

**ORDINANCE NO. 595
CITY OF DAYTON**

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF DAYTON, INCLUDING BUT NOT LIMITED TO THE ENVIRONMENTAL HEALTH AND SANITATION ASPECTS; GRANTING AN EXCLUSIVE FRANCHISE TO PROVIDE SOLID WASTE SERVICE WITHIN THE CITY; PROVIDING FOR RECYCLING, REUSE AND OTHER RESOURCE RECOVERY AND WASTE REDUCTION SERVICES; REPEALING ALL OTHER ORDINANCES AND RESOLUTIONS IN CONFLICT WITH THIS ORDINANCE

WHEREAS, the City desires to continue to protect the public health, safety, welfare and environment and to conserve energy and natural resources within the City and to carry out the recycling, reuse and other resource recovery and waste reduction requirements of the State of Oregon and of ORS Chapter 459; and

WHEREAS, the efficient and orderly collection of solid waste is an essential component of public safety and health, balanced solid waste management planning must be maintained and developed so as to safeguard public health and insure the efficient and orderly collection and disposal of solid waste; and

WHEREAS, the City has the authority within its jurisdiction to regulate the collection of solid waste, including but not limited to, the right to franchise solid waste collection and disposal; and

WHEREAS, by Ordinance No. 413, subsequently amended by Ordinances No. 491, 524 and 552, the City granted to Franchisee a non-exclusive franchise to collect and dispose of solid waste and recyclable material within the City. Such Franchise is replaced in its entirety in accordance with this franchise; and

WHEREAS, the City and Franchisee hereby agree to amend the existing Collection Franchise and extend its term through December 31, 2017.

THE CITY OF DAYTON ORDAINS AS FOLLOWS:

Section 1: Exhibit A “Solid Waste Collection Franchise” is adopted in its entirety.

Section 2: Ordinance Nos. 413, 491, 524 and 552 are hereby repealed and replaced in their entirety with this Ordinance No.595

Section 3. This ordinance shall go into affect 30 days after adoption.

Passed and adopted by the Council on this 5th day of April 2010

Mode of Enactment:

ORDINANCE NO. 595

Date of first reading: March 1, 2010 In full _____ or by title only

Date of second reading: April 5, 2010 In full _____ or by title only

No Council member present at the meeting requested that the ordinance be read in full.

_____ A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder not later than one week before the first reading of the Ordinance.


Final Vote:

In Favor: **Blackburn, Dickson, Evers, Frank, Hensley, White, Wytoski**


Opposed: **None**

Absent: **None**

Abstained: **None**



Jolie White Mayor



Peggy Selberg City Recorder

4/30/2010

Date of Signing

4/5/2010

Date of Enactment

EXHIBIT A
SOLID WASTE COLLECTION FRANCHISE

- 1) This Solid Waste Collection Franchise (the “Franchise” or “Agreement”) is entered into this ___ day of _____, 20___, between the City of DAYTON (the “Franchisor” or “City”) and Western Oregon Waste, an Oregon corporation (the “Franchisee”).

Article I. DEFINITIONS

- 1) For the purposes of this Franchise and the administration thereof, the following list of terms shall have the designated meanings as set forth herein.
- 2) The definitions and terms set forth in Ordinance No. 595 of the Effective Date of the Agreement shall be applicable to the terms utilized in this Agreement except where the same conflict with state statute or other specific provisions of this Franchise in which case state statute and specific franchise language shall control.
- 3) Definitions in this Franchise shall have the following meaning:
- a) **Affiliated Company** – shall mean the parent company of Franchisee or any company of which thirty percent (30%) or more of the common stock of control is owned or controlled by Franchisee or shareholder(s) of Franchisee who own or control thirty percent (30%) or more of the common stock of Franchisee, and which shares costs with the Franchisee with respect to the services provided under this Agreement. Examples of such shared costs include but are not limited to labor, equipment or administrative costs.
 - b) **Allowable Expenses** – shall mean those expenses used for calculation of the Operating Ratio, as outlined in Article VI.
 - c) **Gross Cash Receipts** – shall mean all payments received on account for services provided pursuant to this agreement.
 - d) **City** – shall mean the City of DAYTON, its Council or other authorized designated representative.
 - e) **City Council** – shall mean the Council of the City of DAYTON in which the City’s legislative powers are vested.

- f) Collection or Collection Service – shall mean all or any part of the activities involved in the collection of Solid Waste, or other material specified in this Agreement and its transportation to an appropriate Solid Waste Management Facility.
- g) Construction and Demolition Waste – shall mean any Solid Waste generated from the construction, remodeling or demolition of the entirety or any portion of a building, improvement, structure or dwelling, regardless of its current or intended purpose.
- h) Customer – shall mean any generator of Solid Waste in the City to whom Franchisee provides Collection Service under this Agreement.
- i) DEQ – shall mean the Oregon State Department of Environmental Quality or any successor to such agency’s functions or responsibilities.
- j) Disposal – shall mean the final disposition of Solid Waste collected by the Franchisee at a permitted Solid Waste Management Facility selected by Franchisee. Franchisee shall make every effort to locate and utilize the most cost-effective DEQ-approved site.
- k) Disposal Fees – for a given period shall mean the total paid by Franchisee for the Disposal of Solid Waste collected under this Agreement, including but not limited to, the cost of transfer, transport and Disposal.
- l) Disposal Site – shall mean land and facilities approved and permitted by DEQ for the disposal, handling, treatment, management or transfer of Solid Waste, including but not limited to landfills, transfer stations, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, and composting plants.
- m) Effective Date – shall mean _____, 20__, the date on which this Agreement shall become effective and any prior agreement(s) concerning the Collection of Solid Waste shall be amended or replaced.
- n) Force Majeure – shall mean acts of God, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, strikes, lockout or other industrial disturbances, acts of the public enemy, wars, blockades, embargoes, or act of civil or military authority, explosions, governmental restraint, temporary unavailability of a Disposal Site and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.
- o) Franchise – shall mean the rights granted to the Franchisee under the terms and conditions of this Agreement.

- p) Franchise Area – shall mean i) the entire territory included within the City limits of DAYTON as of the Effective Date of this Agreement; and ii) such additional area as may thereafter be included within the City Limits from time to time as a result of annexations.
- q) Gross Revenue –shall mean all amounts billed by Franchisee for the services provided under this franchise, including, but not limited to, charges for collection of solid waste and recyclable materials, revenue from the sale of recycled material, disposal charges, surcharges, fees and taxes. Revenue shall also include any other monies received by Franchisee from any other entity as compensation for the services provided hereunder, allocated fairly and reasonably to the jurisdiction and customers receiving said services.
- r) Hazardous Waste – shall be defined as in ORS 466, as follows:
- i) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.
 - ii) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.
 - iii) Discarded, useless or unwanted containers and receptacles used in the transportation, storage use or application of the substances described elsewhere in this definition.
 - iv) Hazardous Waste shall not include radioactive wastes, materials, and receptacles for transport, storage, or use of same.
 - v) Hazardous Waste shall not include incidental Household Hazardous Waste or Small Quantity Generator Waste, which is commingled with Solid Waste.
- s) Household Hazardous Waste – shall be defined as in ORS 459, meaning any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. Household Hazardous Waste may include but is not limited to some cleaners, solvents, pesticides and automotive and paint products.
- t) Medical Waste – shall include biological waste, infectious waste, pathological waste and sharps, as defined by ORS 459. Materials included in this definition may or may not be

acceptable in Franchisee's medical waste collection program, depending on the specific requirements set forth by Franchisee's duly contracted vendor for this service.

- i) Biological waste includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.
 - ii) Infectious waste includes biological waste, cultures and stocks, pathological waste and sharps.
 - iii) Pathological waste includes biopsy materials and all human tissues; Anatomical parts that emanate from surgeries, autopsies and obstetrical and laboratory procedures; and Animal carcasses exposed to pathogens in research and the bedding and other waste from such animals; Pathological waste does not include teeth or formaldehyde or other preservative agents.
 - iv) Sharps includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.
- u) Operating Ratio – Is a formula equal to the total allowable expenses divided by the sum of Gross Revenue minus unallowable expenses. The target Operating Ratio for this agreement shall be Eighty-Eight percent (88%).
- v) Point of Collection – shall be defined for can/cart service as the time at which the can/cart is emptied of its contents into Franchisee's collection vehicle. Point of Collection for commercial containers and drop boxes shall be defined as the time at which materials are placed into the container or drop box.
- w) Rate Category – shall mean the specific rate the Franchisee is authorized to charge for a specific type or level of collection service as set forth in an Approved Rate Schedule approved by the City and amended from time to time pursuant to Article VI of this Agreement.
- x) Recycling – shall mean any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.
- y) Recyclable Material – shall mean any waste material or group of materials that can be collected and sold for reprocessing into new products.
- z) Revenue Requirement – shall mean the sum of the quotient of Allowable Expenses divided by the Operating Ratio (expressed as a decimal) and Pass-Through Expenses.
- aa) Small Quantity Generator Waste – shall refer to waste materials produced by a Conditionally Exempt Small Quantity Generator, which is defined in ORS 459 as a person who generates hazardous waste but is conditionally exempt from certain regulations because the waste is

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generated in quantities below the threshold adopted by the Environmental Quality Commission.

- bb) Solid Waste – shall include all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard; grass clippings; composts; sewer sludge; residential, commercial and industrial appliances, equipment, and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts and vehicle tires; manure, vegetable, or animal solid and semi-solid waste and dead animals. Waste shall mean useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste or waste, may from time to time have value and thus be utilized shall not remove them from the definition. The terms solid waste or waste do not include: Environmentally hazardous wastes as defined above, materials used for fertilized or for other productive purposes or land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals or land which has been zoned for residential non-agricultural purposes; Septic Tank and cesspool pumping or chemical toilet waste; Source separated recyclable materials that are purchased from or exchanged by the generator for fair market value for recycling or reuse.
- cc) Solid Waste Management Facility - shall mean any permitted facility designed to manage Solid Waste including but not limited to a Solid Waste transfer station, recyclable materials recovery or processing facility, composting facility, waste-to-energy facility, and landfill facilities.
- dd) Source Separated – shall mean recyclable materials that have been separated according to Franchisee guidelines and removed from the waste stream by the person who last used the recyclable material.
- ee) Special Waste - shall mean Solid Waste which is generated from an agricultural, industrial, commercial and/or manufacturing operation or process and collected through the use of a drop box or other specialized collection receptacle (other than a residential can, roll-cart or front load container) or which requires other special handling or extraordinary management.
- ff) Term - shall mean the term of this Agreement, as provided for in, and as the same may be extended from time to time in accordance with Article III of this Agreement.
- gg) Generator - shall mean the owner or occupant of premises, including the City, individuals, businesses and other entities, that generate Solid Waste in the Franchise Area.
- hh) Yard Debris - shall include trimmings and clippings, grass, leaves, limbs, vegetables, fruits, flowers, trees, shrubs, and stumps. Yard Debris does not include, sod, soil, manure, pet waste, animal bedding, hay, straw, dirt, rocks, trash, plastic, metal or stumps with attached rootballs, and any other organic material not complying with requirements adopted by the Franchisee.

ARTICLE II – Exclusive Franchise

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- 1) Pursuant to the authority of ORS 459A.085 and Section __ of Ordinance _____, the City grants this exclusive Franchise for the collection of all Solid Waste generated within the city limits of the City of DAYTON. It is expressly understood that all Solid Waste shall become the property of the Franchisee at the Point of Collection. The quality and character of the service to be provided hereunder shall be in accordance with the minimum requirements as set forth in the City Code and any other standards agreed to by the Franchisee and the City and set forth in Exhibit "B," attached hereto and made a part hereof by this reference.

ARTICLE III – Franchise Term

- 1) Except as may be extended by agreement of the parties, the rights and privileges granted herein shall be in full force and effect through December 31st, 2017; provided however, that commencing January 1, 2010 and each January 1 thereafter (the "anniversary date"), this Franchise term shall be automatically extended one (1) additional year unless the City, in its sole discretion provides written notice to Franchisee that it elects not to approve such annual extension. Written notice of the City's election not to grant an annual extension shall be delivered to Franchisee within thirty (30) days prior to the next applicable anniversary date.

ARTICLE IV – Franchise Administration Fee

- 1) As consideration for the granting of this Franchise and to reimburse the City for the administration thereof, Franchisee shall collect and pay to the City a monthly fee equal to three percent (3%) of Gross Cash Receipts, and may be amended from time to time at the sole option of the City Council.

ARTICLE V – Franchisee's Responsibilities

- 1) The work to be done by Franchisee pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required as provided in Exhibit "B" attached hereto. Perform all such services in accordance with the requirements of the rules and regulations of the City and other applicable governmental agencies.
- 2) Franchisee shall be obligated to collect all Solid Waste generated within the City of DAYTON subject to the terms and conditions of this Agreement; provided, that the rates charged by the Franchisee for the collection of Special Waste shall not be subject to regulation by the City.
- 3) Franchisee shall hold City, including City officers, City agents and employees free and harmless from any claim for personal injury or damage, including any judgments, attorney's fees or defense costs which may result from any operations pursuant to this Franchise. Franchisee agrees to carry liability insurance covering the operations and premises upon which operations are conducted and to name City as an additional insured for the term of this Franchise. Minimum liability insurance coverage shall be \$500,000.00 bodily injury to one person, \$1,000,000.00 for injuries arising out of any one accident or incident and for not less than \$250,000.00 for property damage for any one

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occurrence. The policy shall provide that it cannot be canceled without 30 days advance written notice to the City.

- 4) Franchisee shall make payment of all claims, debts, expenses and wages for which Franchisee is responsible and to abide by all applicable laws, the City of DAYTON Municipal Code, and applicable rules and regulations which relate to the franchisee's duties and payment therefore.
- 5) Franchisee shall perform all services and furnish all personnel, equipment and supplies necessary to timely bill and collect from all Customers, all rates and charges authorized pursuant to this Agreement and the City Code for Solid Waste Collection Services.
- 6) The work to be done by Franchisee pursuant to Exhibit "B" of this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within City are at all times provided litter free, reliable, and courteous and high-quality Solid Waste Collection, and any specified Recycling services. City may require changes in existing services or the addition of new services and Franchisee shall comply, provided that if such changes result in substantial and significant increases in cost to the Franchisee that cause the Franchisee's Operating Ratio to rise above 91%, Franchisee shall have a right to apply for a special rate review and adjustment pursuant to Article VI(h) of this Agreement.
- 7) Franchisee may choose to exclude from its obligation of collection the following items:
 - a) Hazardous Waste as defined herein or as determined by the City to be hazardous to equipment, service workers or to the public.
 - b) Animal processing offal.
 - c) Sewage sludge.
 - d) Septic tank and cesspool pumpings or other sludge.
 - e) Manure.
 - f) Vegetable or animal solid and semi solid waste.
 - g) Dead animals.
 - h) Petroleum products.

ARTICLE VI – Rates and Compensation

- 1) Determination of Rates.
 - a) In consideration for its services hereunder, Franchisee shall be allowed to charge and collect those rates adopted each year in accordance with this section, the "Approved Rate Schedule"

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attached hereto as Exhibit "A". The rates set shall be fixed at a level sufficient to produce a Revenue Requirement for Franchisee that is equal to the quotient of Allowable Expenses divided by the Operating Ratio (expressed as a decimal). For purposes of this section, 'Allowable Expenses' shall be allowable to the extent they are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), do not exceed the fair market value of like services, and are reasonably and prudently incurred by the Franchisee in the course of performing its obligations under this Franchise.

- b) Allowable expenses shall include but not be limited to the following:
- i) The costs of complying with all laws, regulations or orders applicable to the obligations of Franchisee hereunder, as now or hereafter amended.
 - ii) Disposal fees.
 - iii) Labor costs, including supervisory labor, associated with provision of services under the Franchise, including workers compensation and benefits and third party transportation costs.
 - iv) All expenses of maintaining and replacing capital equipment, and assets, including depreciation, registration fees, fuel, oil, tires, repair and maintenance. Capital equipment includes sufficient "back-up" equipment as required to ensure the Franchisee's ability to meet operational requirements.
 - v) Performance bonds and insurance, at a minimum, in the amounts and coverage required by the city.
 - vi) Administrative costs including officer salaries, administrative staff, data processing, postage, billing and supplies.
 - vii) Utilities.
 - viii) Training and worker safety.
 - ix) Marketing, promotion and public education costs.
 - x) Property or facility depreciation, rental or lease costs necessary to the provision of services required by the franchise agreement.
 - xi) Professional fees and costs.
 - xii) Interest expenses other than any interest expenses associated with purchases of routes or business purchases.

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- xiii) Franchise fees.
 - xiv) Any expense incurred in the collection, handling, processing, storing, transporting, marketing, or sale or other disposition of recyclable materials.
 - xv) All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon Franchisee or levied by federal, state or local governments in connection with Franchisee's provision of Solid Waste collection, transportation, disposal and resource recovery services.
 - xvi) Any other expense determined in advance by the City and Franchisee to be reasonable and necessary to the provision of the services required under the franchise agreement.
- c) Under no circumstances will the following expenses be counted as Allowable Expenses:
- i) Interest and amortization on the purchase of the DAYTON franchise routes or other franchise routes, buyout of partners, redemption of shares, or other financial transactions not directly related to the operation of the collection company.
 - ii) Political and charitable cash contributions.
 - iii) Federal, state, and local income taxes.
 - iv) Loss on sale of assets.
 - v) Officers' life insurance premiums.
 - vi) Director fees.
 - vii) Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase.
 - viii) Penalties and fines.
- d) For purposes of this section, Operating Ratio shall equal eighty eight percent (88%)
- e) The Franchisee and its affiliates may use common resources (equipment, fuel, labor, etc.) to service the City and other nearby jurisdictions. In such cases, it will be necessary to allocate the costs of such resources among the jurisdictions they serve. Franchisee and the City shall mutually agree upon an allocation formula, which shall be attached to the Franchise as Exhibit "C". Such allocation formula may be amended upon the written mutual consent of the Franchisee and the city and shall be applied, as amended, to determine Allowable Expenses throughout the term of the Franchise.

- f) Where the Franchisee shares management and general and administrative resources with its affiliates, in lieu of the Allocation Method, the Franchisee and the city agree that the charges for such services shall be determined as a percentage of gross revenues which may be adjusted by mutual agreement between the city and the Franchisee. Charges for these services shall be equal to or less than eighty percent (80%) of the cost of procuring such services from third party service providers.
- g) Except as provided in subsection (h) of this section, a cost of living rate adjustment shall be made annually according to the following procedures:
 - i) Commencing on July 1, 2011 and on July 1 of each year thereafter (the Adjustment Date) throughout the term of the Franchise, the rates shall be adjusted in a percentage amount equal to the percent change in the Consumer Price Index for all Urban Consumers for West-B/C, All Items published by the Bureau of Labor Statistics ("the Index") that occurred between the months of May and April of the previous year and the months of May and April of the current year provided however, that the adjustment shall not exceed 4 percent in any year. The adjusted rates shall become effective on each July 1.
 - ii) On each Adjustment Date, the then-current rates shall be multiplied by a fraction, the numerator of which is the 12-month average of the Index for the current year and the denominator of which is the 12-month average of the Index for the previous year, where the 12-month average of the Index is calculated by adding each monthly West-B/C Index published from May through April and dividing such sum by 12.
 - iii) The Franchisee shall submit to the City a notice of a change in the established rates based on the CPI adjustment described in (i) and (ii). This document shall be submitted to the City Manager as soon as possible after April 30 but no later than June 1. Within thirty days following the written notice of a rate change, the City Manager shall
 - (a) Make specific findings on the validity of the change in the CPI;
 - (b) Forward a copy of findings, the franchisee's notice, and a copy of the amended rates to the City Council and the franchisee; and
 - (c) These rates shall become effective on July 1.
 - iv) In the event the Index for Urban Consumers for West-B/C is no longer published by the Bureau of Labor Statistics, Franchisee and City shall negotiate in good faith to agree upon a suitable replacement index reflective of the cost of living in the franchise area.
- h) Each year, except the first year of this agreement, on or before April 1, the Franchisee will submit to the city a rate review report (the "Report") showing the actual Allowable Expenses incurred by Franchisee in the preceding calendar year, all additional Allowable Expenses Franchisee reasonably anticipates will be incurred or imposed in the current calendar year, the allocation formulas used to determine expenses, the actual Operating Ratio for the preceding calendar year, and the expected Operating Ratio for the current calendar year. If the Report

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indicates that the Operating Ratio for the next succeeding 12-month period will be less than eighty-five percent (85%) or greater than ninety-one percent (91%) then rate review will automatically be implemented in accordance with this section. In addition, prior to April 15, either Franchisee or the city may request a rate review to confirm that the Operating Ratio for the next succeeding 12-month period will be not less than eighty-five percent (85%) and not greater than ninety-one percent (91%), provided, however, that not more than five consecutive years shall pass during the term of this franchise without a formal rate review as set forth in this subsection. Under no circumstances will there be an increase under section (g) and (h) in a given year.

- i) In the event a rate review is requested or required as provided hereunder, the following procedures shall bind the city and Franchisee:
 - i) Each year, except for the first year of his agreement, no later than April 1, Franchisee shall submit to the city a rate review report (the "Report"). If there is reason to believe, based on the city's review of the data from the report, that the Operating Ratio for the current calendar year will be less than eighty-five percent (85%) or greater than ninety-one percent (91%), the Report shall also include proposed rates for the current calendar year that are calculated in accordance with subsection (b) above to produce Franchisee's Revenue Requirement for such calendar year in light of all Allowable Expenses set forth in the Report.
 - ii) The city shall review the Report and, if the city's review of the Report indicates that the Operating Ratio is likely to be greater than ninety-one percent (91%) or less than eighty-five percent (85%), the city shall adopt rates for the next year, either as proposed by Franchisee in the Report or as modified by the city, no later than June 15. The duly adopted rates shall then become effective not later than July 1 and shall supersede the rates that were previously in effect. The adopted rates shall provide the franchisee an operating ratio of 88%.
 - iii) In the event the Report shows that the Operating Ratio for the current calendar year is not likely to be greater than ninety-one (91%) percent or less than eighty-five (85%) percent, the existing rates shall not be adjusted and the current rates shall continue in effect until next adjusted in accordance with subsection (g) of this section.
- j) The City shall set all policies and procedures respecting the implementation of rates and shall direct Franchisee to carry out such policies and procedures. The City, its agents or employees may, upon reasonable notice and during normal business hours, audit those records of Franchisee that pertain to Revenue and Allowable Expenses; provided, however, in reviewing such records, the city and its agents and employees shall maintain such records in strict confidence and not disclose, divulge or transmit such records or copies of such records to any third party, subject to the provisions of the Oregon Public Records Law.

- k) Special Waste - When no rate has been established for a service which the franchisee can provide at customer request, the franchisee shall charge a rate based on the factors outlined in this section. The franchisee shall require a contract from a customer or customers who require an unusual service involving added or specialized equipment solely to provide that service. The purpose of this section is to prevent the added cost from being assessed against other rate-payers if the customer later withdraws from service. The terms of this contract shall specifically provide for this protection.
 - l) No Rate Preferences. The rates to be charged to all persons by franchisee shall be adequate, reasonable, uniform and based upon the level and type of service rendered. Rates established by the Council are fixed rates and Franchisee shall not give preference to any person, locality, or type of solid waste stored, collected, transported or disposed.
 - i) Nothing in this section is intended to prevent the reasonable establishment of uniform classes of rates based on the type of waste collected, transported, disposed of, recycled or resource recovered; or the number, type and location of customers served; or upon other factors so that rates are reasonably based on the cost of the particular service.
 - ii) Nothing in this section is intended to prevent Franchisee from providing service at a reduced cost for a civic, community, benevolent or charitable purpose.
 - m) In the event Franchisee, at any time, becomes liable to pay any new or increased legislated costs, including surcharges, fees or expenses associated with regulatory requirements, or any new or increased legislated disposal and/or legislated long-haul transportation costs or fees, and these costs represent in excess of two percent (2%) of Gross Revenue, then all such costs and/or fees shall be passed through and added to the then-existing rate structure immediately upon City's receipt and verification of Franchisee's documentation of and liability to pay the same. In the event Franchisee, at any time, experiences a reduction in such costs, in excess of two percent (2%) of Gross Revenue, then all such savings shall be passed through and subtracted from the then-existing rate structure immediately upon City's receipt and verification of Franchisee's documentation of the same. Franchisee shall include all such costs, cost savings, and/or fees in the next succeeding year's Report as actual Allowable Expenses of Franchisee.
- 2) Billing Terms
- a) The Franchisee may require advance payment for residential and multi-family residential service for up to three months in advance, or any combination thereof. When service is terminated which was paid for in advance, the franchisee will refund a pro rata portion of the payment for any period in which service was not provided. When billed in advance, no rate adjustment shall be effective until the end of the advance billing. Accounts billed three months in advance shall not be considered delinquent until after sixty days from initial billing.
 - b) The franchisee may charge at the time of or in advance of providing service for any customer who has not established credit with the franchisee. The franchisee may consider in approving

or disapproving credit, credit information used in the normal course of business practice by other businesses.

- c) No-Service credits for vacation stops will be issued when the customer notifies the Franchisee's office in advance. Credits are only available when two or more service days will be missed.

ARTICLE VII – Reports

- 1) The following reports and information shall be submitted by Franchisee to the City in accordance with the following schedule:
 - a) Commencing April 1, 2010 and each April 1 thereafter, the Franchisee shall submit to the Council an Annual Report consisting of the following:
 - i. Reviewed financial statements for Franchisee for the preceding year, with mutually agreed schedules prepared by the Franchisee to provide backup for any allocated expenses. Franchisee shall also identify any expense incurred with an Affiliated Company. At the City's request, Franchisee shall provide such backup as is reasonable to verify that such expense was equal to or less than that which would have been incurred with a non-Affiliated Company;
 - ii. Projected "Allowable Expenses" and "Pass-Through Expenses" for the current year;
 - iii. Projected Gross Revenue for the current year based on current levels of service and the current Rate Schedule (before any cost of living adjustment); and
 - iv. Subject to the conditions of Article VI, a proposed Rate Schedule to be effective July 1 with rationale as to how the rates were developed.

ARTICLE VIII – Suspension, Modification or Revocation of Franchise

- 1) Franchisee shall provide 120 days advance written notice of any proposed transfer or assignment. Except as provided in this Section, Franchisee shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person or corporate entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. Any such assignment without the consent of the City Council shall be void and the attempted assignment shall constitute a default of this Agreement.
- 2) If Franchisee requests City's consideration of and consent to a transfer or assignment, City shall act on such request within ninety (90) days of the receipt of Franchisee's notice and shall not unreasonably refuse to approve an assignment of this franchise to an assignee with sufficient knowledge, experience and financial resources so as to be able to meet the obligations of the Franchisee hereunder.
- 3) Except as otherwise provided in this Agreement, each of the following shall constitute an event of default hereunder:

- a) Franchisee fails to perform its obligations under this Agreement, as it may be amended from time to time, and if the failure or refusal of Franchisee to perform as required by this Agreement is not cured within a reasonable time but not to exceed sixty (60) days, after receiving notice from the City pursuant to Section 8.3 below.
 - b) There is a seizure of attachment (other than a prejudgment attachment) of, or levy affecting possession of the operating equipment of Franchisee, including but not without limit, its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Franchisee's performance of all obligations under this Agreement and which cannot be released, bonded or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.
 - c) Franchisee files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee (other than as part of a transfer of equipment no longer useful to Franchisee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Franchisee for a part of Franchisee's operating assets or any substantial part of Franchisee's property, or shall make any general assignment for the benefit of Franchisee's creditors, or shall fail generally to pay Franchisee's debts as they become due or shall take any action in furtherance of any of the foregoing; or
 - d) Any court having jurisdiction shall enter a decree or order for relief in respect of Franchisee, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Franchisee or for any part of Franchisee's operating equipment or assets, or order the winding up or liquidation of the affairs of Franchisee.
- 4) In accordance with this Section, this Franchise may be terminated by the City if Franchisee fails to comply with the provisions and specifications of this Franchise so designated in the written notice. Provided, however, if a threat to public health, or some other condition of equal proportion, exists as a result of an act or omission of Franchisee, City may take immediate action to correct said health hazard, and take whatever action the City Council deems necessary to terminate the Franchise.
- a) After written notice from City that such grounds exist, Franchisee shall have not more than 60 days from the date of mailing of the notice of termination in which to comply or request a public hearing from the City.
 - b) If Franchisee fails to comply within the time designated by the City with the order of the City, entered upon the basis of findings at the public hearing, the City may suspend, modify or revoke the franchise or make such action contingent upon continued non-compliance.

- c) At a public hearing, Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the City. The findings of the City thereon shall be subject to judicial review.
- 5) In the event of termination for default, the City shall have the right to, but no obligation to take temporary possession of any and all of Franchisee's land, equipment, and other property used or necessary to the provision of services under this Agreement. City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Solid Waste collection services under this Agreement, which may include the award of an agreement to another waste hauling company. If City retains possession thereof after the period of time for which Franchisee has already been paid by means of bills issued in advance of providing service for the class of service involved, Franchisee shall be entitled to its allocated portion of the existing debt service for such property (which shall be offset against any damages due the City for Franchisee's default). Franchisee shall furnish City with immediate access to all of its business and financial records including billing of accounts for services.
- 6) In addition to any and all other legal or equitable remedies, in the event the Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to the appropriate Disposal Site, any or all Solid Waste required to be collected under this Agreement, for a period of more than ten (10) consecutive days, and if, as a result thereof, should Solid Waste accumulate in the City to such an extent, in any manner, or for such time that the City should find that such accumulation endangers or menaces the public health or safety, then the City shall have the right, but not the obligation, without payment to Franchisee, upon twenty-four (24) hours prior notice to Franchisee during the period of such emergency as determined by the City:
- a) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee; and/or
 - b) to take possession of any or all of Franchisee's land, equipment, and other property used or necessary to the provision of services under this Agreement.
- 7) Notices of Franchisee's failure, refusal or neglect to collect and transport Solid Waste may be given orally to Franchisee at its principal office and shall be effective immediately. Written confirmation or such oral notification shall be sent to Franchisee within twenty-four (24) hours of the oral notification.
- 8) Franchisee further agrees that in such event of default:
- a) It will fully cooperate with City to effect the transfer of such possession of property to City for City's use.
 - b) It will, if City so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

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- 9) Upon the City's possession and operation of the Franchisee's property as provided in Section V, the City shall have the ability but not the obligation to lease the Franchisee's property for a monthly rental fee equal to the debt service thereon, and shall indemnify and hold harmless the Franchisee from and against any damage to such equipment or liability to any third person injured or damaged as a result of the City's use of such equipment, up to the limits allowed under the Oregon Tort Claims Act.
- 10) City has no obligation to maintain possession of Franchisee's property and/or continue its use in providing the services under this Agreement for any period of time and may, at any time, in its sole discretion, relinquish possession to Franchisee.
- 11) City's right to retain possession of Franchisee's property, and to provide the services under this Agreement, shall continue until Franchisee can demonstrate to City's satisfaction that it is ready, willing and able to resume such services.

ARTICLE IX – Service Interruption

- 1) Except for the right to refuse service as set forth in the City Code, Franchisee shall not interrupt service unless:
 - a) Access, roads, streets and highways necessary for operation of the transfer station and its facilities or transportation of the refuse from the facilities are unusable and there are not alternative routes and provided that Franchisee shall restore services no later than 24 hours after the access, roads, streets and highways necessary for such services are open;
 - b) The occurrence of a Force Majeure event.
- 2) Upon the occurrence of a Force Majeure event, which prevents or impairs Franchisee's ability to perform any of the obligations under this Agreement, Franchisee shall:
 - a) Provide immediate oral notice to the City Manager or Director of Public Works, of the nature of the event and extent and anticipated duration of its inability to perform any obligation under this Agreement.
 - b) Commence immediately to develop, in communication and cooperation with the City, a plan for the restoration of performance; and
 - c) Take all such other reasonable actions so as to assist the City in protecting the public health and safety and to restore service and performance under this Agreement as soon as is practicable.

ARTICLE X – City Requirements

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- 1) City shall make available to Franchisee all information available to it to assist Franchisee in providing services rendered under the terms of this Agreement. City shall notify Franchisee of any complaints received by the City regarding Franchisee's services as soon as reasonably possible and Franchisee shall promptly respond to such complaint.

ARTICLE XI – Persons and Practices Exempt from Franchise

- 1) Nothing in this ordinance requires a franchise from the following persons for the following businesses or practices:
 - a) Transportation of solid waste by a person (generated or produced by such person) to a disposal site, resource recovery site or market so long as such person complies with this ordinance, other City Ordinances, and ORS Chapter 459 relating to solid waste management and regulations promulgated under any of the foregoing. Except as otherwise provided in this paragraph, in the case of a residential dwelling unit, (whether individually owned, nonowner occupied, or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative or association of property manager or agent of such person. A person owning, managing or entitled to possession of the property may haul wastes unlawfully left by a tenant or occupant at the end of the term of the tenancy or occupancy.
 - b) Transporting, disposing of or resource recovering sewage sludge, septic tank pumpings, and cesspool pumpings.
 - c) Any person licensed as a motor vehicle wrecker under ORS 481.345 et. Seq. from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts.
 - d) A contractor employed to demolish, construct or remodel a building or structure, including but not limited to land clearing operations and construction wastes, when the wastes hauled by such a contractor are hauled in vehicles owned by, and under the control of or in the possession of the contract and hauled by contractors' employees as a regular part of their employment. Third-party or sub-contracted hauling of construction and/or demolition waste without written approval from the franchisee shall be a violation of this ordinance.
 - e) The collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity, including, but not limited to Salvation Army, Goodwill Industries, and similar organizations.
 - f) The collection, transportation, or redemption of beverage containers under Chapter 459, including and limited to that portion commonly known as the "Bottle Bill", together with other related statutes or regulations promulgated thereunder or under ORS Chapter 459.

- g) The collection, transportation and recycling of totally source-separated materials or operation of a collection center for totally source-separated materials by a religious, charitable, benevolent or fraternal organization, which organization was not organized for nor is operated for any solid waste management purpose, and which organization is using the activities for fund-raising, including but not limited to Scouts, churches, service clubs and similar organizations.
 - h) A person transporting or disposing of wastes that such person creates or produces as an incidental part of the regular carrying on of a business or janitorial service, gardening, rendering or landscaping service. "Janitorial service" does not include the collection and pickup of accumulated or stored wastes.
 - i) Recyclable material collection, handling, processing, transportation or marketing when the recyclable material is source-separated by the generator and is purchased from or exchanged by the generator for fair market value for recycling or reuse.
- 2) Unless exempted pursuant to Section 11.1 above, or franchised or otherwise permitted pursuant to this agreement, no person shall solicit for service customers, advertise the providing or service or provide service within the boundaries of Dayton.

ARTICLE XII – Subfranchisees

- 1) Upon approval of the City, which approval shall not be unreasonably withheld, Franchisee may subcontract with others to provide a portion of the collection services required under this Agreement. This section shall not apply to contracts for emergencies, or contracts ancillary to the normal operation of Franchisee, such as, but without limitation, equipment repair or maintenance, labor, administrative support, outside professional services, or supplies. No subcontract shall relieve Franchisee of its responsibility for providing and maintaining services and for compliance with this Agreement. All subcontracts shall provide that the subcontractor shall not have claim or right of action whatsoever against the City. The City shall have all rights of recourse against the subcontractor as it would against the Franchisee.

ARTICLE XIII – Construction

- 1) Any finding of any court of competent jurisdiction that any portion of this Franchise is unconstitutional or invalid shall not invalidate any of the other provisions of this Agreement.

ARTICLE XIV – Dispute Resolution

- 1) In the event of any dispute arising under this Franchise, the City and Franchisee shall continue performance of their respective obligations under this Franchise.
- 2) In addition to and without waiving any rights and remedies under this Agreement or under civil or common law, in the event of a dispute under this Franchise, the parties may agree to Arbitration

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pursuant to the terms of this Section 13.2. Within fifteen (15) days after agreement to Arbitration has been reached, each party shall submit the name of its own arbitrator, selected from a panel of persons qualified with the Arbitration Service of Portland, Inc., or the American Arbitration Association, whichever organization is specified in the written notice of demand for arbitration, and the two arbitrators shall select a third arbitrator selected from such panel within 15 days, or in case of a disagreement concerning the appointment of the third arbitrator, the third arbitrator shall be appointed from such panel by the Presiding Judge of Yamhill County Circuit Court. During such time that the arbitrators are being selected or appointed, the parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner.

- 3) Arbitration shall be conducted in Yamhill County, Oregon in accordance with the then-effective arbitration rules of Arbitration Service of Portland, Inc., or the then-effective commercial arbitration rules of the American Arbitration Association, whichever organization is specified in the written notice of request for arbitration. The decision of the arbitrators in the matter shall be final and binding on the parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.
- 4) The City and Franchisee shall use their best efforts to conclude all arbitration proceedings involving rate adjustment disputes within 30 days following the commencement of such arbitration proceedings. Any arbitration determination granting an increase in rates may include an award of interest at the statutory rate for the period between June 1 and the date the increase becomes effective. Such award may also include any adjustment necessary to meet or restore Franchisee's Revenue Requirement.
- 5) The arbitrators shall have the authority, but shall not be required, to award to the prevailing party in the arbitration proceedings reasonable attorneys' fees, expert and nonexpert witness costs and expenses, and all other reasonable costs and expenses incurred directly or indirectly in connection with the proceedings.

ARTICLE XV – Attorneys Fees and Costs

- 1) In the event that suit or action is instituted to enforce any of the terms of this Franchise, the prevailing party shall be entitled to recover from the other such sums as the court adjudge as reasonable for attorneys fees at the trial upon appeal of such suit or action in addition to all other sums provided by law.

ARTICLE XVI – Enforcement

- 1) The City may enforce the provisions of this Chapter by administrative, civil or criminal remedies or any combination as necessary to obtain compliance with this Chapter. The City Council shall take such legislative action as is necessary to support the Chapter and the franchise granted thereunder.
- 2) The Franchisee may enforce the provisions of this ordinance by appropriate civil action as necessary to obtain compliance with this ordinance. The City Council shall take such legislative

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action as is necessary to support the ordinance and the franchisee in accordance with this agreement.

- 3) The City may enforce the provisions of this Chapter. The City may enter the affected premises at reasonable times for the purpose of determining compliance with the provisions and terms of this Chapter. Failure on the part of the customer to cooperate and allow inspection by the City, shall relieve the franchisee from the obligation of providing service. In the event of termination of service, the franchisee shall provide notice to the City.

ARTICLE XVII – Violations

- 1) The following are violations:
 - a) No person shall block the access to a solid waste container or drop box.
 - b) No unauthorized person shall take or remove any solid waste placed by the generator for collection by the franchisee including, but not limited to recyclable material. All solid waste shall become the property of the Franchisee at the point of collection.
 - c) No unauthorized person shall interfere with or remove any solid waste container from its location.
 - d) No unauthorized person shall remove the lid from any solid waste container, nor shall any such person collect, molest, or scatter solid waste stored in any solid waste container.
 - e) No unauthorized person shall deposit solid waste into any solid waste container.
 - f) No unauthorized person shall be permitted to access or enter a drop box, container or compactor for any purpose, including the salvage of potentially recyclable materials.
 - g) No person shall install a commercial/industrial – grade stationary compactor for collection of solid wastes unless the franchisee has been notified and has the necessary equipment to handle the solid waste.

IN WITNESS WHEREOF, the respective parties hereto by and through their duly authorized officers, have executed this Franchise in duplicate as of this ____ day of _____, 2010.

Approved:

CITY OF DAYTON

City Attorney

Mayor

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City Manager

Western Oregon Waste
Attested To:

Secretary

President

EXHIBIT A – CURRENT RATE SCHEDULE

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**EXHIBIT B – SOLID WASTE AND RECYCLING
COLLECTION SERVICE STANDARDS**

- 1) **Days and Hours of Collection.** Franchisee shall make Collections (Monday through Friday) for commercial accounts with special arrangements necessary for weekends and Holidays (Christmas and Thanksgiving), and once weekly (Monday through Friday) in all residential areas with special arrangements for Christmas and Thanksgiving. Changes in collection schedule and services may be approved by the City, including the provision of less than weekly service options. Collection of Solid Waste must occur within hours authorized by City Regulations, if any. Franchisee will promptly resolve any issues of noise to the reasonable satisfaction of the City.

- 2) **Residential Collection Services.** The Franchisee shall provide Collection services for all Solid Waste and Recycling generated from residential customers within the Franchise Area. The Collection services offered by the Franchisee to its residential customers shall include the services described in this Section.
 - a) **Solid Waste Collection from Single Family Residences.** Residential Solid Waste from a single family residence shall be considered properly set out or placed for Collection when placed in a leak proof vessel provided by and/or acceptable to Franchisee.
 - i) To qualify as “curbside service”, container must be placed in a visible and accessible location not more than four feet from the curb or edge of the street (and away from other objects that could interfere with collection, such as mailboxes, telephone poles, basketball hoops, vehicles, etc.) or such other location as may be specified by the City that constitutes the Franchisee's regular residential route for such residence.
 - ii) Sideyard collection must be within forty (40) feet of the roadside where collection is designated (the point where the container would be placed for curbside service). Franchisee shall not be required to go more than forty (40) feet without special arrangement between Franchisee and customer. Any residential Solid Waste set out for collection in accordance with the foregoing requirements is herein referred to as "Delivered for Collection."
 - b) The Franchisee shall provide, as part of its single family residential Collection services, the following with respect to all Solid Waste properly Delivered; provided that nothing herein shall prevent or in any way restrict any single family residential customer from choosing other Collection services offered by the Franchisee or prevent or restrict the Franchisee from offering other Collection services not described herein as approved by the City.
 - c) The Franchisee shall provide regularly scheduled Collection of Solid Waste along scheduled routes in all residential districts within the Franchise Area.
 - d) The Franchisee shall not be required to go into garages or other buildings to make pick-ups at residences nor shall the Franchisee be required to go into closed areas, through enclosed gates,

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lift containers out of enclosures, or go up or down stairs to make pick-ups unless specific arrangements for such pick-up are made between the customer and the Franchisee.

- 3) **Solid Waste Collection from Multi-Family Residential Buildings.** Multifamily residential Solid Waste shall be considered properly Delivered when placed in a Franchisee provided or approved vessel or vessels, which may be cans, roll carts or stationary or movable containers, compactors or debris boxes, or any combination thereof, as scheduled by the Franchisee with each multi-family residential customer, in a location accessible to the Franchisee's Collection vehicles.
- 4) **Multi-Family Service for Solid Waste.** The Franchisee shall provide regular scheduled Collection of Solid Waste for all multi-family residential buildings within the Franchise Area. The Franchisee shall not be required to go into any garages or other buildings to make a pick-up at a multi-family residence, nor shall the Franchisee be required to go into closed areas, through closed gates, lift containers out of enclosures, or go up or down stairs to make a pick-up unless specific arrangements for such pick-up are made between the customer and the Franchisee.
- 5) **Collection of Non Conforming Delivery of Residential Solid Waste and Recyclable Materials.**
 - a) The Franchisee shall not be obligated to collect any waste that does not constitute Solid Waste, or to collect Solid Waste or Recyclable Materials that are improperly delivered by a residential Customer. Notwithstanding the foregoing, the Franchisee may, in its sole discretion, proceed to collect improperly Delivered Solid Waste or Recyclable Materials and to charge the Customer such special charges as have been approved by the City to compensate Franchisee for its increased costs.
 - b) When the Franchisee refuses to collect waste which is not Solid Waste or to collect improperly Delivered Solid Waste or Recyclable Materials, the Franchisee may leave a written notice on which the Franchisee has provided its phone number and indicated the reasons for its refusal to collect the waste that does not constitute Solid Waste or the improperly Delivered Solid Waste or Recyclable Materials. In lieu of a written notice, the Franchisee, may, at its own discretion, elect to contact customers by telephone or other appropriate means to relay the necessary information.
- 6) **Collection on Private Streets/Roads.** For collection to be made at curbside on a private street/road, the street or road must meet the Franchisee's standards regarding clearance, composition, grade and condition.
 - a) Nothing in this section is intended to prevent Franchisee from refusing to provide service on a private street/road if there are unresolved safety issues that present undue risk to Franchisee's equipment or personnel.
 - b) Franchisee shall not be liable for damage to private streets or roads attributable to normal wear and tear.
 - c) To receive service on such private streets/roads, the Customer must have their address on the private street/road.

- 7) **In-Ground Cans.** The Franchisee is not required to remove a garbage can from an in ground or sunken location. Any Customer who wishes service at such a location shall be responsible for placement of the can, with lid, above ground.
- 8) **Ingress and Egress.** Franchisee shall not be required to pass through any doors or gate(s), cross flower beds, go through hedges, cross open lawns, or place themselves in a situation which would jeopardize their health and safety.
- 9) **Location of Empty Cans/Carts/Containers/Bins.** The Franchisee shall return any emptied can(s), cart(s), or container(s) to the Point of Collection, or for sideyard service, the identified storage location. The Franchisee is responsible to close any can/cart or container as securely as possible to prevent the lid blowing away or rain getting into the can/cart or container. For curbside service, the Customer shall be directed not to leave cans or carts at the point of collection for more than 24 hours past the collection day.
- 10) **Overweight Vessels.** The Franchisee is not required to service an overweight can/cart or container (see Figure “A”). If collection is refused, a written notice may be left describing the problem, and requesting that the Customer place the material in more than one container and describing pickup options. The notice must contain the Franchisee's name and phone number. The Franchisee shall keep a record of customer contacts and supply the same to the City upon request. In lieu of a written notice, the Franchisee, may, at its own discretion, elect to contact customers by telephone or other appropriate means to relay the necessary information.
- a) Where a Franchisee has refused to pick up an overweight can/cart/container, the Franchisee must provide collection of double the customer's subscribed service level at no additional cost to the Customer on the Customer's next scheduled collection day, if a special pick up has not been requested. Where a double pickup is provided, standard can/cart/ container weight limits apply to each can, cart, container, bundle or other receptacle. The Franchisee may charge the call back rate established by the City if the Customer requests that the material be picked up on any day other than the Customer's next regularly scheduled collection day.
- b) Figure “A” - Solid Waste Can, Cart, and Container Capacity

Weights include container and contents:

SIZE / TYPE MAXIMUM	WEIGHT INCLUDING CONTAINER
User-provided Cans up to and including 20 gallons	35 Lbs
User-provided Cans over 20 gallons, up to and including 32 gallons	60 Lbs
Franchisee provided roll carts of 32-40 gallons	75 Lbs
Franchisee provided roll carts over 40, up to and	105 Lbs

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including 60 gallons	
Franchisee provided roll carts over 60, up to and including 90 gallons	145 Lbs

11) **Commercial and Industrial Collection Services.** The Franchisee shall provide Collection services for all Solid Waste and Recycling generated from commercial or industrial premises within the Franchise Area. The Collection services offered by the Franchisee to its commercial and industrial customers shall include the services described in this Section.

- a) **Solid Waste.** The Franchisee shall offer Collection of Solid Waste delivered to a Franchisee approved commercial can, roll cart, container, compactor or debris box for Collection as scheduled with the customer.
- b) **Collection of Improperly Delivered Solid Waste.** The Franchisee shall not be obligated to collect any waste that does not constitute Solid Waste, or to collect Solid Waste that is improperly delivered by a commercial or industrial Customer. Notwithstanding the foregoing sentence, the Franchisee may, in its sole discretion, proceed to collect improperly Delivered Solid Waste and to charge the Customer such special charges as have been approved by the City to compensate Franchisee for the increased costs.

12) **Container Access Standards.** All container locations shall provide for direct and unobstructed access by Franchisee’s equipment and personnel. Any enclosure, pad, or prepared surface to be used for solid waste container placement must meet Franchisee’s minimum requirements. Franchisee shall make these standards available to customers upon request. Franchisee shall not be required to place a container in a location which poses an undue risk to Franchisee’s equipment or personnel, customer’s property or public safety.

13) **Medical and Infectious Waste.** Franchisee shall offer scheduled on-call Collection and Disposal of Medical and Infectious Waste from commercial and residential customers in compliance with Oregon Revised Statutes and Oregon Administrative Rules promulgated thereunder at rates approved by City. Rates for large generators will be submitted separately for approval.

14) **Recycling Services.** Except as specifically permitted elsewhere in the Franchise Agreement, the Franchisee shall be the sole provider of recycling collection services within the City boundaries. Materials accepted, equipment provided, collection standards, and frequency shall be at the discretion of the Franchisee within the guidelines of ORS 459. Recycling collection services may be provided through joint agreement of City and Franchisee. Franchisee reserves the right to refuse to provide recycling services to individual customers in certain special circumstances, including locations without adequate access or clearance, failure to comply with Franchisee’s preparation guidelines, and non-payment for solid waste collection services. If requested, collection service shall be limited to those areas of the City that the franchisee asserts it can reasonably provide said services. Standards for commercial customers shall be determined at the sole discretion of the Franchisee based on the needs of each commercial customer.

15) **Additional Services.** At City's request, and subject to the following, Franchisee shall provide any other non-exclusive solid waste collection services not granted by this Franchise ("New Services") upon receiving a written request from City and subject to establishment of an appropriate rate for such New Service. Nothing herein shall prevent or in any way restrict any single family residential customer or any commercial or industrial customer from choosing other Collection services offered by the Franchisee or prevent or restrict the Franchisee from offering other Collection services not described herein that are approved by City.

16) Collection Standards:

- a) **Care of Private Property.** Reasonable care shall be used by Franchisee's employees in handling all collection containers and enclosures. Franchisee shall pay for the cost of repair of all damage to private property caused by the actions or negligence of its employees. City shall refer issues about damage to private property to Franchisee.
- b) **Noise.** All Solid Waste Collection operations shall be conducted as quietly as possible, and shall conform to applicable City noise level regulations. City may conduct random checks of noise emission levels to ensure such compliance. Franchisee will promptly resolve any issues of noise to the satisfaction of City.
- c) **Minimization of Spills.** Franchisee shall use due care to prevent Solid Waste from being spilled or scattered during Collection. If any Solid Waste is spilled during any phase of Collection, Franchisee shall promptly clean up all spilled materials.
- d) **Clean-Up.** During Collection, where Solid Waste is delivered, Franchisee shall clean up litter spilled by Franchisee in the immediate vicinity. Franchisee shall discuss instances of repeated spillage not caused by it directly with the customer responsible. City shall attempt to rectify such situations with the customer if Franchisee has already attempted to do so without success.
- e) **Covering of Loads.** No material shall be transported by Franchisee to the Disposal Site or any other Solid Waste Management Facility in vehicle hoppers. Franchisee shall cover all debris boxes and compactor-tube openings during transport to the Disposal Site.
- f) **Fuel, Oil or Other Vehicle Fluid Spills.** Franchisee is responsible for the immediate clean-up of all fuel, oil, or vehicle fluid spills which result from Franchisee's vehicles. All vehicles must carry an acceptable absorbent material to use in the event of spills. Repair for damages caused by fuel, oil, or other vehicle fluid spills from Franchisee's vehicles or equipment shall be at Franchisee's expense.

17) Public/Customer Service and Accessibility for Solid Waste Collection.

- a) **Office and Operational Facility.** Franchisee shall provide a business office and maintain an operational facility in Yamhill County for purposes of carrying out its obligations under this Agreement.
- b) **Office Hours.** The Franchisee's office shall be open to the public Monday through Friday. The office may be closed on Saturdays and Sundays and those holidays on which the offices of the City are closed. A representative of the Franchisee shall be available at the Franchisee's local office during office hours to communicate with the public.
- c) **Telephone.** Franchisee shall be available by phone Monday through Friday, and have available service representatives sufficient to reasonably handle in a timely manner calls from customers. Franchisee shall provide a message service for off-hours.
- d) **Change in Collection Operations/Administration or Schedule.** In the event of changes to the Collection schedule the Franchisee must notify all affected customers in writing at least (14) days prior to any change in the day on which Solid Waste or Recycling Collection occurs. The Franchisee will not permit any customer subscribing to weekly service to go more than eight (8) days without service in connection with a Collection schedule change. This notification does not extend to the franchisee's holiday service schedule, or changes in service due to weather, equipment breakdown, construction, or other temporary conditions.
- e) **Service Issues.** Franchisee agrees to maintain documentation of all oral and written service issues registered with Franchisee from customers within City. Franchisee shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer issues. Franchisee shall document all written and oral issues, noting the name and address of complainant, date and time of issue, nature of issue, and nature and date of resolution. Such records shall be kept so that they may be inspected by representatives of City upon request.

18) Maintenance of Equipment.

- a) **Vehicles.** The Franchisee shall provide a fleet of Collection vehicles and equipment sufficient in number and capacity to efficiently perform the work required by this Agreement and shall maintain all such vehicles and equipment in good order and repair. The Franchisee shall have available sufficient back-up vehicles and equipment and qualified operators for each type of Collection vehicle used to respond to normal issues and emergencies.
- b) **Specifications.** All vehicles used by Franchisee in providing Solid Waste Collection services shall be registered with the Oregon Department of Motor Vehicles and shall meet or exceed all applicable legal standards. Franchisee agrees to maintain all of its Collection vehicles in compliance with the provisions of the Oregon Vehicle Code and the Public Utility Commission rules and regulations governing weight of trucks.

- c) **Vehicle Identification.** Franchisee's name, telephone number, and a unique vehicle identification number designed by Franchisee for each vehicle shall be prominently displayed on all vehicles. Franchisee shall not place City's logo on its vehicles.
- d) **Cleaning and Maintenance.** Franchisee shall maintain all of its properties, facilities and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times. All graffiti shall be removed immediately.
- e) **Inspection.** City may inspect vehicles at any time to determine compliance with requirements.
- f) **Maintenance and Repairs.** Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to federal motor carrier regulations.
- g) **Inventory.** Franchisee shall furnish sufficient vehicles to provide all service required under this Agreement, including backup Collection vehicles. Franchisee shall maintain a written inventory of all vehicles ("Vehicle Inventory List"), including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, and capacity.
- h) **Storage.** Franchisee shall arrange to store all vehicles and other equipment in safe and secure locations in accordance with applicable zoning regulations.
- i) **Operation.** All vehicles shall be operated in compliance with the Oregon Vehicle Code and all applicable safety and local ordinances. The Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.

19) Solid Waste Storage Vessels.

- a) **Single Family Residential.** The standard size customer-provided cans for residential services shall not exceed 32 gallons unless otherwise agreed to by the Franchisee. The combined weight of the can and contents shall be of a weight not to exceed 60 pounds, (see Figure "A") which meets standards allowed by OR-OSHA. Franchisee shall affix to every metal or plastic refuse can which no longer holds Solid Waste without spilling or leaking, a written notice advising that such can is unsuitable for properly delivering Solid Waste for Collection. In lieu of a written notice, the Franchisee, may, at its own discretion, elect to contact customers by telephone or other appropriate means to relay the necessary information. All perishable cartons, boxes and other perishable containers, and all paper and plastic garbage bags, used to contain Solid Waste will be disposed of along with their contents.
- b) **Other than Single Family Residential.**

- i) The Franchisee shall make available for rental to multi -family residences and commercial and industrial customers, containers and drop boxes for the Delivery of Solid Waste at rates approved by City.
 - ii) Containers shall be designed and constructed to be water-tight and prevent the leakage of liquids.
 - iii) All containers with a capacity of one cubic yard or more shall meet applicable federal regulations on Solid Waste container safety.
 - iv) Except in the case of specialty equipment required to meet a specific customer's needs, all containers and drop boxes used for the collection of solid waste shall be provided by the Franchisee. Prior to installation, any specialty equipment must be reviewed by Franchisee to ensure its compatibility with Franchisee's equipment and rate structure.
 - v) All containers or drop boxes provided by the Franchisee shall prominently display the name and telephone number of the Franchisee.
 - vi) Provisions to lock containers shall be provided at customer request, with the cost being paid by the customer at rates approved by City.
 - vii) If a customer cannot be serviced from a parking lot, a charge will be made for pulling the container more than 10 feet for collection.
- c) **Cleaning, Painting, Maintenance.** All Franchisee provided containers shall be maintained by the Franchisee in a functional condition and neat and clean appearance. The Franchisee shall periodically steam clean, repair and paint all commercial front-load containers, other than containers provided by Customers. The Franchisee shall be entitled to charge its customers for such cleaning, if required by the customer in addition to regular scheduled maintenance in accordance with the rates set forth for such services.
- d) **Care of Containers.** Containers provided by Franchisee are under the care and custody of the customer, and Franchisee shall not be responsible for damages to containers, outside of normal wear and tear, caused by acts of negligence, vandalism or carelessness by any parties except for employees of Franchisee.
- 20) **Personnel.** Franchisee shall furnish such qualified drivers, collectors, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner and in conformance with generally accepted standards prevailing at the time for similar services.

21) **Driver Qualifications.**

- a) **Valid License/Endorsements.** All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the Oregon Department of Motor Vehicles.
 - b) **Safety Training.** The Franchisee shall provide suitable operational and safety training for all of its employees who maintain, utilize, or operate vehicles, equipment, or facilities for Collection of Solid Waste or who are otherwise directly involved in such Collection. The Franchisee shall train its employees involved in Solid Waste Collection to identify, and not to collect, Hazardous Waste or Infectious Waste. Employees who do handle Hazardous Waste and Infectious Waste as part of their regular duties shall be properly trained.
 - c) **Employee Appearance and Conduct.** The Franchisee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Franchisee shall require its drivers, and all other employees who come into contact with the public, to wear suitable and acceptable attire which identifies the Franchisee. The Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, the Franchisee shall take all appropriate corrective measures.
 - d) **No Gratuities.** Franchisee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the Collection of Solid Waste under this Agreement.
 - e) **Provision of Field Supervision.** Franchisee shall provide adequate supervision of field operations. The field supervisor will devote an adequate portion of his/her time in the field checking on Collection operations, including responding to issues.
- 22) **Non-Discrimination.** Franchisee shall not discriminate in the Provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, disability, marital status, age or sex of such persons or as otherwise prohibited by law.

EXHIBIT C - THREE FACTOR ALLOCATION METHOD

In order to allocate common expenses incurred in the provision of refuse collection services between service types and service areas, a three factor allocation method will be used. The majority of expenses in providing refuse collection are in Labor, Disposal, and Vehicle expenses. On average, these expenses represent 70 to 85 percent of the total costs of operating. The Franchisee could operate separately in each jurisdiction, and keep detailed cost accounting records of all expenses incurred on a Franchise Area and service type basis. However, it is the desire of the City to have the Franchisee perform collection services and maintain records in a more cost-effective manner.

The three factors that will be used to allocate these costs are:

- Labor hours - Used to allocate labor costs. Vehicle costs will also be allocated on labor hours as a substitute for engine hours. If, in the opinion of the operator, these hours would not be materially similar, then a four-factor formula would need to be implemented which would include engine hours to allocate the cost of vehicles.
- Weight - Average Vessel Weights used to allocate disposal.
- Customer Base - Weighted customer counts used to allocate general and administrative and management expenses.

Currently, the methods for collecting this data are:

- Labor hours - Franchisee shall make use of a computerized tracking program that monitors and allocates route time by jurisdiction for each route. If the computerized system becomes unavailable for an extended time, a manual form will be completed by route drivers at regular intervals. This data will then be summarized and averaged for application to the annual accounting data, or summarized and applied to the specific quarterly accounting data.
- Weight - Franchisee shall make use of a computerized tracking program that monitors and allocates weight by jurisdiction for each load. If the computerized system becomes unavailable for an extended time, manual auditing of containers weights will be performed to obtain representative weights. These weights will then be applied to route list customer data to obtain relative weights per route. These relative weights per route will then be applied to the cost of disposal.
- Customer Base - This data is readily available from computer reports generated in conjunction with billing and route list preparation.

Data collected in this manner shall be compared to prior years to assure consistency of allocation. To perform the actual allocations, a model will be developed, with the factors applied to the appropriate accounting line items.