

RESOLUTION NO. 1442

A RESOLUTION AUTHORIZING THE INTERIM CITY ADMINSTRATOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH KAHUT COMPANIES HOLDINGS INCORPORATED

WHEREAS, the City of Canby (City) and Kahut Companies Holdings Incorporated (Franchisee) are parties to an exclusive franchise agreement (Franchise Agreement) under which Franchisee holds the exclusive franchise, right, and privilege to collect and transport solid waste, recyclable materials, and yard debris from customers with the City of Canby, subject to the terms of the Franchise Agreement;

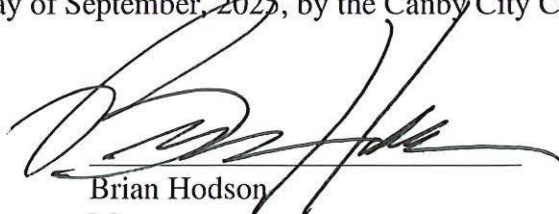
WHEREAS, Kahut Companies Holdings, LLC, in coordination with Pink Sistas, a domestic nonprofit corporation registered in the State of Oregon, has proposed a donation program wherein Franchisee would offer to qualifying customers a specially issued 95-gallon recycled materials container in the color pink and branded with the Pink Sistas logo in exchange for a fifty dollar (\$50.00) donation that Franchisee would collect from qualifying customers on behalf of Pink Sistas and remit, in whole, to Pink Sistas without any financial consideration or benefit to Franchisee (Donation Program); and

WHEREAS, the City desires to enter into a Memorandum of Understanding (MOU) to establish the terms and conditions under which Franchisee may offer the Donation Program to customers within the City in accordance with the terms and conditions of the Franchise Agreement.

NOW THEREFORE, BE IT RESOLVED by the City of Canby City Council as follows:

1. The City Council authorizes the Interim City Administrator to execute, on behalf of the City, a MOU with Franchisee for the Donation Program in substantially the same form as the MOU attached to this Resolution as Exhibit A.
2. The City Council further authorizes the Interim City Administrator to administratively take all actions necessary to correct any typographical errors, scrivener's errors, or formatting errors in the MOU.
3. This Resolution shall become effective immediately upon adoption.

ADOPTED by the City Council this 3rd day of September, 2025, by the Canby City Council.


Brian Hodson
Mayor

ATTEST:


Maya Benham, CMC
City Recorder

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between the City of Canby (City) and Kahut Companies Holdings Incorporated (Franchisee).

RECITALS

WHEREAS, on June 16, 2010, the City Council of the City of Canby granted to Canby Disposal Company the exclusive franchise, right, and privilege to collect and transport solid waste, recyclable materials, and yard debris from customers within the service area, subject to the terms of the Franchise Agreement (Agreement) and Ordinance 1328; and

WHEREAS, on September 15, 2021, the City Council of the City of Canby adopted Resolution 1358, which assigned all rights, duties, and obligations in the Agreement to Franchisee; and

WHEREAS, Section 5.4.3(F) of the Agreement establishes requirements for the physical characteristic of the receptacles, including containers, used by Franchisee to collect solid waste, recyclable materials, and yard debris; and

WHEREAS, Section 4.1 of the Agreement establishes a franchise fee imposed by the City against Franchisee as a percentage of the gross revenues collected from Franchisee for the services provided under the Agreement; and

WHEREAS, Franchisee, in coordination with Pink Sistas, a domestic nonprofit corporation registered in the State of Oregon, has proposed a donation program wherein Franchisee would offer to qualifying customers a specially issued 95-gallon recycled materials container in the color pink ("Pink Containers") and branded with the Pink Sistas logo in exchange for a fifty dollar (\$50.00) donation that Franchisee would collect from qualifying customers on behalf of Pink Sistas and remit, in whole, to Pink Sistas ("Donation Program") without any financial consideration or benefit to Franchisee; and

WHEREAS, Section 5.4.3(F)(b)(4) of the Agreement between the City and Franchisee grants the City discretion to approve recycling container colors other than those expressly permitted by the Agreement; and

WHEREAS, the Agreement imposes a franchise fee against Franchisee's "gross revenues," defined as "all revenue or compensation actually remitted by customers to [Franchisee]" for services provided under the Agreement; and

WHEREAS, the parties wish to enter into this MOU to permit Franchisee to offer Pink Containers in accordance with the Donation Program and to clarify the applicability of the Agreement's Franchise Fee to donations collected by Franchisee and remitted to Pink Sistas pursuant to Donation Program.

NOW, THEREFORE, the parties hereby agree as follows:

1. Recitals.

The Recitals are a material part of this MOU and are incorporated herein.

2. Term.

The term of this MOU shall commence upon execution by both parties and shall continue until terminated by either party.

3. Termination.

Franchisee may terminate this MOU effective upon thirty calendar days' written notice to the City or effective as otherwise mutually agreed upon. Additionally, the City may terminate this this MOU effective immediately upon written notice to Franchisee. Upon termination of this MOU, Franchisee shall immediately comply with any directive from the City to remove the Pink Containers and replace them with containers compliant with the Agreement.

4. Agreement Terms.

Except as may be expressly modified by the terms and conditions of this MOU, the parties ratify and confirm each of the terms and conditions of the Agreement which, the parties acknowledge and agree, remains in full force and effect. In case of conflict between the terms of the Agreement and this MOU, the terms of the Agreement shall apply. The Agreement is attached to this MOU as Exhibit A and incorporated herein by this reference.

5. Containers.

Pursuant to Section 5.4.3(F)(b)(4) of the Agreement, the City approves Franchisee's proposal to offer Pink Containers, in substantially similar form as depicted in the rendering attached to this MOU as Exhibit B and incorporated herein by this reference, to customers for the sole purpose of the Donation Program. All other requirements in Section 5.4.3 of the Agreement shall apply to the Pink Containers.

6. Franchise Fee.

The City and Franchisee agree that donations collected by Franchisee and wholly remitted to Pink Sistas pursuant to the Donation Program are not "revenue or compensation . . . actually remitted by customers" to Franchisee for the services provided under the Agreement. Therefore, the parties agree that the franchise fee established by the Agreement shall not be imposed upon donations that are collected by Franchisee and wholly remitted to Pink Sistas pursuant to the Donation Program. The franchise fee will continue to apply to all "gross revenues," as defined by the Franchise Agreement, which includes any portions of donations that are not wholly remitted from Franchisee to Pink Sistas.

7. Reporting.

Once per quarter, for this duration of this MOU, Franchisee shall provide the following to the City: documentation showing the number and dollar amount of donations collected pursuant to the Donation Program; documentation showing the number and dollar amount of donations remitted to Pink Sistas pursuant to the Donation Program; and documentation showing the number of Pink Containers issued to customers pursuant to the Donation Program.

8. Indemnification.

Both parties mutually agree to indemnify, defend, and hold each other and each other's officers, agents, and employees harmless against any and all claims, demands, damages, liabilities, and costs incurred by the other party, as the result of a third party claim, arising out of, or in connection with, either directly or indirectly, the terms of this MOU.

9. Miscellaneous.

- a. The parties agree that this MOU does not establish any precedent or practice for any future dealings between the parties.
- b. All notices required or permitted under this MOU shall be made in writing and may be given by personal delivery, first class mail, certified mail (return receipt requested), or email (read receipt requested). Mailed notices shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery.
- c. This MOU is governed by the laws of the State of Oregon without reference to its "conflict of laws" provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement shall be brought in the appropriate court of Clackamas County, Oregon.
- d. Neither party shall assign or transfer any interest in or duty under this MOU without the written consent of the other party and no assignment shall be of any force or effect whatsoever unless and until the other party has consented.
- e. In the event any provision or portion of this MOU is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the Parties when they entered into the Agreement.
- f. Franchisee and the City are the only parties to this MOU and are the only parties entitled to enforce its terms. Nothing in this MOUs gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this MOU.
- g. The parties agree not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability,

national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this MOU.

- h. This MOU and attached Exhibits constitute the entire MOU between the parties. There are no understandings, agreements, or representations, oral or written, not specified in this MOU regarding this MOU.
- i. No waiver, consent, modification, or change of terms of this MOU shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given.
- j. All provisions in this MOU, which by their nature should remain in effect beyond termination or expiration of this MOU, will survive until fulfilled.
- k. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same MOU.
- l. The parties represent and warrant that they have the right and authority to execute this Agreement. The parties further represent and warrant that the person executing this Agreement is duly authorized to do so.

For the City:

For Franchisee:



Randy Ealy
Interim City Administrator



Kris Wright

District Manager

Date: 9-4-2025

Date: 9/5/25