative discretion, and City may direct or take  
8 corrective actions for any performance inadequacies.

1 **ARTICLE 9**  
2 **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**  
3

4 **9.1 General**

5 Company shall maintain such accounting, statistical, and other records related to  
6 its performance under this Agreement as shall be necessary to develop the  
7 financial statements and other reports required by this Agreement. Also,  
8 Company agrees to conduct data collection, information and record keeping, and  
9 reporting activities needed to comply with applicable laws and regulation and to  
10 meet the reporting and solid waste, recyclable materials, and yard debris  
11 program management needs of City. To this extent, such requirements set out in  
12 this and other articles of this Agreement shall not be considered limiting or  
13 necessarily complete. In particular, this article is intended to only highlight the  
14 general nature of records and reports and is not meant to define exactly what the  
15 records and reports are to be and their content. Further, with the written  
16 direction or approval of City, the records and reports to be maintained and  
17 provided by Company in accordance with this and other articles of the  
18 Agreement shall be adjusted in number, format, or frequency. The foregoing is  
19 not intended to require significant additional administrative labor or the  
20 modification of Company's computer software.

21 **9.2 Records**

22 **9.2.1 General**

23 Company shall maintain records required to conduct its operations, to support  
24 requests it may make to City, and to respond to requests from City in the  
25 conduct of City business. All records shall be maintained for five years after the  
26 expiration of this Agreement, with the exception of accounts payable records,  
27 which will be maintained for three years after payment.

28 Company agrees that the records addressed in the Agreement shall be provided  
29 or made available to City and its official representatives during normal business  
30 hours.



1           **9.2.2 Financial Records**

2           Financial records shall be maintained in a manner such that cost and revenue  
3           information can be allocated among the service types (residential, commercial  
4           and drop box) and to the City.

5           **9.2.3 Solid Waste, Recyclable Materials, and Yard Debris Records**

6           Records shall be maintained by Company for City relating to:

- 7           a)     Customer services and billings;
- 8           b)     Weight and volume of solid waste, recyclable materials and yard debris  
9           collected. Information is to be separated between single-family dwelling  
10          unit, commercial premises, and drop box collection service. If solid waste,  
11          recyclable materials, and yard trimmings collected in the City are  
12          combined with materials collected from other jurisdictions, Contractor  
13          shall allocate weight and volume of such material to the City's collection  
14          program based on volume or tonnage using a method approved by the  
15          City.
- 16          c)     Routes;
- 17          d)     Facilities, equipment, and personnel used;
- 18          e)     Facilities and equipment operations, maintenance and repair;
- 19          f)     Disposal of solid waste;
- 20          g)     Processing of recyclable materials;
- 21          h)     Processing of yard debris;
- 22          i)     Complaints; and,
- 23          j)     Missed pick-ups.

24          **9.2.4 CERCLA Defense Records**

25          City views the ability to defend against CERCLA (Comprehensive  
26          Environmental Response, Compensation, and Liability Act of 1980, 42 USC  
27          §9601, et seq.) and related litigation as a matter of great importance. For this

1 reason, City regards the ability to prove where solid waste collected in City was  
2 taken for disposal, as well as where it was not taken, to be matters of concern.  
3 Company shall maintain data retention and preservation systems which can  
4 establish where solid waste collected in City was land-filled (and therefore  
5 establish where it was not land-filled) and provide a copy or summary of the  
6 reports required in Sections 5.7, 9.2.3, and 9.2.5 for five years after the term  
7 during which Collection services are to be provided pursuant to this Agreement,  
8 or to provide copies of such records to City. Company agrees to notify City's  
9 Risk Manager and City Attorney before destroying such records. This provision  
10 shall survive the expiration of the period during which collection services are to  
11 be provided under this Agreement.

### 12 **9.2.5 Disposal Records**

13 Company shall maintain records of disposal of all solid waste collected in City  
14 for the term of this Agreement or successor Agreements. In the event Company  
15 discontinues providing solid waste services to City, Company shall provide all  
16 records of disposal or processing of all solid waste collected in City within 30  
17 calendar days of discontinuing service. Records shall be in chronological and  
18 organized form and readily and easily interpreted.

## 19 **9.3 Reports**

### 20 **9.3.1 Report Formats and Schedule**

21 Records shall be maintained in forms and by methods that facilitate flexible use  
22 of data contained in them to structure reports, as needed. Reports are intended  
23 to compile recorded data into useful forms of information that can be used to,  
24 among other things:

- 25 a) Determine and set rates and evaluate the financial efficacy of operations;
- 26 b) Evaluate past and expected progress towards achieving diversion goals  
27 and objectives;
- 28 c) Determine needs for adjustment to programs; and,
- 29 d) Evaluate customer service and complaints.

1 Company may propose report formats that are responsive to the objectives and  
2 audiences for each report. The format of each report will be mutually agreed  
3 upon by City and Company. Company agrees to submit all reports on computer  
4 discs or via e-mail in a mutually agreed upon format at no additional charge, if  
5 requested by City. Company will provide a certification statement, under  
6 penalty of perjury, by the responsible Company official, that the report being  
7 submitted is true and correct.

8 Quarterly reports shall be submitted no later than 45 calendar days after the end  
9 of the quarter. Quarters end on September 30, December 31, March 31, and June  
10 30. Annual reports shall be submitted before September 30 following the end of  
11 the rate period.

12 All reports shall be submitted to:

13 City Administrator  
14 City of Canby  
15 P.O. Box 930  
16 Canby, OR 97013

### 17 **9.3.2 Quarterly Reports**

18 The information listed shall be the minimum reported for each service:

#### 19 **A. Regular Services**

- 20 1) Solid waste collected monthly by Company in tons, listed separately  
21 for single-family dwelling units and commercial premises and the  
22 disposal site used.
- 23 2) Recyclable materials collected monthly by Company in tons, listed  
24 separately for single-family dwelling units and commercial premises  
25 and the processing facility used.
- 26 3) Yard debris collected monthly by Company in tons, listed separately  
27 for single-family dwelling units and commercial premises and the  
28 processing facility used.
- 29 4) Complaint summary, for month and cumulative for rate period,  
30 summarized by nature of complaints.

- 1           5) Narrative summary of problems encountered (including scavenging)  
2           and actions taken with recommendations for City, as appropriate.
- 3           6) A summary or copy of the hazardous waste records required in  
4           Section 5.8.
- 5           7) Other information or reports that City may reasonably request or  
6           require.

7       **B. Summary Assessment.** Provide a summary assessment of the overall  
8       solid waste, recyclable materials, and yard debris program from Company's  
9       perspective relative to financial and physical status of program. The physical  
10       status is to relate to how well the program is operating for efficiency, economy,  
11       and effectiveness relative to meeting all the goals and objectives of this  
12       Agreement and ORS 459A. Provide recommendations and plans to improve.  
13       Highlight significant accomplishments and problems.

14       **9.3.3 Annual Report**

15       The Annual Report is to be essentially in the form and content of the quarterly  
16       reports. In addition, Company's annual reviewed financial statements for the  
17       most-recently completed fiscal year shall be included. The annual report shall  
18       also include a list of Company's officers and members of its board of directors.

19       **A. Financial Statements.** Financial statements shall show Company's results of  
20       operations for City, including the specific revenues and expenses in  
21       connection with the operations provided for in this Agreement. The financial  
22       statements and footnotes shall be prepared in accordance with Generally  
23       Accepted Accounting Principles (GAAP). The financial statements shall be  
24       reviewed in accordance with Generally Accepted Auditing Standards (GAAS)  
25       by a certified public accountant (CPA) licensed (in good standing) to practice  
26       public accounting in the State of Oregon as determined by the State of  
27       Oregon Board of Accountancy.

28       **B. Customer Billing List.** Summary customer billing list that identifies each  
29       customer account code (e.g., 1 cubic yard container with 1 pick-up per week)  
30       and the number of customers receiving such service.

1    **9.4    Adverse Information**

2           **9.4.1 Reporting Adverse Information.** Company shall provide City two copies  
3 (one to the City Administrator, one to the City Attorney) of all reports,  
4 pleadings, applications, notifications, notices of violation, or other formal actions  
5 relating specifically to Company’s performance of services pursuant to this  
6 Agreement, submitted by Company to, or received by Company from, the  
7 United States Environmental Protection Agency, the Oregon Department of  
8 Environmental Quality, the Securities and Exchange Commission or any other  
9 federal, state, or local agency, including any federal or state court actions  
10 brought by any of the aforementioned agencies, with regard to Company’s  
11 operations in the State of Oregon. Copies shall be submitted to City  
12 simultaneously with Company’s filing or submission of such matters with said  
13 agencies. Company’s routine correspondence to said agencies need not be  
14 routinely submitted to City, but shall be made available to City promptly upon  
15 City’s written request.

16           **9.4.2 Failure to Report.** The refusal or failure of Company to submit any  
17 required reports or to provide required information to City shall result in  
18 liquidated damages as described in Section 12.3.2.D, or the inclusion of any  
19 materially false or misleading statement or representation by Company in such  
20 report shall be deemed an event of default of the Agreement as described in  
21 Section 12.1 and shall subject Company to all remedies which are available to  
22 City under the Agreement or otherwise.

**ARTICLE 10**  
**INDEMNIFICATION, INSURANCE AND BOND**

**10.1 Indemnification**

Company hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnitees) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, contractors, and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the environmental laws), ordinances, and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, contractors, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the environmental laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused in part by any of the indemnitees' negligence, but shall not extend to matters resulting from the indemnitees' negligence, willful misconduct, or breach of this Agreement. Company further agrees to and shall, upon demand of City, at Company's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation

1 over the definitions of "solid waste" or the limits of City's authority with respect  
2 to the grant of licenses, or agreements, exclusive or otherwise, asserting rights  
3 under the Dormant Commerce Clause or federal or state laws to provide solid  
4 waste, recyclable materials, or yard debris services in City. This provision shall  
5 survive the expiration of the period during which collection services are to be  
6 provided under this Agreement. City and Company agree to confer following  
7 any trial to decide jointly whether to appeal or to oppose any appeal. In the  
8 event City and Company jointly agree to appeal, or to oppose any appeal, City  
9 and Company agree to share equally the costs of appeals. Should either City or  
10 Company decide to appeal, or to oppose an appeal, and the other decide not to  
11 appeal, or to oppose an appeal, the Party which decides to appeal, or to oppose  
12 an appeal, shall bear all fees and costs of the appeal or the opposition to the  
13 appeal.

14 Company's duty to indemnify and defend from the aforementioned events  
15 arising during the term of the Agreement and as it may be extended shall survive  
16 the expiration or earlier termination of this Agreement.

17 **10.2 Hazardous Substances Indemnification**

18 Company shall indemnify, defend with counsel reasonably acceptable to City,  
19 protect and hold harmless City, its elected and appointed boards, commissions,  
20 officers, employees, and agents (collectively, indemnitees) from and against all  
21 claims, damages (including but not limited to special, consequential, natural  
22 resources and punitive damages), injuries, costs, (including without limit any  
23 and all response, remediation and removal costs), losses, demands, debts, liens,  
24 liabilities, causes of action, suits, legal or administrative proceedings, interest,  
25 fines, charges, penalties, attorney's fees for the adverse party and expenses  
26 (including without limit attorneys' and expert witness fees and costs incurred in  
27 connection with defending against any of the foregoing or in enforcing this  
28 indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or  
29 suffered by, or asserted against, indemnitees arising from or attributable to the  
30 acts or omissions of Company, its officers, directors, employees, companies or  
31 agents, whether or not negligent or otherwise culpable, in connection with or  
32 related to the performance of this Agreement, including without limit damages  
33 arising from or attributable to any repair, cleanup or detoxification, or  
34 preparation and implementation of any removal, remedial, response, closure or

1 other plan (regardless of whether undertaken due to governmental action)  
2 concerning any hazardous substance, hazardous waste, and/or household  
3 hazardous waste (collectively, "waste") at any places where Company collects  
4 and transports, processes, stores, or disposes of City solid waste, recyclable  
5 materials, yard debris, and/or street debris, or other waste. The foregoing  
6 indemnity is intended to operate as an agreement pursuant to §107(e) of the  
7 Comprehensive Environmental Response, Compensation and Liability Act,  
8 CERCLA, 42 USC. §9607(e), to defend, protect, hold harmless, and indemnify  
9 City from liability. This provision is in addition to all other provisions in this  
10 Agreement and shall survive the end of the term of this Agreement.

### 11 **10.3 Insurance**

12 City does not, and shall not, waive any rights against Company which it may  
13 have by reason of the aforesaid hold harmless agreements, because of acceptance  
14 by City or the deposit with City by Company of the insurance policies described  
15 in this provision. Company shall maintain insurance policies meeting the  
16 following specifications at all times during the term of this Agreement.

#### 17 **10.3.1 Minimum Scope of Insurance**

18 Coverage shall be at least as broad as:

- 19 1) Comprehensive general liability or commercial general liability  
20 insurance.
- 21 2) Automobile liability insurance.
- 22 3) Workers' Compensation insurance as required by the State of  
23 Oregon and employer's liability insurance.

#### 24 **10.3.2 Minimum Limits of Insurance**

25 Company shall maintain in force for the term of this Agreement limits no less  
26 than:

- 27 1) Comprehensive general liability: Five Million Dollars (\$5,000,000)  
28 aggregate, One Million Dollars (\$1,000,000) combined single limit  
29 per occurrence for bodily injury, personal injury and property  
30 damage.



- 1           2)     Automobile liability: Five Million Dollars (\$5,000,000) aggregate,  
2                     One Million Dollars (\$1,000,000) combined single limit per accident  
3                     for bodily injury and property damage.
- 4           3)     Workers' Compensation and Employer's Liability: Workers'  
5                     compensation limits as required by the State of Oregon and  
6                     Employer's liability limits of One Million Dollars (\$1,000,000) per  
7                     accident.
- 8           4)     Environmental Impairment Liability: Five Million Dollars  
9                     (\$5,000,000) combined single limit per occurrence for the release of  
10                    pollution into the environment.

11     **10.3.3 Deductibles and Self-Insured Retentions.** If Company wants to increase  
12     the amounts of deductibles or self-insured retentions that were in effect on the  
13     effective date of this Agreement, the Company shall obtain the written consent of  
14     City. City's consent will not be unreasonably withheld.

15     **10.3.4 Other Insurance Provisions.** The policies are to contain, or be endorsed  
16     to contain, the following provisions:

- 17           1)     General Liability, Automobile Liability, and Environmental  
18                     Impairment Liability Coverage
  - 19                    a)     City, its elective and appointive boards, commissions,  
20                             officials, employees, agents and volunteers are to be named  
21                             as additional insureds as respects: liability arising out of  
22                             activities performed by or on behalf of Company; products  
23                             and completed operations of Company; premises owned,  
24                             leased or used by Company; or vehicles owned, leased, hired  
25                             or borrowed by Company. The coverage shall contain no  
26                             special limitations on the scope of protection afforded to City,  
27                             its elective and appointive boards, commissions, officials,  
28                             employees, agents or volunteers.
  - 29                    b)     Company's insurance coverage shall be primary insurance as  
30                             respects City, its elective and appointive boards,  
31                             commissions, officials, employees, agents and volunteers.  
32                             Any insurance or self-insurance maintained by City, its

1 officials, elective and appointive boards, commissions,  
2 employees, agents or volunteers shall be excess of Company's  
3 insurance and shall not contribute with it.

4 c) Any failure to comply with reporting provisions of the  
5 policies shall not affect coverage provided to City, its  
6 officials, elective and appointive boards, commissions,  
7 employees, agents or volunteers.

8 d) Coverage shall state that Company's insurance shall apply  
9 separately to each insured against whom claim is made or  
10 suit is brought, except with respect to the limits of the  
11 insurer's liability.

12 2) Workers' Compensation and Employers Liability Coverage - The  
13 insurer shall agree to waive all rights of subrogation against City,  
14 its officials, elective and appointive boards, commissions,  
15 employees, agents and volunteers for losses arising from work  
16 performed by Company for City.

17 3) All Coverage - Each insurance policy required by this clause shall  
18 be endorsed to state that coverage shall not be suspended, voided,  
19 canceled by either party, reduced in coverage or in limits except  
20 after 30 calendar days' prior written notice by certified mail, return  
21 receipt requested, has been given to City.

22 **10.3.5 Acceptability of Insurers.** The insurance policies required by this Article  
23 shall be issued by an insurance company or companies authorized to do business  
24 in the State of Oregon and with a rating in the most recent edition of Best's  
25 Insurance Reports of A+ or better.

26 **10.3.6 Verification of Coverage.** Simultaneously with the execution of this  
27 Agreement, Company shall furnish City with certificates of insurance and with  
28 original endorsements affecting coverage required hereunder, in form and  
29 substance satisfactory to City. The certificates and endorsements for each  
30 insurance policy are to be signed by a person authorized by that insurer to bind  
31 coverage on its behalf. Such certificates and endorsements shall show the type  
32 and amount of coverage, effective date and dates of expiration of policies, and

1 shall have all required endorsements. City reserves the right to review copies of  
2 all required insurance policies, at City Hall, upon the reasonable request of City.

3 Renewal certificates will be furnished periodically to City to demonstrate  
4 maintenance of the required coverage throughout the term.

5 If Company fails to procure and maintain any insurance required by this  
6 Agreement, City may take out and maintain, at Company's expense, such  
7 insurance as it may deem proper.

8 **10.3.7 Contractors and Subcontractors.** Company shall include all contractors  
9 and subcontractors providing collection services under this Agreement as  
10 insureds under its policies or shall furnish separate certificates and endorsements  
11 for each contractor and subcontractor. All coverage for contractors and  
12 subcontractors shall be subject to all of the requirements stated herein. All other  
13 subcontractors having face-to-face contact with the customers shall be required  
14 by Company to carry general liability insurance.

15 **10.3.8 Required Endorsements**

- 16 1) The Workers' Compensation policy shall contain an endorsement in  
17 substantially the following form:

18 "Thirty calendar days prior written notice by certified mail, return  
19 receipt requested, shall be given to City in the event of cancellation,  
20 reduction in coverage, or non-renewal of this policy. Such notice  
21 shall be sent to:

22 City Administrator  
23 City of Canby  
24 P.O. Box 930  
25 Canby, OR 97013  
26

- 27 2) The Public Liability policy shall contain endorsements in  
28 substantially the following form:

29 a) "Thirty calendar days prior written notice by certified mail,  
30 return receipt requested, shall be given to City in the event of  
31 cancellation, reduction in coverage, or non-renewal of this  
32 policy. Such notice shall be sent to:

1 City Administrator  
2 City of Canby  
3 P.O. Box 930  
4 Canby, OR 97013  
5

- 6 b) "City, its officers, elective and appointive boards,  
7 commissions, employees, and agents are additional insureds  
8 on this policy."
- 9 c) "This policy shall be considered primary insurance as  
10 respects any other valid and collectible insurance maintained  
11 by City, including any self-insured retention or program of  
12 self-insurance, and any other such insurance shall be  
13 considered excess insurance only."
- 14 d) "Inclusion of City as an additional insured shall not affect  
15 City's rights as respects any claim, demand, suit or judgment  
16 brought or recovered against Company. This policy shall  
17 protect Company and City in the same manner as though a  
18 separate policy had been issued to each, but this shall not  
19 operate to increase Company's liability as set forth in the  
20 policy beyond the amount shown or to which Company  
21 would have been liable if only one party had been named as  
22 an insured."

1 **ARTICLE 11**  
2 **CITY'S RIGHT TO PERFORM SERVICE**

3 **11.1 General**

4 In the event that Company, for any reason whatsoever, fails, refuses, or is unable  
5 to collect or transport any or all solid waste, recyclable materials, or yard debris  
6 which it is required to by this Agreement, at the time and in the manner  
7 provided in this Agreement, for a period of more than 48 hours, and if, as a  
8 result thereof, solid waste, recyclable materials, or yard debris should  
9 accumulate in City to such an extent, in such a manner, or for such a time that  
10 City should find that such accumulation endangers the public health, safety or  
11 welfare, then City shall have the right, but not the obligation, upon 24 hour prior  
12 written notice to Company during the period of such emergency as determined  
13 by City, (1) to perform, or cause to be performed, such services itself with its own  
14 or other personnel without liability to Company; and/or (2) to take temporary  
15 possession of any or all of Company's land, equipment, and other property used  
16 or useful in the collection and transportation of solid waste, recyclable materials,  
17 and yard debris and to use such property to collect and transport any solid  
18 waste, recyclable materials, and yard debris generated within City which  
19 Company would otherwise be obligated to collect and transport pursuant to this  
20 Agreement.

21 If solid waste, recyclable materials, or yard debris accumulates in City to such an  
22 extent, in such a manner or for such a time that City finds that such accumulation  
23 represents an immediate danger to the public health safety or welfare, City shall  
24 not be required to provide the 24 hour prior written notice set forth above in  
25 order to take the above actions.

26 Notice of Company's failure, refusal or neglect to collect and transport solid  
27 waste, recyclable materials, or yard debris may be given orally by City by  
28 telephone to Company at its principal office and shall be effective immediately.  
29 Written confirmation of such oral notification shall be sent by City to Company  
30 within 24 hours of the oral notification.

1 Company further agrees that in such event:

2 A. It will take direction from City to effect the transfer of possession of  
3 equipment and property to City for City's use.

4 B. It will, if City so requests, keep in good repair and condition all of such  
5 equipment and property, provide all motor vehicles with fuel, oil and other  
6 service, and provide such other service as may be necessary to maintain said  
7 property in operational condition.

8 C. City may immediately engage all or any personnel necessary or useful for  
9 the collection and transportation of solid waste, recyclable materials, and yard  
10 debris, including, if City so desires, employees previously or then employed by  
11 Company, Company further agrees, if City so requests, to furnish City the  
12 services of any or all management or office personnel employed by Company  
13 whose services are necessary or useful for solid waste, recyclable materials, and  
14 yard debris collection, transportation, processing and disposal operations and for  
15 the billing and collection of fees for these services.

16 City agrees that it assumes complete responsibility for the proper and normal use  
17 of such equipment and facilities while in its possession.

18 If the interruption or discontinuance in service is caused by any of the reasons  
19 listed in Section 12.4, City shall pay to Company the reasonable rental value of  
20 the equipment and facilities, possession of which is taken by City, for the period  
21 of City's possession, if any, which extends beyond the period of time for which  
22 Company has rendered bills in advance of service, for the class of service  
23 involved.

24 Except as otherwise expressly provided in the previous paragraph, City's  
25 exercise of its rights under this Article: (1) does not constitute a taking of private  
26 property for which compensation must be paid; (2) will not create any liability on  
27 the part of City to Company; and (3) does not exempt Company from any of the  
28 indemnity or insurance provisions of this Agreement, which are meant to extend  
29 to circumstances arising under this Section, provided that Company is not  
30 required to indemnify City against claims and damages arising from the  
31 negligence or willful misconduct of City, its elective and appointive boards,

1 commissions, officers, employees and agents in the operation of collection  
2 vehicles during the time City has taken possession of such vehicles.

3 **11.2 Temporary Possession of Company's Property**

4 If City suffers an interruption or discontinuance of service (including  
5 interruptions and discontinuance due to events described in Section 12.4), City  
6 may take possession of and use all of Company's property described above until  
7 other suitable arrangements can be made for the provision of solid waste,  
8 recyclable materials, and yard debris services.

9 **11.3 Billing and Compensation to City During City's Possession**

10 During such time that City is providing solid waste, recyclable materials, and  
11 yard debris services, as above provided, Company shall bill and collect payment  
12 from all users of the above-mentioned services as described in Section 6.1.  
13 Company further agrees that, in such event, it shall reimburse City for any and  
14 all costs and expenses incurred by City beyond that billed and received by  
15 Company in taking over possession of the above-mentioned equipment and  
16 property for solid waste, recyclable materials, and yard debris service in such  
17 manner and to an extent as would otherwise be required of Company under the  
18 terms of this Agreement. Such reimbursement shall be made from time to time  
19 after submission by City to Company of each statement listing such costs and  
20 expenses, but in no event later than five business days from and after each such  
21 submission.

22 **11.4 City's Right to Relinquish Possession**

23 It is further mutually agreed that City may at any time at its discretion relinquish  
24 possession of any or all of the above-mentioned property to Company and  
25 thereupon demand that Company resume the solid waste, recyclable materials,  
26 and yard debris services as provided in this Agreement, whereupon Company  
27 shall be bound to resume the same.

28 **11.5 Duration of City's Possession**

29 City's right pursuant to this Article to retain temporary possession of Company's  
30 facilities and equipment, and to render collection services, shall terminate when  
31 the event which caused the taking possession under Section 11.1 is cured and the

1 performance bond is fully restored. In any case, City has no obligation to  
2 maintain possession of Company's property or equipment and/or continue its  
3 use for any period of time and may at any time, in its sole discretion, relinquish  
4 possession to Company.



1 **ARTICLE 12**

2 **DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

3 **12.1 Events of Default**

4 All provisions of the franchise and this Agreement to be performed by Company  
5 are considered material. Each of the following shall constitute an event of  
6 default.

7 **A. Fraud or Deceit.** If Company practices any fraud or deceit upon City.

8 **B. Insolvency or Bankruptcy.** If Company becomes insolvent, unable, or  
9 unwilling to pay its debts, or upon listing of an order for relief in favor of  
10 Company in a bankruptcy proceeding.

11 **C. Failure to Maintain Coverage.** If Company fails to provide or maintain in  
12 full force and effect the Workers' Compensation, liability, or indemnification  
13 coverage as required by this Agreement unless such insurance becomes  
14 unavailable.

15 **D. Violations of Regulation.** If Company violates any orders or filings of  
16 any regulatory body having jurisdiction over Company, which orders or filings  
17 have a material impact on Company's ability to perform this Agreement,  
18 provided that Company may contest any such orders or filings by appropriate  
19 proceedings conducted in good faith, in which case no breach of the franchise  
20 and this Agreement shall be deemed to have occurred.

21 **E. Failure to Perform.** If Company ceases to provide collection services as  
22 required under this Agreement for a period of two consecutive days or more, for  
23 any reason within the control of Company, including labor disputes. If City  
24 performs service under Article 11, the Company's failure to perform shall not be  
25 considered a default.

26 **F. Failure to Pay.** If Company fails to make any payments required under  
27 this Agreement and/or refuses to provide City with required information,  
28 reports, and/or records in a timely manner as provided for in the Agreement.

29 **G. Acts or Omissions.** Any other act or omission by Company which  
30 violates the terms, conditions, or requirements of this Agreement, ORS 459 and

1           ORS 459A, as it may be amended from time to time, or any law, statute,  
2           ordinance, order, directive, rule, or regulation issued there under and which is  
3           not corrected or remedied within the time set in the written notice of the  
4           violation or, if Company cannot reasonably correct or remedy the breach within  
5           the time set forth in such notice, if Company should fail to commence to correct  
6           or remedy such violation within the time set forth in such notice and diligently  
7           effect such correction or remedy thereafter.

8           **H. False or Misleading Statements.** Any material representation or  
9           disclosure made to City by Company in connection with or as an inducement to  
10          entering into this Agreement, or any future amendment to this Agreement,  
11          which proves to be false or misleading in any material respect as of the time such  
12          representation or disclosure is made, whether or not any such representation or  
13          disclosure appears as part of this Agreement.

14          **I. Attachment.** There is a seizure of, attachment of, or levy on, the operating  
15          equipment of Company, including without limits its equipment, maintenance or  
16          office facilities, and any part thereof for a period of more than 60 calendar days.

17          Company shall be given 48 hours from notification by City to cure any default  
18          arising under Sections 12.1.C, 12.1.E, 12.1.F, 12.1.I, and 12.1.J provided, however,  
19          that City shall not be obligated to provide Company with a notice and cure  
20          opportunity if the Company has committed the same or similar breach within a  
21          24-month period.

## 22    **12.2 Right to Terminate Upon Default**

23          In the event that Company should default and subject to the right of the  
24          Company to cure, in the performance of any provisions of this contract, and the  
25          default is not cured within 48 hours from notification of default from City for any  
26          default arising under Sections 12.1.C., 12.1.E, 12.1.F, 12.1.I, or 12.1.J, or 10  
27          calendar days' notice if the public health or safety is threatened, or otherwise 30  
28          calendar days after receipt of written notice of default from City, then City may,  
29          at its option, hold a hearing at its next practically available City Council meeting  
30          to determine whether this contract should be terminated. In the event City  
31          decides to terminate this contract, City shall serve 30 calendar days' written  
32          notice of its intention to terminate upon Company. In the event City exercises its  
33          right to terminate this contract, City may, at its option, either directly undertake

1 performance of the services or arrange with other persons to perform the  
2 services with or without a written agreement. This right of termination is in  
3 addition to any other rights of City upon a failure of Company to perform its  
4 obligations under this Agreement.

5 City's right to terminate this Agreement and to take possession of Company's  
6 facility(ies) are not exclusive, and City's termination of this Agreement shall not  
7 constitute an election of remedies. Instead, they shall be in addition to any and  
8 all other legal and equitable rights and remedies that City may have.

9 By virtue of the nature of this Agreement, the urgency of timely continuous and  
10 high-quality service, the time required to effect alternative service, and the rights  
11 granted by City to Company, the remedy of damages for a breach hereof by  
12 Company may be inadequate and City may seek injunctive relief.

### 13 **12.3 Liquidated Damages**

#### 14 **12.3.1 General**

15 City finds, and Company agrees, that as of the time of the execution of this  
16 Agreement, it is impractical, if not impossible, to reasonably ascertain the extent  
17 of damages which shall be incurred by City as a result of a breach by Company  
18 of its obligations under this Agreement. The factors relating to the  
19 impracticability of ascertaining damages include, but are not limited to, the fact  
20 that: (i) substantial damage results to members of the public who are denied  
21 services or denied quality or reliable service; (ii) such breaches cause  
22 inconvenience, anxiety, frustration, and deprivation of the benefits of the  
23 Agreement to individual members of the general public for whose benefit this  
24 Agreement exists, in subjective ways and in varying degrees of intensity which  
25 are incapable of measurement in precise monetary terms; (iii) that Franchise  
26 services might be available at substantially lower costs than alternative services  
27 and the monetary loss resulting from denial of services or denial of quality or  
28 reliable services is impossible to calculate in precise monetary terms; and (iv) the  
29 termination of this Agreement for such breaches, and other remedies are, at best,  
30 a means of future correction and not remedies which make the public whole for  
31 past breaches.

1 **12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet**  
2 **Standards**

3 The Parties further acknowledge that consistent, reliable solid waste, recyclable  
4 materials, and yard debris collection service is of utmost importance to City and  
5 that City has considered and relied on Company's representations as to its  
6 quality of service commitment in awarding the franchise to it. The parties  
7 further recognize that some quantified standards of performance are necessary  
8 and appropriate to ensure consistent and reliable service and performance. The  
9 parties further recognize that if company fails to achieve the performance  
10 standards, or fails to submit required documents in a timely manner, City and its  
11 residents will suffer damages and that it is and will be impractical and extremely  
12 difficult to ascertain and determine the exact amount of damages which City will  
13 suffer. Therefore, without prejudice to City's right to treat such non-performance  
14 as an event of default under this Article, the Parties agree that the following  
15 liquidated damage amounts represent a reasonable estimate of the amount of  
16 such damages considering all of the circumstances existing on the effective date  
17 of this Agreement, including the relationship of the sums to the range of harm to  
18 City that reasonably could be anticipated and the anticipation that proof of actual  
19 damages would be costly or impractical. In placing their initials at the places  
20 provided, each Party specifically confirms the accuracy of the statements made  
21 above and the fact that each Party has had ample opportunity to consult with  
22 legal counsel and obtain an explanation of the liquidated damage provisions at  
23 the time that the Agreement was made.

24 Company \_\_\_\_\_ City  
25 Initial Here \_\_\_\_\_ Initial Here \_\_\_\_\_

26 Company agrees to pay (as liquidated damages and not as a penalty) the  
27 amounts set forth below:

- 28 **A. Collection Reliability**  
1) For each failure to commence service to a new customer  
account within seven calendar days after ordered by  
customer which exceeds 12 such occurrences annually: \$150.00

- 2) For each failure to collect solid waste, recyclable materials, or yard debris which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within 24 hours which exceeds 12 such occurrences annually: \$150.00
- 3) For each failure to collect solid waste, recyclable materials, or yard debris which has been properly set out for collection, from the same customer on two consecutive scheduled pickup days which exceeds 12 such occurrences annually: \$150.00

**B. Collection Quality**

- 1) For each occurrence of damage to private property which exceeds 12 such occurrences annually: \$250.00
- 2) For each occurrence of failure to properly return empty receptacles to avoid pedestrian or vehicular traffic impediments which exceeds 12 such occurrences annually: \$150.00
- 3) For each occurrence of excessive noise or discourteous behavior which exceeds 12 such occurrences annually: \$250.00
- 4) For each failure to clean up solid waste, recyclable materials, or yard debris spilled from receptacles which exceeds 12 such failures annually: \$150.00
- 5) For each occurrence of collecting solid waste, recyclable materials, or yard debris during unauthorized hours which exceeds 12 such occurrences annually: \$250.00

**C. Customer Responsiveness**

- 1) For each failure to initially respond to a customer complaint within one business day which exceeds 12 such failures annually: \$100.00
- 2) For each failure to process customer complaints to City as required by Section 6.2 which exceeds 12 such failures annually: \$100.00

1

**D. Timeliness of Submissions to City**

Any report shall be considered late until such time as City receives a correct and complete report. For each calendar day a report is late, the daily liquidated damage amount shall be:

- 1) Quarterly Reports: \$100 per day
- 2) Annual Reports: \$100 per day

2 Where the reference to "annually" appears in the charts above, it shall refer to  
3 occurrences within each "calendar year", commencing January 1 and ending  
4 December 31.

5 **12.3.3 Process**

6 Liquidated damages will only be assessed after Company has been given the  
7 opportunity but failed to rectify the damages as described in this Agreement.

8 City may determine the occurrence of events giving rise to liquidated damages  
9 through the observation of its own employees or representative or investigation  
10 of customer complaints.

11 Prior to assessing liquidated damages, City shall give Company notice of its  
12 intention to do so. The notice will include a brief description of the  
13 incident(s)/non-performance. Company may review (and make copies at its  
14 own expense) all information in the possession of City relating to  
15 incident(s)/non-performance. Company may, within 10 calendar days after  
16 receiving the notice, request a meeting with City. Company may present  
17 evidence in writing and through testimony of its employees and others relevant  
18 to the incident(s)/non-performance. City will provide Company with a written  
19 explanation of its determination on each incident(s)/non-performance prior to  
20 authorizing the assessment of liquidated damages. The decision of City shall be  
21 final.

1           **12.3.4 Amount**

2           City may assess liquidated damages for each calendar day or event, as  
3           appropriate, that Company is determined to be liable in accordance with this  
4           Agreement.

5           **12.3.5 Timing of Payment**

6           Company shall pay any liquidated damages assessed by City within 10 days  
7           after they are assessed unless Company requests a meeting with City in  
8           accordance with Section 12.3.3. If they are not paid within the 10-day period,  
9           City may order the termination of the franchise granted by this Agreement.

10       **12.4 Excuses from Performance**

11           The parties shall be excused from performing their respective obligations  
12           hereunder in the event they are prevented from so performing by reason of  
13           floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of  
14           terrorism, acts of any government (including judicial action), and other similar  
15           catastrophic events which are beyond the control of and not the fault of the party  
16           claiming excuse from performance hereunder. Labor unrest, including, but not  
17           limited to, strike, work stoppage or slowdown, sick-out, picketing, or other  
18           concerted job action conducted by Company's employees or directed at  
19           Company is not an excuse from performance and Company shall be obligated to  
20           continue to provide service notwithstanding the occurrence of any or all of such  
21           events.

22           The Party claiming excuse(s) from performance shall, within two calendar days  
23           after such Party has notice of such cause, give the other Party notice of the facts  
24           constituting such cause and asserting its claim to excuse under this section.

25           The interruption or discontinuance of Company's services caused by one or more  
26           of the events excused shall not constitute a default by Company under this  
27           Agreement. Notwithstanding the foregoing, however, if Company is excused  
28           from performing its obligations hereunder for any of the causes listed in this  
29           Section for a period of seven calendar days or more, City shall nevertheless have  
30           the right, in its sole discretion, to terminate this Agreement by giving 10 days'  
31           notice, in which case the provisions relative to taking possession of Company's

1 land, equipment and other property and engaging Company's personnel in  
2 Article 11 and this Article will apply.

3 **12.5 Notice, Hearing and Appeal of City Breach**

4 Should Company contend that City is in breach of this Agreement, it shall file  
5 with the City Administrator a written request for an administrative hearing.  
6 Said request shall be made within 90 calendar days of the event or incident that  
7 allegedly gave rise to the breach. City shall notify Company of the time and date  
8 said hearing shall be held within 30 calendar days of receipt of Company's  
9 request. Company shall present its position and all relevant facts after City staff  
10 has made its presentation. Company shall be notified of City Administrator's  
11 ruling in writing within 14 calendar days of the administrative hearing.

12 If Company is not in agreement with the ruling issued by the City Administrator  
13 following the administrative hearing, it shall have the right to appeal the ruling  
14 to the City Council or in its discretion, to a three person appeal/review board,  
15 one member appointed by the City Council, another member appointed by  
16 Company, and the third member selected by the other two appointees. This  
17 appeal shall be made in writing to City Council no later than 14 calendar days  
18 after receipt of the administrative hearing ruling. City shall notify Company of  
19 the time and date the Council or Board will review Company's allegation.  
20 Company shall present its position and all relevant facts after staff has made its  
21 presentation. Company shall be notified in writing within 30 calendar days of  
22 the Council or Board's ruling. The Council or Board's ruling shall be final, and  
23 Company shall have no further rights of appeal.

24 Company shall have no cause of action for damages against City in relation to  
25 any such dispute or claim.



1 **ARTICLE 13**  
2 **OTHER AGREEMENTS OF THE PARTIES**  
3

4 **13.1 Relationship of Parties**

5 The parties intend that Company shall perform the services required by this  
6 Agreement as an independent Company engaged by City and not as an officer or  
7 employee of City or as a partner of or joint venture with City. No employee or  
8 agent of Company shall be or shall be deemed to be an employee or agent of  
9 City. Except as expressly provided herein, Company shall have the exclusive  
10 control over the manner and means of conducting the solid waste, recyclable  
11 materials, and yard debris collection services performed under this Agreement,  
12 and all persons performing such services. Company shall be solely responsible  
13 for the acts and omissions of its officers, employees, contractors, subcontractors  
14 and agents. Neither Company nor its officers, employees, contractors,  
15 subcontractors and agents shall obtain any rights to retirement benefits, workers'  
16 compensation benefits, or any other benefits which accrue to City employees by  
17 virtue of their employment with City.

18 **13.2 Compliance with Law**

19 In providing the services required under this Agreement, Company shall at all  
20 times, at its sole cost, comply with all applicable laws and regulations of the  
21 United States, the State of Oregon, and local agencies. City shall comply with all  
22 applicable regulations promulgated by federal, state, regional or local  
23 administrative and regulatory agencies, now in force and as they may be  
24 enacted, issued or amended during the term.

25 **13.3 Governing Law**

26 This Agreement shall be governed by, and construed and enforced in accordance  
27 with, the laws of the State of Oregon.

1 **13.4 Jurisdiction**

2 Any lawsuits between the parties arising out of this Agreement shall be brought  
3 and concluded in the courts of the State of Oregon, which shall have exclusive  
4 jurisdiction over such lawsuits.

5 With respect to venue, the parties agree that this Agreement is made in and will  
6 be performed in Clackamas County.

7 **13.5 Assignment**

8 **13.5.1 Company's Assignment**

9

10 A. **Permitted Assignments.** Company shall have the right to assign the entirety  
11 of this Agreement to any other company which is owned and controlled by  
12 Company provided that: (i) such company is qualified to do business and has  
13 a place of business in Oregon, has a net worth at least equal to that of  
14 Company at the time of the assignment, and assumes in writing all of  
15 Company's obligations under this Agreement prior to or concurrently with  
16 such assignment. Assignee Company shall also provide a performance bond  
17 in the amount of Five Hundred Thousand dollars (\$500,000.00). The  
18 performance bond shall be in a form acceptable to the City and shall serve as  
19 security for the faithful performance of all the provisions and obligations of  
20 this Agreement.

21

22 Company shall not otherwise assign its rights nor delegate or otherwise  
23 transfer its obligations under this Agreement to any other person without the  
24 prior written consent of the City. Any such assignment made without the  
25 consent of the City shall be void and the attempted assignment shall  
26 constitute a breach of this Agreement.

27 B. **Assignment Defined.** For the purpose of this Section, "assign" or  
28 "assignment" shall include, but not be limited to: (i) a sale, exchange or  
29 other transfer to either a related or a third party of substantially all of  
30 Company's (or its parent Company's) assets dedicated to service under  
31 this Agreement; (ii) the issuance of new stock to or the sale, exchange, or  
32 other transfer of 10% or more of the then outstanding common stock of  
33 Company (or its parent Company) to a person other than the shareholder  
34 or an affiliate of shareholder owning said stock at the effective date.  
35 "Parent Company" refers to a company owning more than 50% of the

1 shares of another company (subsidiary) or a company that has  
2 management control over such subsidiary.

3 C. **Consent Requirements.** Except as provided in Section 13.5.1A above, this  
4 Agreement and the duties and obligations of Company hereunder may  
5 not be assigned. Provided, however, nothing herein is intended to  
6 prevent Company from requesting that the City consider waiving this  
7 restriction and consenting to an assignment. In connection with any such  
8 request, Company anticipates that it will undertake or furnish the  
9 following:

- 10 1. Company shall undertake to pay the City the reasonable expenses  
11 for attorneys' and consultants' fees and costs necessary to  
12 investigate the suitability of any proposed assignee, and reasonable  
13 expenses incurred in reviewing and finalizing any documentation  
14 required for approving any such assignment proffered;
- 15 2. Company shall furnish the City with audited financial statements  
16 of the proposed assignee's operations for the immediately  
17 preceding three (3) operating years;
- 18 3. Company shall furnish the City with satisfactory proof that: (i) the  
19 proposed assignee has directly related solid waste management  
20 collection experience; (ii) in the last five (5) years, the proposed  
21 assignee has not suffered any material citations or other material  
22 censure from any federal, state, or local agency having jurisdiction  
23 over its collection, processing, transfer station or landfill operations  
24 due to any significant failure to comply with federal, state or local  
25 waste management laws and that the assignee has provided the  
26 City with a complete list of any citations and censures (whether  
27 material or not); (iii) the proposed assignee has at all times  
28 conducted its collection, processing, transfer station, and landfill  
29 operations in an environmentally safe and conscientious fashion;  
30 (iv) the proposed assignee conducts its solid waste collection,  
31 processing, transfer station, and landfill management practices in  
32 material compliance with all federal, state, and local laws  
33 regulating the collection, processing, transfer and disposal of solid

1 waste; (v) that the guaranty agreement provided by the proposed  
2 assignee is satisfactory to the City and is binding and enforceable  
3 upon the guarantor; and, (vi) any other information reasonably  
4 required by the City to ensure the proposed assignee can fulfill the  
5 terms of this Agreement in a timely, safe, and effective manner.

### 6 **13.5.2 City's Assignment**

7 City may assign and delegate all rights and duties of City, and its Council,  
8 Boards, and Officials, its rights under this Agreement to any joint powers  
9 authority or other public agency; provided, however, that this Agreement will  
10 continue to govern only the collection and transportation of solid waste,  
11 recyclable materials, and yard debris generated within City.

### 12 **13.6 Contracting or Subcontracting**

13 Company shall not engage any contractors or subcontractors for collection,  
14 transporting, processing, or disposing of solid waste, recyclable materials, and  
15 yard debris without the prior written consent of City. Provided, however,  
16 permission is granted to assign the collecting, transporting and disposing of  
17 medical waste to Bio-Med of Oregon.

### 18 **13.7 Binding on Assigns**

19 The provisions of this Agreement shall inure to the benefit to and be binding on  
20 the permitted assigns of the parties.

### 21 **13.8 Transition to Next Company**

22 If the transition of services to another company occurs through expiration of  
23 term, default and termination, or otherwise, Company will cooperate with City  
24 and subsequent company(ies) to assist in an orderly transition which will include  
25 Company providing route lists and billing information.

### 26 **13.9 Parties in Interest**

27 Nothing in this Agreement, whether express or implied, is intended to confer  
28 any rights on any persons other than the parties to it and their representatives,  
29 successors and permitted assigns.

1    **13.10 Condemnation**

2           City fully reserves the rights to acquire Company's property utilized in the  
3           performance of this Agreement, by purchase or through the exercise of the right  
4           of eminent domain. This provision is additive, and not intended to alter the  
5           rights of the parties set forth in Article 11.

6    **13.11 Notice**

7           All notices, demands, requests, proposals, approvals, consents and other  
8           communications which this Agreement requires, authorizes or contemplates  
9           shall be in writing and shall either be personally delivered to a representative of  
10          the Parties at the address below or be deposited in the United States mail, first  
11          class postage prepaid, addressed as follows:

12          If to City:

13                                   City Administrator  
14                                   City of Canby  
15                                   P.O. Box 930  
16                                   Canby, OR 97013

17          If to Company:

18                                   General Manager  
19                                   Canby Disposal  
20                                   P.O. Box 550  
21                                   Canby, OR 97013  
22

23          The address to which communications may be delivered may be changed from  
24          time to time by a written notice given in accordance with this Section.

25          Notice shall be deemed given on the day it is personally delivered or, if mailed,  
26          three business days from the date it is deposited in the mail.

27    **13.12 Representatives of the Parties**

28          References in this Agreement to the "City" shall mean the City Council and all  
29          actions to be taken by City shall be taken by the City Council except as provided  
30          below. The City Council may delegate, in writing, authority to the City  
31          Administrator, and/or to other City employees and may permit such employees,  
32          in turn, to delegate in writing some or all of such authority to subordinate

1 employees. Company may rely upon actions taken by such delegates if they are  
2 within the scope of the authority properly delegated to them.

3 Company shall, by the effective date, designate in writing a responsible officer  
4 who shall serve as the representative of Company in all matters related to the  
5 Agreement and shall inform City in writing of such designation and of any  
6 limitations upon his or her authority to bind Company. City may rely upon  
7 action taken by such designated representative as actions of Company unless  
8 they are outside the scope of the authority delegated to him/her by Company as  
9 communicated to City.

### 10 **13.13 City Free to Negotiate with Third Parties**

11 During the Term of this Agreement, City may investigate all options for the  
12 collection, transportation, processing, and disposal of solid waste, recyclable  
13 materials, and yard debris after the expiration of the term. Without limiting the  
14 generality of the foregoing, City may solicit proposals from Company and from  
15 third parties for the provision of collection services, and may negotiate and  
16 execute agreements for such services that will take effect upon the expiration or  
17 earlier termination under Article 12.

### 18 **13.14 Compliance with Municipal Code**

19 Company shall comply with those provisions of the municipal code of City  
20 which are applicable, and with any and all amendments to such applicable  
21 provisions during the term of this Agreement.

### 22 **13.15 Privacy**

23 Company shall strictly observe and protect the rights of privacy of customers.  
24 Information identifying individual customers or the composition or contents of a  
25 customer's waste stream shall not be revealed to any person, governmental unit,  
26 private agency, or company, unless upon the authority of a court of law, by  
27 statute, or upon valid authorization of the customer. This provision shall not be  
28 construed to preclude Company from preparing, participating in, or assisting in  
29 the preparation of waste composition studies or waste stream analyses which  
30 may be required by ORS 459A.035.

1   **13.16 Attorney Fees and Cost Recovery**

2           The prevailing party in any action, including any appeals there from, brought to  
3           enforce the terms of this Agreement or arising out of this Agreement may  
4           recover its reasonable costs and attorneys' fees expended in connection with such  
5           an action/appeal from the other party.

1 **ARTICLE 14**  
2 **MISCELLANEOUS AGREEMENTS**

3  
4 **14.1 Entire Agreement**

5 This Agreement, including the Exhibits, represents the full and entire Agreement  
6 between the parties with respect to the matters covered herein.

7 **14.2 Article and Section Headings**

8 The article headings and section headings in this Agreement are for convenience  
9 of reference only and are not intended to be used in the construction of this  
10 Agreement nor to alter or affect any of its provisions.

11 **14.3 References to Laws and Other Agreements**

12 All references in this Agreement to laws shall be understood to include such laws  
13 as they may be subsequently amended or recodified, unless otherwise  
14 specifically provided. This Agreement supersedes any and all agreements  
15 heretofore entered into by the parties.

16 **14.4 Interpretation**

17 This Agreement, including the Exhibits attached hereto, shall be interpreted and  
18 construed reasonably and neither for nor against either party, regardless of the  
19 degree to which either party participated in its drafting.

20 **14.5 Agreement**

21 This Agreement may not be modified or amended in any respect except by a  
22 writing signed by the parties.

23 **14.6 Severability**

24 If any non-material provision of this Agreement is for any reason deemed to be  
25 invalid and unenforceable, the invalidity or unenforceability of such provision  
26 shall not affect any of the remaining provisions of this Agreement which shall be  
27 enforced as if such invalid or unenforceable provision had not been contained  
28 herein.



1 **14.7 Exhibits**

2 Each of the Exhibits identified as Exhibits 1 through 3 is attached hereto and  
3 incorporated herein and made a part hereof by this reference. In the case of  
4 conflict between the Exhibits and the Agreement, the Agreement shall govern.

5 **14.8 Waiver**

6 The waiver by either Party of any breach or violation of any provisions of this  
7 Agreement shall not be deemed to be a waiver of any breach or violation of any  
8 other provision nor of any subsequent breach or violation of the same or any  
9 other provision. The subsequent acceptance by either party of any moneys that  
10 become due hereunder shall not be deemed to be a waiver of any pre-existing or  
11 concurrent breach or violation by the other party of any provision of this  
12 Agreement.

13 Failure of either party to exercise any of the remedies set forth herein within the  
14 time periods provided for shall not constitute a waiver of any rights of that party  
15 with regard to that failure to perform or subsequent failures to perform, whether  
16 determined to be a breach, excused performance or unexcused defaults by the  
17 other party.  
18

1 IN WITNESS WHEREOF, City and Company have executed this Agreement as of the  
2 day and year first above written.

3

4 COMPANY

CITY OF CANBY, OREGON

5 A Municipal Corporation

6 By Fred A Kahut

By Melody Thompson

7 Name: Fred A. Kahut

Name: MELODY THOMPSON

8 Title: president

Title: MAYOR

9

10

APPROVED AS TO FORM:

11

12

13

14

John H. Kelley

John H. Kelley  
City Attorney

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ATTEST:

Kimberly Scheafek

Kimberly Scheafek, CMC  
City Recorder

**EXHIBIT 1**  
**CITY FACILITIES**

## Exhibit 1

### City Facilities

Company shall provide solid waste and Recyclable materials collection services to the City's public facilities, parks, public litter cans, and public recycling cans as listed below. The City may, at any time, modify the service requirements to increase the volume collected or the frequency of collection.

Service Locations	Solid Waste/Recycling	
	No. of Receptacles and Sizes	Frequency of Collection
Arneson Garden	(6) 4-yd	Clean up
Canby Adult Center (Transit Stop)	(3) City Cans	
Canby Area Transit Center	65 gallon	Weekly
Canby City Hall	3-yd	Twice Weekly
Canby City Hall	65 gallon	Weekly
Canby Fire Department	1.5-yd	Twice Weekly
Canby Fire Department	65 gallon/yard debris	Weekly
Canby Public Library	95 gallon	Weekly
Canby Swim Center	4-yd	Weekly
City Cans Around Town	(34)	Three Times a Week
City Shops	3-yd	Weekly
City Shops	4-yd	Weekly
City Shops - Public Works	2-yd	Weekly
Community Park (Berg Parkway)	(2) 4-yd	Three Times a Week
Eco Park	65 gallon	Weekly
Legacy Park	(2) 65 gallon	Weekly
Maple Street Park	(2) 4-yd	Twice Weekly
Skate Park	1.5-yd	Weekly
Slice of Summer	(4) 4-yd	Clean up
Wastewater Treatment Plant	(2) 2-yd	Twice Weekly
Zion Cemetery	3-yd	Weekly

**EXHIBIT 2**  
**RATES FOR RATE PERIOD**  
**JULY 1, 2010 THROUGH JUNE 30, 2011**

## EXHIBIT 2

Canby Disposal Company  
City Rates (includes weekly yard debris collection)  
Proposed effective date July 1, 2010

### Residential Service:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
20-gallon cart weekly curbside	\$ 17.94	\$ 0.36	\$ 18.30	2%
20-gallon cart weekly w/in 50' of road	\$ 20.94	\$ 0.42	\$ 21.36	2%
32-gallon cart weekly curbside	\$ 21.36	\$ 0.43	\$ 21.79	2%
32-gallon cart weekly w/in 50' of road	\$ 24.36	\$ 0.49	\$ 24.85	2%
32-gallon cart monthly curbside	\$ 10.68	\$ 0.21	\$ 10.89	2%
32-gallon cart monthly w/in 50' of road	\$ 12.18	\$ 0.24	\$ 12.42	2%
65-gallon cart weekly curbside	\$ 34.20	\$ 0.68	\$ 34.88	2%
65-gallon cart weekly w/in 50' of road	\$ 37.20	\$ 0.74	\$ 37.94	2%
95-gallon cart weekly curbside	\$ 37.91	\$ 0.76	\$ 38.67	2%
95-gallon cart weekly w/in 50' of road	\$ 40.91	\$ 0.82	\$ 41.73	2%

### Commercial Service:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart weekly curbside	\$ 20.00	\$ 0.40	\$ 20.40	2%
32-gallon cart weekly w/in 50' of road	\$ 20.00	\$ 0.40	\$ 20.40	2%
65-gallon cart weekly curbside	\$ 30.00	\$ 0.60	\$ 30.60	2%
65-gallon cart weekly w/in 50' of road	\$ 30.00	\$ 0.60	\$ 30.60	2%
95-gallon cart weekly curbside	\$ 33.00	\$ 0.66	\$ 33.66	2%
95-gallon cart weekly w/in 50' of road	\$ 33.00	\$ 0.66	\$ 33.66	2%

### Extra Hauling:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart worth	\$ 5.00	\$ 0.10	\$ 5.10	2%
2nd 32-gallon worth on same day	\$ 7.50	\$ 0.15	\$ 7.65	2%
3rd 32-gallon worth on same day	\$ 8.00	\$ 0.16	\$ 8.16	2%

## Mobile Home Courts and Apartments

(Four or more units , where owner accepts and pays billing)

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
32-gallon cart weekly curbside	\$ 16.36	\$ 0.33	\$ 16.69	2%
32-gallon cart weekly w/in 50' of road	\$ 19.36	\$ 0.39	\$ 19.75	2%

\*Note: If billed separately, regular residential rates apply.

## Extra Charge for Stairs:

<u>Service Type</u>	
One flight of stairs	25% add'l
Two flights of stairs	50% add'l

## Hourly Hauling Rates:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Truck and one employee (hourly)	\$ 60.71	\$ 1.21	\$ 61.92	2%
Truck and two employees (hourly)	\$ 82.01	\$ 1.64	\$ 83.65	2%

\*Note: Does not include disposal charges

## Major Appliances

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Small	\$ 4.17	\$ 0.08	\$ 4.25	2%
Large	\$ 35.00	\$ 0.70	\$ 35.70	2%

## Tires:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Up to size 750 x 16	\$ 2.03	\$ 0.04	\$ 2.07	2%
Larger	\$ 3.18	\$ 0.06	\$ 3.24	2%
Up to extra large size	\$ 35.00	\$ 0.70	\$ 35.70	2%

\*Note: Does not include disposal charges

## Container Service - Loose:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
1.5-yard picked up 1x/week	\$ 121.85	\$ 2.44	\$ 124.29	2%
2-yard picked up 1x/week	\$ 162.40	\$ 3.25	\$ 165.65	2%
3-yard picked up 1x/week	\$ 219.50	\$ 4.39	\$ 223.89	2%
4-yard picked up 1x/week	\$ 279.42	\$ 5.59	\$ 285.01	2%
6-yard picked up 1x/week	\$ 392.06	\$ 7.84	\$ 399.90	2%
Additional 1.5-yard picked up 1x/week	\$ 112.85	\$ 2.26	\$ 115.11	2%
Additional 2-yard picked up 1x/week	\$ 153.00	\$ 3.06	\$ 156.06	2%
Additional 3-yard picked up 1x/week	\$ 210.50	\$ 4.21	\$ 214.71	2%
Additional 4-yard picked up 1x/week	\$ 270.42	\$ 5.41	\$ 275.83	2%
Additional 6-yard picked up 1x/week	\$ 383.00	\$ 7.66	\$ 390.66	2%

\*Note: Compacted container rates shall be 2.5 times the loose rate

## Cleanup Containers:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
3-yard container	\$ 66.88	\$ 1.34	\$ 68.22	2%
4-yard container	\$ 85.58	\$ 1.71	\$ 87.29	2%

\*Note: Price is per dump

## Drop Box Services - Loose:

### Permanent Accounts

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
10-yard haul fee	\$ 80.55	\$ 1.61	\$ 82.16	2%
20-yard haul fee	\$ 80.55	\$ 1.61	\$ 82.16	2%
30-yard haul fee	\$ 105.00	\$ 2.10	\$ 107.10	2%
40-yard haul fee	\$ 115.00	\$ 2.30	\$ 117.30	2%

### Occasional Accounts

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
10-yard haul fee	\$ 106.59	\$ 2.13	\$ 108.72	2%
20-yard haul fee	\$ 106.59	\$ 2.13	\$ 108.72	2%
30-yard haul fee	\$ 131.94	\$ 2.64	\$ 134.58	2%
40-yard haul fee	\$ 143.38	\$ 2.87	\$ 146.25	2%

\*Note: Price is for haul fee only; disposal and franchise fees are extra

## Drop Box Services - Compacted:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Under 20 yards (rate per haul)	\$ 91.95	\$ 1.84	\$ 93.79	2%
20-29 yards (rate per yard)	\$ 5.65	\$ 0.11	\$ 5.76	2%
30-39 yards (rate per yard)	\$ 5.05	\$ 0.10	\$ 5.15	2%
40 yards or more (rate per yard)	\$ 4.45	\$ 0.09	\$ 4.54	2%

\*Note: Price is for haul fee only; disposal and franchise fees are extra

## Demurrage Charge:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Occasional accounts (per day after 48 hrs)	\$ 6.19	\$ 0.12	\$ 6.31	2%
Permanent accounts (per month)	\$ 61.98	\$ 1.24	\$ 63.22	2%

## Mileage Fee:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Charge per mile over 18 miles roundtrip from where the truck is stationed	\$ 2.30	\$ 0.05	\$ 2.35	2%

## Transaction Fee:

<u>Service Type</u>	<u>Current Rate</u>	<u>Increase</u>	<u>Proposed Rate</u>	<u>Percent Increase</u>
Transaction fee per drop box haul	\$ 3.00	\$ 0.06	\$ 3.06	2%



**EXHIBIT 3**  
**NOTARY CERTIFICATION**

Exhibit 3

Notary Certification

STATE OF OREGON

COUNTY OF CLACKAMAS

On 06.17.10 (insert date), before me, Lisa Potter, Notary Public (insert name and title of officer (e.g., "Jane Doe, Notary Public")), the undersigned, a Notary Public in and for the State of Oregon, personally appeared Fred A. Kahut, CANBY DISPOSAL CO.

(insert name(s) of signer(s)), known to me to be the president (insert title of signer(s)) of Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Clackamas this 17<sup>th</sup> day of June, 2010.



Lisa Potter  
Notary Public  
My Commission Expires: 3/4/2012