

## **ORDINANCE NO. 883**

### **AN ORDINANCE OF THE CITY OF WILSONVILLE ADOPTING A FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT AND COLLECTION WITHIN THE CITY AND REPEALING ORDINANCE NO. 814.**

WHEREAS, Oregon Revised Statutes (ORS) Chapter 459 grants the City of Wilsonville ("City") the authority to regulate solid waste collection and mandates the development of a recycling program; and

WHEREAS, the City desires to ensure efficient and comprehensive solid waste management and collection services are available to all residents, businesses, and organizations within the City; and

WHEREAS, the City Council has determined that public health, safety, and well-being require an exclusive franchise be awarded to a qualified company for the collection, transportation, processing, and disposal of solid waste, recyclables, yard debris, and food scraps, as more particularly described below; and

WHEREAS, the City Council declares its intention of maintaining reasonable rates and quality service related to the collection, transportation, processing, and disposal of solid waste, recyclables, yard debris, and food scraps; and

WHEREAS, the City Council desires to amend and restate the franchise agreement created by Ordinance No. 814, and repeal Ordinance No. 814.

**NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:**

#### **ARTICLE I**

##### **Title**

This Ordinance will be known as the "Solid Waste Management Ordinance," and may be so cited and pleaded, and will be referred to herein as the "Ordinance."

#### **ARTICLE II**

##### **Purpose**

It is the policy and purpose of the City to protect the health, safety, and welfare of the citizens and the physical environment of Wilsonville through the regulation of solid waste management. This regulation will:

1. Ensure safe, economical, and comprehensive solid waste services, as further defined in this Ordinance;
2. Ensure rates that are just, reasonable, and adequate to provide necessary public services;
3. Prohibit rate preferences and any other practices that might be discriminatory;
4. Provide for technologically and economically feasible recycling and resource recovery, by and through the franchisee;
5. Meet or exceed all applicable ORS Chapter 459 and Metro regulations relating to solid waste management prescribed to local jurisdictions and their authorized franchisees; and
6. Ensure consistent and responsive service and communication with citizens regarding solid waste management operations, education, and requirements.

### **ARTICLE III**

#### **Scope**

Services defined, regulated, and authorized in this Ordinance are applicable only within the City limits of the City of Wilsonville and all future annexations during the term of this Ordinance.

### **ARTICLE IV**

#### **Definitions**

1. **Administrative Rules.** The Solid Waste Management and Collection Administrative Rules attached hereto and incorporated herein as **Attachment 1**, and as may be amended in accordance with this Franchise Agreement.
2. **Allowable Expenses.** Those expenses incurred by Franchisee in the performance of this Franchise that are allowed by the City as reimbursable by the Customer, as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis, and comply with the Cost Allocation methodology contained within this Ordinance for the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise.

*See* the definition for “Cost Allocation” regarding how certain overall costs are to be proportionately allocated. Allowable Expenses include the following:

- a. Costs of complying with all laws, regulations, or orders applicable to the obligations of Franchisees under federal, state, or local law, including this Ordinance, as well as costs for financial reporting, accounting, and regulatory processes associated with or required by this Franchise or under law, as now or hereafter amended;
- b. Costs of collection, transportation, transfer, and disposal, including tipping fees, excise taxes, Metro Regional System Fees and Excise Tax, and DEQ-imposed fees and taxes;
- c. Labor costs, including operational and supervisory labor, payroll taxes, workers’ compensation, and benefits, as well as third-party transportation costs;
- d. Vehicle registration fees, motor fuel, oil, tires, repairs, and maintenance;
- e. New vehicle and equipment purchases, amortized according to applicable historical trends and Franchisee’s fixed asset policy, excluding vehicles or equipment that are part of a pilot project or experimental technology, except as otherwise authorized by City Council;
- f. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance, including container maintenance and repair costs;
- g. Performance bonds and insurance in at least the amounts and coverages required by the City;
- h. All administrative and management costs and expenses reasonably allocated for the Services required under this Franchise, including, but not limited to, compensation, management fees, and benefits for officers and employees, payroll taxes, data processing, billing, equipment or facility rental or lease costs, supplies, finance and accounting, administration, human resource and labor management, rate analysis, and regulatory compliance;
- i. Utilities;
- j. Training, worker safety, and employee development expenses;
- k. Promotion and public education costs;

- l. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of Services under this Franchise over standardized economic useful lives of the various assets;
- m. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
- n. Interest expense, other than interest paid with respect to route or Franchise acquisitions, that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
- o. Direct write-off charges for bad debts; and
- p. Franchise Fees assessed by the City.

Allowable Expenses, as defined above, shall be reasonable if they are comparable with the expenses incurred by similarly situated solid waste and recycling collection companies in Clackamas and Washington Counties of the State of Oregon. If there is any disagreement or discrepancy regarding what is considered an "Allowable Expense" or "Unallowable Expense," or the amount of an "Allowable Expense," Franchisee and the City will work together to resolve the discrepancy. If no resolution is reached, the parties will agree to mediate the discrepancy, in addition to any other legal or equitable remedies that may be available to the parties.

- 3. Annual Franchise Report. The report submitted by Franchisee to the City at the end of each calendar year, as more particularly described in Article XI, Section 2 herein.
- 4. City. The City of Wilsonville.
- 5. Commercial. Stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities. "Commercial" does not include other manufacturing activities or business, or processing activities in residential dwellings.
- 6. Cost Allocation. The following allocation methodology will be used to determine certain Allowable Expenses attributable to Service rendered for the City:
  - a. Operational cost: The Franchisee will perform an annual survey or report to calculate the time spent in each jurisdiction Franchisee services by Residential,

Multifamily, and Commercial route. The annual total hours and total cost will be used to proportionately allocate Franchisee's overall operational costs, such as labor and benefits, fuel, oil, maintenance, vehicle and container leases, vehicle licenses, capital assets, utilities, and training, for Residential, Multifamily, and Commercial Service within the City (e.g., labor costs as an Allowable Expense should represent a proportionate share of Service within the City compared to Franchisee's services utilized by other cities and counties).

- b. Direct cost: The entire cost of Franchise Fees and other expenses directly related to Service within the City and that are not attributable to Franchisee's services performed in other jurisdictions will be used to determine the Allowable Expenses attributable to Service rendered in the City.
- 7. Council. The City Council of the City of Wilsonville.
- 8. CPI. The All Urban Consumers for West-Size Class A Consumer Price Index, as defined by the United States Bureau of Labor Statistics for the most recent twelve-month period reported by the Bureau as of September 1 for the applicable current year, rounded to the nearest hundredth percent, or other index that replaces this index.
- 9. Cure Period. The thirty (30) day period Franchisee has from date of Written Notice to correct any default pursuant to Article XIV. In the case of default by Franchisee, if Franchisee notifies the City that it cannot, in good faith, cure the default within the thirty (30) day Cure Period, then the City may elect to extend the cure period to an agreed upon time period.
- 10. Customer(s). Individuals, groups, businesses, corporations, or other recognized entities receiving Service from the Franchisee within the City.
- 11. DEQ. State of Oregon Department of Environmental Quality.
- 12. EPA. United States Environmental Protection Agency.
- 13. Extraordinary Rate Increases. Service Rate charged by Franchisee to its Customers sought to be increased by Franchisee under Article VIII of this Ordinance.
- 14. Franchise. A contract with the City allowing Franchisee to use any City-owned public right-of-way to collect, transport, process, and dispose of Waste and to

perform other responsibilities set out in this Ordinance and the Administrative Rules.

15. Franchise Fee. Franchise Fee is defined in Article VII of this Ordinance.
16. Franchisee. The Person granted the Franchise by this Ordinance. The particular Franchisee referred to in this Ordinance is Keller Drop Box, Inc., an Oregon corporation, dba Republic Services of Clackamas and Washington Counties.
17. Gross Revenue. For any period of time:
  - a. Gross accrual-based billings by the Franchisee to Customers for Services provided under this Franchise; and,
  - b. The allocated gain on the sale of fixed assets, the depreciation or amortization from which was an Allowable Expense under the terms of this Ordinance, and refunds, sales proceeds, or other reimbursements for any other expense that was an Allowable Expense under this Ordinance.
18. Hazardous Waste. Hazardous Waste includes:
  - a. 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.
  - b. 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 by order of the Oregon Environmental Quality Commission, after notice and public hearing. For purposes of classification, the Oregon Environmental Quality Commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:
    - i. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
    - ii. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

- c. Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in (a) and (b) of this subsection.
  - d. To the extent not covered by the preceding subsections of this Section 18, any amount of waste listed or characterized as hazardous by the EPA or the State of Oregon pursuant to the Resource Conservation and Recovery Act and by any other applicable law, including but not limited to ORS Chapter 466.
19. Multifamily. Any multi-dwelling building or group of buildings that contains five or more dwellings on a single lot.
  20. Operating Margin. Gross Revenues minus Allowable Expenses within the applicable calendar year. For clarity, Franchisee may not include any Unallowable Expenses as “Allowable Expenses” when calculating its Operating Margin.
  21. Organic Materials. Materials which can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. “Organic Materials” includes, but is not limited to, food waste, paper, and putrescible materials which are generally a source of food for bacteria. For Residential and Multifamily Customers, “Organic Materials” include Yard Debris; for Commercial Customers, “Organic Materials” do not include Yard Debris. Other Materials. Bulky Waste, tires, Infectious Waste, Unacceptable Waste, Household Hazardous Waste, and Special Waste (as that term is defined in the Administrative Rules), specifically excluding Recycle+ Materials.
  22. Person. An individual, partnership, association, corporation, limited liability company, sole proprietorship, cooperative, estate, trust, firm, governmental unit, or any other entity in law or fact.
  23. Quarterly Franchise Fee Report. The report submitted by Franchisee to the City at the end of each quarter, as more particularly described in Article XI, Section 1 herein.
  24. Recyclable Materials. Any material or group of materials that can be collected and sold for Recycling at a net cost equal to or less than the cost of collection and disposal of the same material, or other materials as may be designated by the City.

25. Recycle+ Collection Service. An optional recycling service offered by Franchisee for the collection of Recycle+ Materials for reuse or recycling.
26. Recycle+ Materials. Recyclable Materials that are acceptable by Franchisee pursuant to the Recycle+ Collection Service, which are listed in the Administrative Rules.
27. Recycling. The collection, transportation, storage, and processing of Recyclable Materials.
28. Residential. A single-family dwelling unit, duplex (i.e., an attached two-dwelling unit), triplex, or quadplex on a single lot.
29. Resource Recovery. The process of obtaining useful material or energy resources from Waste, including energy recovery, materials recovery, Recycling, or reuse of Waste.
30. Service. The collection, transportation, transfer, disposal of, or Resource Recovery of Waste by Franchisee pursuant to this Franchise Agreement and the Administrative Rules.
31. Service Rates. The cost Customers pay for Service provided by Franchisee as adjusted pursuant to Article VIII of this Ordinance.
32. Solid Waste. All useless or discarded putrescible and non-putrescible materials including, but not limited to, garbage; rubbish; refuse; ashes; useless or discarded commercial, industrial, demolition, and construction materials; discarded residential, commercial, and industrial appliances (to the extent that such appliances do not contain Freon or other refrigerants); manure; equipment and furniture; vegetable or animal solid or semisolid waste; dead animals; and infectious wastes. "Solid Waste" does not include:
  - a. Unacceptable Waste;
  - b. Sewer sludge, septic tank and cesspool pumping, or chemical toilet waste;
  - c. Cardboard generated by a Person that is the generator or source, and baled and transported to a Resource Recovery facility (such Person is deemed to have transported cardboard when it is hauled by a vehicle used in regular deliveries of merchandise to the Person's business);



- d. Material used for fertilizer or other productive purposes in agricultural operations;
  - e. Discarded or abandoned vehicles or parts of vehicles;
  - f. Tires;
  - g. Recyclable Materials, Organic Materials, Other Materials, or Recycle+ Materials that are Source Separated and set out for Recycling; or
  - h. Material that is not acceptable for disposal at the transfer station and/or disposal facility utilized by Franchisee or not acceptable for recycling at the recycling facility utilized by Franchisee, as provided in the Administrative Rules.
33. Solid Waste Management and Collection. The prevention or reduction of Solid Waste generation; management of the storage, collection, transportation, treatment, utilization, processing, and final disposition of Solid Waste; Resource Recovery from Solid Waste; Recycling, reuse, and material or energy recovery from Solid Waste; and facilities necessary and convenient to such activities.
34. Source Separated Materials. Material comprising a waste (such as glass, metals, paper, plastics) that has been separated at its point of generation.
35. Unacceptable Waste. Unacceptable Waste means: (1) oils, fats, other liquids, and semi-solid wastes; (2) Hazardous Waste; and (3) any radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by applicable law or any otherwise regulated waste.
36. Unallowable Expenses. Includes the following:
- a. All political contributions;
  - b. Charitable expenses that are not expressly approved by the City as an Allowable Expense;
  - c. Fines and penalties incurred by Franchisee, including, without limitation, judgments for violation of applicable laws.
  - d. Payments for services provided by individuals related by blood or marriage or by affiliated companies to Franchisee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;
  - e. Accruals for future unknown regulatory changes;

- f. Costs associated with purchase of other companies, including, but not limited to, employee stock ownership plan payments, goodwill, amortization of goodwill, and premiums on key-person life insurance policies;
- g. Principal or interest payments on the acquisition of any new Service routes;
- h. The purchase of equipment and/or facilities to the extent of the portion of the price that reflects goodwill or a premium in excess of fair market value at the time of acquisition;
- i. State and federal income taxes, and any federal, state, local or other taxes or fees not expressly listed as an Allowable Expense;
- j. Fees paid to a Franchisee's Board of Directors;
- k. Attorney's fees and related expenses resulting from:
  - i. Any judicial proceeding in which the City and Franchisee are adverse parties;
  - ii. Any judicial proceeding in which Franchisee is ruled to be liable due to willful misconduct, gross negligence, or in violation of law or regulation;
- l. Operation of community access recycling depot not physically located or operated in conjunction with Franchisee's transfer station;
- m. Recycling operations expenses already calculated and incorporated into Franchisee's tipping fees;
- n. Costs or expenses incurred for providing Service to another jurisdiction, or, when such costs or expenses are incurred for providing Service to multiple jurisdictions, any costs or expenses above the proportional share attributable to Service within the City;
- o. Donated Services, including the "Wilsonville Clean-Up Days" and the "Fall Leaf Clean-Up" events identified in the Administrative Rules, except for Disposal costs associated with these Services;
- p. Any other expenses defined as "unallowable" and approved by mutual consent of Franchisee and the City.

If there is any disagreement or discrepancy regarding what is considered an "Allowable Expense" or "Unallowable Expense," Franchisee and the City will

work together to resolve the discrepancy. If no resolution is reached, the parties will agree to mediate the discrepancy, in addition to any other legal or equitable remedies which may be available to the parties.

37. Written Notice. Any notice provided in writing pursuant to this Ordinance. Any applicable time period begins to run the next day after personal delivery of the Written Notice or three (3) days after mailing the Written Notice.
38. Waste. Material that is no longer usable or that is no longer wanted by the source generator of the material, which material is to be utilized or disposed of by another person. For the purpose of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, composting, energy recovery, or land filling for reclamation, habilitation or rehabilitation of land. “Waste” includes Solid Waste, Recyclable Materials, Other Materials, Organic Materials (and thus, food waste and Yard Debris), Recycle+ Materials and Bulky Waste, as that term is defined in the Administrative Rules.
39. Yard Debris. Grass clippings, leaves, hedge trimmings, and similar vegetative waste of no greater than 4 inches in diameter and 36 inches in length, and other similar vegetative waste generated from landscaping activities or from residential property. “Yard Debris” does not include stumps, rocks, or bulky wood materials. “Yard Debris” also does not include sod or dirt in excess of de minimis amounts (e.g., dirt that surrounds the root ball of a plant).

## **ARTICLE V**

### **Franchise Award**

1. Exclusive Franchise. The City hereby grants to Franchisee, as of the effective date of this Ordinance, the exclusive right, privilege, and Franchise to provide Service within the City limits in the manner described in the Solid Waste Management and Collection Administrative Rules (Article XV herein), and in any area that may be hereafter annexed to the City. Except as allowed in this Ordinance, no other Person may provide Service within the City or over the public roadways within the City limits.
2. Exceptions. Nothing in this Ordinance will:

- a. Prohibit any Person from engaging in the collection of Source Separated Materials for Resource Recovery for the purpose of raising funds for a charitable, civic, or benevolent activity, or an educational project of a full time elementary or high school class, after notice to the Franchisee and permission from the Franchisee or the Council;
- b. Prohibit any Person who is employed as a gardener, landscaper, groundskeeper, or remodeler for a property owner or tenant in the City, who produces ten (10) yards or less of Solid Waste or Yard Debris as a result of the Person's work for a property owner or tenant in the City, from transporting Solid Waste or Yard Debris in the Person's own equipment where the Solid Waste or Yard Debris produced is incidental to the particular job the Person is performing for a property owner or tenant in the City;
- c. Prohibit any Person from transporting Solid Waste the Person generates to an authorized disposal site or Resource Recovery facility. The Solid Waste generated by a tenant, licensee, occupant, or Person other than the owner of the premises is generated by such Person, and not by the property owner (e.g., a tenant may dispose of the tenant's own Solid Waste, but an owner cannot dispose of the tenant's Solid Waste by any means other than the Franchisee's Service);
- d. Prohibit any Person from contracting with a state or federal agency to provide Service to such agency under a written contract with such agency.
- e. Prohibit any Person from selling any Source Separated Material to the Franchisee, or making other arrangements mutually acceptable to the Franchisee and Customer, providing the Franchisee transports the material to the market or utilization facility for such Source Separated Material. The Franchisee is entitled to a reasonable charge for taking the material to market. The Person who is the immediate source of the material will receive credit for the sum received for the Resource Recovered material as against that Person's bill for Service from the Franchisee during the Franchisee's billing period. Any excess of the sum received for the material at the utilization or market facility

over the Franchisee's bill for Service and transporting the Source Separated Material will be reimbursed to the Customer at the end of the billing period.

3. **Solid Waste Removal.** No Person, except the immediate generator of Solid Waste, may remove any product placed in a cart, container, drop box, or other receptacle, except to the extent allowed by applicable law. Nor may any Person other than the immediate generator remove or take possession of any Solid Waste, whether bundled, tied, or loose, placed by the source of the product for collection by the Franchisee. This provision does not:
  - a. Apply to a government employee acting to remove Solid Waste or waste because of a present or imminent danger;
  - b. Prohibit any Person transporting Solid Waste through the City that is not collected within the City;
  - c. Require Franchisee to store, collect, transport, dispose of, or Resource Recover any Unacceptable Waste; provided, however, that Franchisee may engage in a separate business of handling such wastes separate and apart from this Franchise and Chapter; or
  - d. Prevent the City from conducting an annual clean-up campaign for the collection of Recyclable Materials, Organic Materials, Solid Waste, Other Materials, or Recycle+ Materials from the residences in the City, or in any other way providing for the beauty of the City and the safety and convenience of its citizens.
4. **Unauthorized Use.** No Person is permitted to place any material in a container, drop box, or other receptacle not provided for such Person's use without the permission of the Person receiving the Service from the Franchisee.
5. **Title.** Title to Solid Waste shall pass to Franchisee when loaded into Franchisee's collection vehicle or otherwise received by Franchisee. Title to and liability for any Unacceptable Waste shall at no time pass to Franchisee. Franchisee shall have the right to revoke acceptance of any Solid Waste at any time such Solid Waste is discovered to be or contain Unacceptable Waste.

## **ARTICLE VI**

### **Franchise Term**

The rights, privileges, and Franchise herein granted will terminate June 30, 2028, unless sooner terminated in accordance with the provisions herein. If mutually agreed upon, in writing, by the Franchisee and the City, the parties have the option to renew this Franchise for up to two (2) additional five (5) year periods.

## **ARTICLE VII**

### **Franchise Fee**

1. **Franchise Fee.** In consideration of the Franchise by this Ordinance, the Franchisee must pay to the City five percent (5%) of the Gross Revenue collected by the Franchisee for Service within the corporate limits of the City for the rights, privileges, and Franchise granted by this Ordinance. The Franchise Fee is an Allowable Expense and, as such, will be included in determining Franchisee's Operating Margin.
2. **Franchise Fee Payment.** The Franchisee shall submit payments not later than forty-five (45) days after the end of each quarter (i.e., not later than forty-five (45) days after September 30, December 31, March 31, and June 30 of each year). Each quarterly payment will be accompanied by a complete statement setting forth the Gross Revenue collected for the quarter. There will be a reconciliation of final Gross Revenue on the quarterly report ending December 31 of each year for the prior calendar year.
3. **Late Payments; Interest.** Should Franchisee fail or neglect to make the quarterly payment on the payment date stated in Section 2 of this Article, the City will provide Written Notice of failure of payment to Franchisee, either by personal delivery or certified mail. Franchisee will have ten (10) calendar days from the Written Notice to remit payment to the City. If Franchisee fails to pay within the ten (10) calendar days, the City may charge interest retroactive to the payment due date, at a rate of twelve percent (12%) per annum, and may, at its option, either continue the Franchise in force and proceed by suit or action to collect the payment, or declare a forfeiture of the Franchise because of the failure to make payment, but without waiving its right to collect earned Franchise payments and interest.

## ARTICLE VIII

### Establishment and Modification of Service Rates

1. Amendments to Service Rate. Amendments to Service Rates must be approved by Council, and may be approved by resolution.
2. Annual Service Rate Adjustment. It is the goal of Council to provide Franchisee with a target Operating Margin of ten percent (10%) of Gross Revenues, but no less than eight percent (8%) and no greater than twelve percent (12%). Except as provided in Section 3 of this Article, the Service Rate will be adjusted annually under the following circumstances:
  - a. Service Rates will not increase in the next calendar year if the expected Operating Margin in the next calendar year is equal to or greater than twelve percent (12%) of Gross Revenues.
  - b. If the expected Operating Margin in the next calendar year is equal to or greater than ten percent (10%) but less than twelve percent (12%) of Gross Revenues, Service Rates will be adjusted to reflect seventy-five percent (75%) of the percentage increase, if any, in the CPI.
  - c. If the expected Operating Margin in the next calendar year is equal to or greater than eight percent (8%) but less than ten percent (10%) of Gross Revenues, Service Rates will be adjusted to reflect one hundred percent (100%) of the percentage increase, if any, in the CPI.
  - d. If the expected Operating Margin in the next calendar year is less than eight percent (8%) of Gross Revenues and Franchisee is not entitled to an Extraordinary Rate Increase provided in Section 3 below, Service Rates will be adjusted to reflect one hundred twenty-five percent (125%) of the percentage increase, if any, in the CPI. For clarity, the table below illustrates the percent of the CPI increase, if any, that will be applied to the Service Rates depending on the projected Operating Margin:

Operating Margin	Percent of CPI Increase, If Any
12% or greater	No adjustment
10% up to, but not including, 12%	75% of CPI increase
8% up to, but not including, 10%	100% of CPI increase
Less than 8%	125% of CPI increase

- e. The percentage increase of the Service Rate based on the CPI is capped at seven-and-one-half percent (7.5%) in any given year. If the CPI results in a negative percentage change or no change in any given year, then no Service Rate adjustment will occur for that calendar year.
  - f. Franchisee must report its actual revenue and expenses attributable to Customers in the City necessary for the City, or its designee, to adequately verify compliance with the Service Rate allocation methodology set forth in this Ordinance. Resources allocated from regional or national corporate offices or affiliates must be distributed to appropriate expense line items, and must also be disclosed in a schedule describing total allocations and their distribution to individual expense line items.
  - g. Franchisee will provide the information required under subsection (f), above, together with supporting documentation, to the City Manager or designee no later than August 15. The City Manager or designee will verify the CPI and Service Rate adjustment, if any, in writing, to Franchisee on or about October 15. Any Service Rate adjustment allowed under this Section 2 will take effect at the beginning of the next calendar year commencing on January 1. The City Manager or designee must update the City's rate schedule to reflect the any amendments to Service Rates.
  - h. Franchisee will provide any relevant updates relating to operations and customer experience to the City during or before consideration of any Service Rate adjustment.
  - i. The City has the authority to commission reviews or analysis of Franchisee's Annual Franchise Reports and other documents supporting a Service Rate adjustment to validate submissions. The City has further authority to review Franchisee's books, records, and accounts to verify the accuracy of Franchise Fees paid to the City, Franchisee's Operating Margin, and/or any Extraordinary Rate Increases as provided in Article XI herein.
3. Extraordinary Rate Increase. In the event an extraordinary or unanticipated event, including a change in law, a change in disposal site, an adjustment to the disposal rate by Metro, or a mandate from a government entity to provide a new type of



Service, causes an increase greater than two percent (2%) in Franchisee's annual cost for Allowable Expenses, and is projected to decrease Franchisee's Operating Margin below eight percent (8%) of Gross Revenues, then Franchisee may submit a written request to the City Manager or designee for an Extraordinary Rate Increase. The written request must include Franchisee's calculations, and supporting documentation, of the impact of the change. Any requested Extraordinary Rate Increase must be approved by Council through a resolution. Franchisee's request for approval of an Extraordinary Rate Increase shall not be unreasonably withheld or delayed so long as Franchisee's request meets the requirements of this Section 3. This Section is not to be construed as to require the City to accept that Franchisee's calculations are correct or to allow an Extraordinary Rate Increase if the City finds that Franchisee's request does not meet the requirements of this Section. The City may undertake any review of Franchisee's books, records, and accounts necessary to evaluate the validity of Franchisee's request for an Extraordinary Rate Increase.

4. **Surcharges.** The Franchisee may assess a surcharge on Customers to compensate for previously unforeseen, but likely temporary, additional costs to the Franchisee. Franchisee must submit a written request for a specific surcharge, with supporting documents, to the City Manager or designee. The City Manager or designee will perform a review of Franchisee's request and may seek additional documents or clarification from Franchisee. The City Manager or designee will present Franchisee's written request to Council not later than forty-five (45) days after receipt of the written request. Any such surcharges must be approved through a resolution adopted by Council prior to Franchisee assessing Customers. The resolution adopting a surcharge will set a date for Council to review whether to continue the surcharge to a later review date, modify the surcharge, or terminate the surcharge.

## **ARTICLE IX**

### **Franchisee Responsibility**

1. The Franchisee must collect the Solid Waste at the various residences, business establishments, and other places within the corporate limits of the City where such

Service is required or requested and haul such Solid Waste from the City authorized by the most recent rate schedule approved by the Council.

2. The Franchisee shall:

- a. Dispose of Solid Waste collected at a site approved by the local government unit having jurisdiction, or recover resources from the Solid Waste, in compliance with Oregon law.
- b. Provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all types of necessary Service. When necessary, the Franchisee may subcontract with others to provide certain types of specialized service, in accordance with the provisions of this Ordinance.
- c. Equip trucks with a leak-proof, compactor-type metal body. If the Franchisee uses a specially-designed motorized local collection vehicle for transporting Solid Waste short distances from Residential, Multifamily, or Commercial stops to waiting trucks, the Franchisee must equip the container portion of the vehicle with a cover adequate to prevent scattering of the load. If any pickup truck or open-bed truck is used by the Franchisee, the Franchisee must equip the truck with an adequate cover to prevent scattering of the load. The Franchisee must operate all vehicles in conformity with all City ordinances.
- d. Deposit a minimum of three (3), thirty (30) yard drop boxes at locations designated by the City, to be hauled away and replaced as many times as may be necessary for the one (1) week period during which the "Wilsonville Clean-Up Days" event takes place.

3. The Franchisee shall not:

- a. Be obligated to provide Service to non-owners of Residential property where the landlord does not request and pay the bill, unless payment for Service has been guaranteed in advance by the property owner or a satisfactory cash deposit or advance payment has been made by such non-owner requesting Service. The reference to residential property in this Section does not include trailer parks and apartment buildings.
- b. Give any rate preference to any Person, locality, or type of Solid Waste stored, collected, transported, disposed of, or resources recovered. This paragraph

does not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of waste handled, and location of Customers, so long as such rates are reasonably based upon costs of the particular Service and are approved by the Council in the same manner as other rates.

- c. Transfer or assign this Franchise, except upon approval by the Council as a result of a resolution passed by the Council. The Council will approve the assignment or transfer if the new Franchisee meets all applicable requirements met by the original Franchisee. A pledge of this Franchise as security will not be considered a transfer or assignment for the purpose of this Section.
4. Supervision. Service provided under this Franchise is subject to the supervision of the City Manager or such person designated by the City Manager or by the Council.
5. Access for Inspection and Delivery of Notices. Franchisee must make all of Franchisee's premises, facilities, equipment, and records related to its Solid Waste, Recyclable Materials, Organic Materials, Other Materials, and Recycle+ Materials collection services (including, but not limited to, offices, storage areas, financial records, non-financial records, records pertaining to the origin of any Solid Waste collected by Franchisee, receipts for sale or delivery of collected Recyclable Materials, Customer lists, and all records relating to vehicle maintenance and safety that are required under Oregon Department of Transportation motor carrier requirements and regulations and Oregon Revised Statutes Chapter 767) available for inspection by the City Manager or designee within forty-eight (48) hours of Written Notice by certified mail or personal delivery. Such inspections are only for purposes of enforcing this Ordinance and are restricted to normal business hours. During normal business hours, Franchisee must make all company premises and facilities accessible to the City for delivery of any Written Notices. Where receptacles are stored in the public right-of-way, or when the City is inspecting a situation where the Franchisee is allegedly commingling Recyclable Materials, Organic Materials, Other Materials, or Recycle+ Materials with Solid Waste, the need for 48-hour prior Written Notice does not apply to inspection of receptacles or vehicles.

6. Service Interruption or Termination. The Franchisee shall not terminate Service to any or all of its Customers served under this Franchise except in accordance with the provisions of this Ordinance. Service may be interrupted or terminated when:
  - a. The street or road access is unavoidably blocked through no fault of the Franchisee and there is no reasonable alternate route to serve all or a portion of its Customers. In either event, the City will not be liable for any such blocked access; or
  - b. Adverse weather conditions render providing Service unduly hazardous to persons or equipment providing such Service or if such interruption or termination is caused by an act of God or a public enemy.
7. Subcontracts. The Franchisee may subcontract with others to provide specialized service or temporary service under this Ordinance only upon prior written consent of the City, which written consent will not be unreasonably withheld. Such subcontract will not relieve the Franchisee of total responsibility for compliance with this Ordinance.

## **ARTICLE X**

### Insurance and Bonds

1. Insurance. The Franchisee shall obtain, at Franchisee's expense, and keep in effect during the term of this Franchise:
  - a. Comprehensive Commercial General Liability Insurance. Commercial general liability insurance must cover bodily injury and property damage, written on an "occurrence" form policy. This coverage should be in the following minimum insurance coverage amounts: The coverage shall be in the amount of \$5,000,000 for each occurrence and \$10,000,000 general aggregate, and shall include Products-Completed Operations Aggregate in the minimum amount of \$2,000,000 per occurrence, Fire Damage (any one fire) in the minimum amount of \$50,000, and Medical Expense (any one person) in the minimum amount of \$10,000. All of the foregoing coverage must be carried and maintained at all times during this Franchise.
  - b. Workers Compensation Insurance. Franchisee and all employers providing work, labor, or materials under this Franchise that are subject employers under

the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. This shall include Employer's Liability Insurance with coverage limits of not less than \$1,000,000 for each accident.

- c. Pollution Liability Coverage. Franchisee shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze, or other hazardous materials, or disturbance of any hazardous materials, in accordance with DEQ and EPA clean-up requirements. The coverage shall be in the amount of \$2,000,000 for each occurrence and \$6,000,000 general aggregate.
- d. Business Automobile Liability Insurance. Franchisee shall provide the City a certificate indicating Franchisee has business automobile liability coverage for all owner, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$5,000,000.
- e. Insurance Carrier Rating. Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject any or all insurance carrier(s) with a financial rating that is unacceptable to the City.
- f. Certificates of Insurance. As evidence of the insurance coverage required by this Franchise, Franchisee shall furnish a Certificate of Insurance to the City. This Franchise shall not be effective, and Services shall not be performed hereunder, until the required certificates have been received and approved by the City. Franchisee agrees that it will not terminate or change its coverage during the term of this Franchise without giving the City at least thirty (30) days' prior advance notice, and Franchisee will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

2. Bonds. The Franchisee shall furnish a bond to the City that is acceptable to the City to ensure the faithful performance by the Franchisee of the Service the Franchisee is required to provide under this Ordinance. The bond will provide for liquidated damages as provided in Article XIV, Section 3.

## **ARTICLE XI**

### **Review of Records**

1. Quarterly Franchise Fee Reports. Franchisee must complete and remit to the City Manager or designee a Quarterly Franchise Fee Report no later than the date the quarterly Franchise Fee payment is due. The Quarterly Franchise Fee Report must include a statement of Gross Revenue for that quarter covered by the tendered Franchise Fee. Such statements are public records. Franchisee must maintain books and records disclosing the receipts derived from Service conducted within the City, which must be open at reasonable times for review by the City Manager or designee within forty-eight (48) hours of Written Notice by certified mail or by personal delivery. Intentional misrepresentation of Gross Revenue constitutes a material breach of the Franchise and this Ordinance and is cause to initiate the process to terminate the Franchise, in addition to any other legal or equitable remedies available to the City.
2. Annual Franchise Reports. Franchisee must complete and remit to the City Manager or designee an Annual Franchise Report, no later than August 15 of each calendar year, which must include the following information:
  - a. Information about Customer counts, Services provided, disposal volumes, and Recycling activities for all Customer classifications and for all programs identified in this Ordinance for the prior calendar year.
  - b. A synopsis of Franchisee's operations during the prior calendar year, including: a description of the measures the Franchisee has taken to make its operations more efficient, a listing of efficiency measures which it intends to take in the next calendar year, a composite table showing the type and number of customer service complaints and a description of the measures that the Franchisee has taken or is planning to take to correct the cause of commonly reported

complaints, and such other information as requested by the City Manager or designee.

- c. A description and quantification of communication, outreach, and educational activities performed by Franchisee during the prior calendar year.
  - d. A summary of food waste contamination instances, including information regarding the fees assessed and any rejected loads (e.g., amount of food waste disposed of as solid waste) during the prior calendar year.
  - e. The quantities of Solid Waste, Recyclable Materials, Organic Materials, and Other Materials by Customer classification collected within the City during the prior calendar year, the locations to which these materials were delivered, the number of Customer accounts, and other information requested by the City Manager or designee and mutually agreed upon by Franchisee.
  - f. A summary of communication, marketing, and educational outreach conducted by Franchisee during the prior calendar year.
  - g. The number of Customer complaints and a summary of the type of complaints received during the prior calendar year, along with a summary of Franchisee's response to these Customer complaints.
4. Franchisee may identify specific information submitted to the City in Quarterly Franchise Fee Reports, Annual Franchise Report, and any other documents or information provided to the City as "CONFIDENTIAL," and it will not be subject to public disclosure except as required by applicable federal or state law. If the City receives a request for disclosure of information marked as "CONFIDENTIAL" pursuant to this Ordinance, the City Manager or designee will notify Franchisee within seven (7) calendar days after receiving the request to allow Franchisee an opportunity to defend against the requested disclosure through appropriate legal action. The City is not obligated to defend against the disclosure of any information marked "CONFIDENTIAL" by Franchisee.
  5. No later than forty-eight (48) hours after Written Notice, Franchisee must make available for inspection, copying, and review by the City Manager or designee, at any time during normal business hours, all records in Franchisee's possession that the City Manager or designee deems relevant to verifying the accuracy of Franchisee

Fees paid to the City, regulating Service Rates, or carrying out any responsibility that Franchisee or the City has under this Ordinance.

6. No more often than once during any calendar year, the City may perform a review of the books, records, and accounts of Franchisee for the prior year through a certified public accountant, or such other professional chosen by the City, to verify the accuracy of Franchise Fees paid to the City, Franchisee's Operating Margin, and/or any Extraordinary Rate Increases.
  - a. In the event such review discloses any difference in payment due to either the City or Franchisee, the review will be submitted to the Council. The Council may accept, reject, or modify the findings in the review. If the Council orders, by resolution, payment to the City or Franchisee, such payment owed is due and payable within thirty (30) calendar days of the date of the resolution.
  - b. If the review discloses a discrepancy in Franchisee's actual Allowable Expenses upon which an Extraordinary Rate Increase is approved by the Council through resolution was based, Service Rates may be adjusted to reflect the Service Rates authorized under Article VIII, through resolution of the Council, within forty-five (45) calendar days of the date of the resolution.
  - c. If Franchisee owes the City a payment of the Franchise Fee under (6)(a) of this Article, and the payment is more than one percent (1%) of the annual Franchise Fee, Franchisee will reimburse the City all its actual costs for the review and the City may request an additional review during the next calendar year, with all actual costs of such additional review paid by Franchisee. The City may also charge interest retroactive to the payment due date, at a rate of twelve percent (12%) per annum.
  - d. City and Franchisee are not required to make payments to the other for years that previously have been, or could have been, reviewed by the City. Prior review years may not be reopened based on findings made in connection with the review of a subsequent year unless the City finds evidence implicating intentional misrepresentation by Franchisee.



## ARTICLE XII

### City Responsibility

1. Emergency Service. In the event the Council finds an immediate and serious danger to the public creating a hazard or serious public nuisance, the Council may, after a minimum of twenty-four (24) hours' actual notice to the Franchisee, and a public hearing if Franchisee requests it, authorize another Person to temporarily provide Service under this Ordinance, or the City may provide such Service. Franchisee will make all reasonable efforts to assist the City in such emergency situations. In the event the power under this Section is exercised, the usual charges for Service will prevail, and the Franchisee is entitled to collect such usual charges but shall reimburse the City for its actual cost, as determined by the City.
2. City Collection. Nothing herein contained is to be construed in any way as to prevent the City from conducting a semi-annual clean-up campaign for the collection of brush, cleaning out of garages or basements, or any other facility or location in the City so as to prevent public nuisances and so as to provide for the beauty of the City and the safety of its citizens.
3. City Enforcement. The City, through its appropriate officers, shall take all appropriate steps to protect the exclusive right of Franchise hereby granted to the Franchisee.
  - a. The City has the authority to enforce this Ordinance, the Administrative Rules, and any other rules and regulations adopted pursuant thereto. The City Manager or designee may entitle appropriate city employees, including police officers, and others to enter premises to ascertain compliance with this Ordinance and the Administrative Rules. No premises shall be entered without first attempting to obtain the consent of either the owner or person in control thereof, if different. If consent cannot be obtained, the City representative shall secure a search warrant from the appropriate court before attempting to gain entry and shall have recourse to every other remedy provided by law to secure such entry.
  - b. City shall seek to enforce the rights the City has granted to Franchisee hereunder, however the City shall not be obligated to instigate litigation to protect the rights of Franchisee. Franchisee may independently enforce its

rights under this Solid Waste Management Ordinance and the Administrative Rules against third party violators, including but not limited to seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by Franchisee without obligating the City to join any such litigation. Notwithstanding the foregoing, the City shall enforce its municipal ordinances in the ordinary course against third parties providing authorized Service and shall, if necessary, pass such additional ordinances as may be required to maintain the exclusiveness of the Franchise.

- c. **Damages and Penalties.** The City may prosecute in the Wilsonville Municipal Court any Person's violation of or non-compliance with this Ordinance or the Administrative Rules in accordance with Wilsonville Code Chapter 1. Any Person who provides Services in violation of the Franchise or this Solid Waste Management Ordinance shall also be liable to Franchisee and the City, as applicable, for each of their damages, including without limitation, the following:

- i. Lost customer revenue due Franchisee;
- ii. Franchise fees owed the City;
- iii. Other appropriate legal or equitable remedy available to Franchisee and/or the City; and
- iv. Reasonable Attorney's fees, expenses and costs incurred by Franchisee in enforcing the Franchise and Solid Waste Collection Ordinance, including any attorney fees incurred at trial or on appeal.

- 4. **Annexation.** Immediately upon the annexation to the City of additional territory, the City shall take such steps as may be necessary to give the Franchisee the exclusive right to collect Solid Waste within the annexed area. The City shall notify any other Solid Waste collector to cease collection on or before ninety (90) days from the date of such notice. Franchisee shall endeavor to arrive at a mutually satisfactory agreement with any other Solid Waste collector who has been serving any such newly annexed area concerning appropriate compensation for the cessation of its Solid Waste collection Services. In the event the Franchisee and other Solid Waste collector cannot reach an agreement, the matter may be submitted

to an arbitration board. The arbitration board will consist of one arbitrator selected by the Franchisee, one selected by the City, and one selected by the Solid Waste collector in the newly annexed area. The decision of the arbitration board will be binding on all parties to the arbitration, and the award of the arbitrators will be final. In the event of arbitration, it is contemplated that the award will include payment of money by the Franchisee to the Solid Waste collector in the newly annexed area.

### **ARTICLE XIII**

#### **Dispute Resolution**

1. **Dispute Resolution with Customers.** Upon receipt of any notice of dispute from a Customer about any bill, charge, Service, or customer service issue, Franchisee will thoroughly investigate the matter and promptly report the results of its investigation to the Customer. Except in the event a Customer has attempted to improperly dispose of Hazardous Waste in violation of federal, state, or local laws or regulations, Franchisee will not refuse Service to any Customer during a time of dispute. If Franchisee is not able to resolve a dispute with the Customer, the Customer may contact the City Manager or designee, who will act as an informal arbitrator in an attempt to resolve the matter. Should the dispute remain unresolved, Franchisee or Customer may then pursue the matter through any legal means available to the party.
2. **Dispute Resolution with the City.** During all disputes arising under this Franchise, including those subject to Article XIV, the City and Franchisee will continue to perform their respective obligations under this Franchise unless and until the Franchise is terminated. Notwithstanding Article XIV, Franchisee and the City will make good faith efforts to resolve any disputes, including, upon mutual agreement, undergoing mediation.

### **ARTICLE XIV**

#### **Suspension, Modification, or Revocation of Franchise**

1. **Default.** Franchisee is in default of the Franchise upon failure to comply with Written Notice from the City to provide necessary Service or to otherwise fail to comply with the provisions of this Ordinance, state law and regulations, or federal law and regulations after Written Notice and reasonable opportunity to comply.

2. Timing after Notice. No later than the end of the Cure Period, the Franchisee shall comply with the Written Notice and this Franchise or else request a public hearing before the Council. In the event of a public hearing, the Franchisee and other interested persons will have an opportunity to present information and oral or written testimony. If the Franchisee fails to comply within the specified time or fails to comply with the order of the Council entered upon the basis of findings at the public hearing, the Council, in its sole and absolute discretion, may suspend, modify, or revoke the Franchise or make such action contingent upon continued noncompliance with this Ordinance. The Franchisee has the right to seek review of any such action by the Council from the Clackamas County Circuit Court, pursuant to ORS 34.010 through ORS 34.102.
3. Liquidated Damages. The Franchisee's insurance bond provided for in Article X, Section 2, will provide that, in the event of default, the City will be entitled to One Thousand Dollars (\$1,000) as liquidated damages for each day that Franchisee is in default after the Cure Period for failure of the Franchisee to perform as required. The Franchisee and the City agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach by Franchisee and that the extent of damages will be impractical or impossible to calculate due to the variety of Services provided by the Franchisee and the vast number of Customers that rely on the Services.
4. Costs of Temporary Replacement Services. In the event of default uncured after the Cure Period, in lieu of liquidated damages, the City may obtain replacement Service from another party, and Franchisee must reimburse the City for all reasonable costs incurred by the City, including City staff time and resources, due to Franchisee's breach of this Franchise, and must pay to the City any Franchise Fees owed.

## **ARTICLE XV**

### **Administrative Operations Standards and Rules**

1. Administrative Rules. Operational standards are hereby adopted in conjunction with this Ordinance entitled, "Solid Waste Management and Collection Administrative Rules," which are attached hereto and incorporated herein as

**Attachment 1.** The Solid Waste Management and Collection Administrative Rules may be amended from time to time by the City Manager or designee in consultation with Franchisee. The City will disseminate the Solid Waste Management and Collection Administrative Rules to the public in any manner the City deems appropriate. Franchisee will also retain a copy of the Solid Waste Management and Collection Administrative Rules and provide them to any current Customer, upon request of the Customer or the City, and to all new Customers.

2. **Enforcement of Administrative Rules.** In addition to any enforcement allowed under state law, the City may prosecute in the Wilsonville Municipal Court any violation of or non-compliance with the Solid Waste Management and Collection Administrative Rules by a Customer, in accordance with Wilsonville Code Chapter 1. The burden of proof is on the City to prove an infraction by a preponderance of the evidence. Any violation or non-compliance of the Solid Waste Management and Collection Administrative Rules by Franchisee will be enforced pursuant to Articles XIII and XIV of this Ordinance.

## **ARTICLE XVI**

### **General Provisions**

1. **Indemnity and Hold Harmless.** The Franchisee shall indemnify the City, the Council, and any officers, employees, representatives, or agents of the City and hold them harmless from all loss, damage, claim, expense, and liability arising out of the negligent or willful misconduct by the Franchisee under this Franchise. In the event that any suit or action is brought for injury or damage to persons or property against any of the foregoing, based upon or alleged to be based upon any loss, damage, claim, expense, or liability arising out of the operation of the Franchisee under this Franchise, the Franchisee shall defend the same at its own cost and expense using legal counsel reasonably acceptable to the City. The Council and the City Manager reserve the right to retain counsel of their own choosing and to join in the defense of any such suit or action.
2. **Severability.** Any finding by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid will not invalidate any other provision of this Ordinance.

3. Forum. Any litigation between the City and the Franchisee arising under, relating to, or regarding this Franchise will occur in Clackamas County Circuit Court.
4. Written Acceptance. Within fourteen (14) days after this Ordinance becomes effective, Franchisee shall provide the City Recorder a written acceptance of this Franchise, executed by Franchisee on a form substantially similar to the form attached hereto as **Attachment 2**. A failure on the part of Franchisee to provide such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby, and the Ordinance granting this Franchise shall thereupon be null and void. Such acceptance must be unqualified and will be construed as acceptance of all the terms and conditions contained in this Franchise.
5. Repealing Clause. Ordinance No. 814 is hereby repealed, and upon acceptance by the Franchisee, all rights and obligations arising under Ordinance No. 814 shall terminate.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 6<sup>th</sup> day of November 2023, and scheduled for a second reading at a regular meeting of the Council on November 6, 2023, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

DocuSigned by:  
*Kimberly Veliz*  
E781DE10276B498...  
Kimberly Veliz, City Recorder

ENACTED by the City Council on the 6<sup>th</sup> day of November 2023, by the following votes:  
Yes: 5              No: 0

DocuSigned by:  
*Kimberly Veliz*  
E781DE10276B498...  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor the 6<sup>th</sup> day of November 2023.

DocuSigned by:  
  
8A074AF3ADE042E...  
JULIE FITZGERALD, MAYOR

**SUMMARY OF VOTES:**

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes

**Attachments:**

Attachment 1 – Solid Waste Management and Collection Administrative Rules

Attachment 2 – Written Acceptance of Ordinance No. 883

Attachment 1 to Ordinance No. 883



# **SOLID WASTE MANAGEMENT AND COLLECTION ADMINISTRATIVE RULES**

**Implementing Solid Waste Franchise Ordinance No. 883**

**Effective: January 1, 2024**



Attachment 1 to Ordinance No. 883

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## Attachment 1 to Ordinance No. 883

**Section 1: Purpose of Rules**

It is the purpose of the City of Wilsonville to protect the health, safety, and welfare of Wilsonville's residents and to provide a coordinated program for the collection and Disposal of Waste. It is the City policy to regulate such activities to:

- Provide for safe, economical, and comprehensive collection, processing, and Disposal of Waste within the City.
- Provide for the opportunity to recycle to every Wilsonville resident and business.
- Provide clear and objective standards for Franchisee Service, and Franchisee and Customer responsibilities.

These Administrative Rules (these "Rules") were originally adopted effective as of July 31, 2019, by the adoption of Ordinance No. 814 (the Solid Waste Management Ordinance), and the related franchise agreement. This amended and restated version of the Rules was approved effective as of January 1, 2024, by the passage off Ordinance No. 883 (the "Franchise Agreement").

**1.1. Scope of Rules**

These Rules articulate the operational standards and expectations for the collection, processing, and Disposal of Waste within the City.

**1.2. Adoption and Amendment of Rules**

The City Manager or designee may propose and prepare amendments to these Rules. The text of proposed amendments must be forwarded to the Franchisee who will have thirty (30) days to respond in writing. Proposed amendments may be established by the City Manager or designee, following consideration of the Franchisee's response. Any disputed amendments to these Rules may be appealed by the Franchisee to the City Council. The City Council's decision regarding amendments to these Rules is final.

**Section 2: Definitions**

- 2.1. Administrative Rules** means these Solid Waste Management and Collection Administrative Rules.
- 2.2. Battery or Batteries** means only alkaline, 6-volt to 9-volt, rechargeable alkaline, NiCad, lithium, silver oxide and button cell batteries. The terms "Battery" and "Batteries" do not include vehicle or battery backup (UPS) units, other lead acid batteries.
- 2.3. Bulky Wastes** means large items of Solid Waste such as appliances, furniture, large auto parts, trees, branches greater than 4 inches in diameter and 48 inches in length, tree stumps, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing, or Disposal methods.
- 2.4. Cart** means a container provided by Franchisee that is ninety (90) gallons or less.
- 2.5. City** means the City of Wilsonville, Oregon.
- 2.6. Clackamas County** means Clackamas County, Oregon.

## Attachment 1 to Ordinance No. 883

- 2.7. **Commercial** means stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals and other non-manufacturing entities. “Commercial” does not include other manufacturing activities or business, or processing activities in residential dwellings.
- 2.8. **Commission** means the Environmental Quality Commission.
- 2.9. **Compact** or **Compacting** means the process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.
- 2.10. **Compactor** means any self-contained, power-driven mechanical equipment designed for the Compacting of materials.
- 2.11. **Container** means a trash can, Cart, bin, or other Receptacle one (1) cubic yard or larger in size used for the Disposal of Waste, but not a Drop Box or Compactor.
- 2.12. **Council** means the City Council of the City of Wilsonville.
- 2.13. **Covered Business** means a workplace or business that cooks, assembles, processes, serves, or sells food or does so as a service provider for other enterprises and that is required to comply with the Metro Business Food Waste Program.
- 2.14. **Curbside** means a location within three (3) feet of the edge of a public street, excluding such area separated from the street by fence or enclosure. The “street” may be a public alley. For residences on a flag lot, or other private driveway, or any private street not meeting the standards, “Curbside” is the point where the driveway or street intersects the public street, or at such other location agreed upon between Franchisee and Customer, or as determined by the City.
- 2.15. **Date of Delivery** means the actual date of delivery, if personally delivered, or the stated date on the notice, plus three (3) calendar days, if sent by first class mail and/or certified mail, return receipt requested.
- 2.16. **DEQ** means the Oregon Department of Environmental Quality.
- 2.17. **Dispose** or **Disposal** means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of materials.
- 2.18. **Disposal Facility** means the land, buildings, and equipment used for Disposal whether or not open to the public.
- 2.19. **Drop Box** means a single container designed for the storage and collection of large volumes of Waste that is usually ten (10) cubic yards or larger in size.
- 2.20. **EPA** means the United States Environmental Protection Agency.
- 2.21. **Food Waste** means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. “Food Waste” includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. “Food Waste”

## Attachment 1 to Ordinance No. 883

does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations. For the purposes of these Rules, Food Waste is included and incorporated into the definition of Organic Materials, below.

- 2.22. **Franchisee** means Keller Drop Box, Inc., an Oregon corporation, dba Republic Services of Clackamas and Washington Counties.
- 2.23. **Franchise Agreement** means City Ordinance no. 883.
- 2.24. **Generator** means the person who produces Waste.
- 2.25. **Hazardous Waste** includes:
  - 2.25.1. 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.
  - 2.25.2. 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 by order of the Commission, after notice and public hearing. For purposes of classification, the Commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:
    - 2.25.2.1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
    - 2.25.2.2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
  - 2.25.3. Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in Sections 2.25.1. and 2.25.2.
  - 2.25.4. To the extent not covered by the preceding subsections of this Section 2.25, any amount of waste listed or characterized as hazardous by the EPA or the State of Oregon pursuant to the Resource Conservation and Recovery Act and by any other applicable law, including but not limited to ORS Chapter 466.
- 2.26. **Household Hazardous Waste** means 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. "Household Hazardous Waste" includes, but is not limited to, cleaners, solvents, pesticides, and automotive and paint products. Household Hazardous Waste, however, does not include any materials that are not considered household hazardous waste by the EPA or DEQ.

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- 2.27. Infectious Waste** means biological waste, cultures and stocks, pathological waste, and sharps, as each are defined in ORS 459.386.
- 2.28. Metro** means the Portland metropolitan area regional government.
- 2.29. Metro Business Food Waste Program** means the program requiring Covered Businesses to separately dispose of Food Waste and for Solid Waste collection companies like Franchisee to collect and manage Food Waste pursuant to Metro Ordinance No. 18-1418, Business Food Waste Requirement, as modified by Metro Ordinance 20-1451, March 10, 2021, as implemented by Metro Solid Waste Administrative Rules AR 5.15-4000 through 4085, revised February 1, 2021, and related Metro administrative rules.
- 2.30. Multifamily** means any multi-dwelling building or group of buildings that contains five or more dwellings on a single lot.
- 2.31. Notice of Non-Compliance** means a written letter from the City to a Covered Business or responsible party for failing to obtain Service for Food Waste
- 2.32. Notice of Violation** means a written letter from the City to a Covered Business or responsible party for failing to comply with the requirements of the Metro Business Food Waste Program after receiving a Notice of Non-Compliance.
- 2.33. Organic Materials** means material which can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. "Organic Materials" include, but are not limited to, Food Waste, paper, and putrescible material which are generally a source of food for bacteria. For Residential and Multifamily Customers, "Organic Materials" include Yard Debris; for Commercial Customers, "Organic Materials" do not include Yard Debris.
- 2.34. Other Materials** means Bulky Waste, tires, Infectious Waste, Unacceptable Waste, Household Hazardous Waste, and Special Waste, specifically excluding Recycle+ Materials.
- 2.35. Person** means an individual, partnership, association, corporation, limited liability company, sole proprietorship, cooperative, estate, trust, firm, governmental unit, or any other entity in law or fact.
- 2.36. Rate** means the cost payable by a Customer to the Franchisee for Service.
- 2.37. Receptacle** means a Cart, Container, Drop Box, Compactor, recycling bin, or any other container used for the Disposal of Waste.
- 2.38. Recyclable Materials** means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and Disposal of the same material, or other materials as may be designated by the City.
- 2.39. Recyclable Materials List** means the current list of Recyclable Materials collected by Franchisee for Recycling, which is available on the City's solid waste management webpage, which may be amended by the City from time to time, in accordance with EPA and DEQ requirements and market conditions.
- 2.40. Recycle+ Collection Service** means an optional recycling service offered by Franchisee for the

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collection of Recycle+ Materials for reuse or recycling.

- 2.41. **Recycle+ Materials** means Recyclable Materials that are acceptable by Franchisee pursuant to the Recycle+ Collection Service, which are listed in Section 8.2.4.
- 2.42. **Recycling** means the collection, transportation, storage, and processing of Recyclable Materials.
- 2.43. **Residential** means a single-family dwelling unit, duplex (i.e., an attached two-dwelling unit), triplex, or quadplex on a single lot.
- 2.44. **Resource Recovery** and **Resource Recovery Facility** mean the process of obtaining useful material or energy resources from Waste, including energy recovery, materials recovery, Recycling, or Reuse of Waste, and a location at which such material or energy resources are obtained from the processing of Waste.
- 2.45. **Reuse** means return of waste into the economic stream, to the same or similar use or application, without change in the waste's identity.
- 2.46. **Service** means the collection, transportation, Disposal of, or Resource Recovery of Waste by Franchisee pursuant to the Franchise Agreement and these Rules.
- 2.47. **Service Area** means the geographic area in which Solid Waste Management and Collection is provided by the Franchisee.
- 2.48. **Service Day** means the regularly scheduled day or days when Franchisee collects the Customer's Waste.
- 2.49. **Solid Waste** means all useless or discarded putrescible and non-putrescible materials, including, but not limited to, garbage; rubbish; refuse; ashes; residential, commercial, and industrial, demolition, and construction wastes; discarded residential, commercial, and industrial appliances (to the extent that such appliances do not contain Freon or other refrigerants); equipment and furniture; manure; vegetable or animal solid or semisolid waste; dead animals; and infectious wastes. "Solid Waste" does not include:
  - 2.49.1. Unacceptable Waste;
  - 2.49.2. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste;
  - 2.49.3. Cardboard generated by a Person that is the Generator or source, and baled and transported to a Resource Recovery Facility (such Person is deemed to have transported cardboard when it is hauled by a vehicle used in regular deliveries of merchandise to the Person's business);
  - 2.49.4. Material used for fertilizer or other productive purposes in agricultural operations;
  - 2.49.5. Discarded or abandoned vehicles or parts of vehicles;
  - 2.49.6. Tires; or
  - 2.49.7. Recyclable Materials, Organic Materials, or Recycle+ Materials that are Source Separated and set out for Recycling; or

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- 2.49.8. Material that is not acceptable for disposal at the transfer station and/or disposal facility utilized by Franchisee or not acceptable for recycling at the recycling facility utilized by Franchisee, as provided in these Rules.
- 2.50. Solid Waste Management and Collection** means the City's prevention or reduction of Solid Waste generation; management of the storage, collection, transportation, treatment, utilization, processing, and final disposition of Solid Waste; Resource Recovery from Solid Waste; Recycling, Reuse, and material or energy recovery from Solid Waste; and facilities necessary and convenient to such activities.
- 2.51. Source Separated Materials** means material comprising a waste (such as glass, metals, paper, plastics) that has been separated at its point of generation.
- 2.52. Special Waste** means any waste (even though it may be part of a delivered load of waste) that falls within one or more of the following categories:
- 2.52.1. Containerized waste (e.g., a drum, barrel, portable tank, box, pail, etc...) of a type listed in Sections 2.52.3 through 2.52.9, or 2.52.11;
  - 2.52.2. Waste transported in a bulk tanker;
  - 2.52.3. Liquid waste including outdated, off spec liquid food waste or liquids of any type when the quantity and the load would fail the paint filter liquid (Method 9095, SW-846) test or includes 25 or more gallons of free liquid per load, whichever is more restrictive;
  - 2.52.4. Containers (or drums) that once held commercial products or chemicals, unless the containers (or drums) are empty as provided in 40 CFR 261.7(b)(1);
  - 2.52.5. Sludge waste from septic tanks, food service, grease traps, or wastewater from commercial laundries, laundromats or car washes;
  - 2.52.6. Waste from an industrial process;
  - 2.52.7. Waste from a pollution control process;
  - 2.52.8. Residue or debris from the cleanup of a spill or release of chemical substances, commercial products or wastes listed in Sections 2.52.1 through 2.52.7 or 2.52.9;
  - 2.52.9. Soil, water, residue, debris, or articles which are contaminated from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of wastes listed in Sections 2.52.1 through 2.52.8;
  - 2.52.10. Chemical-containing equipment removed from service (e.g., filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical-containing equipment);
  - 2.52.11. Waste in waste containers that are marked with a National Fire Protection Association identification label that has a hazard rating of 2, 3, or 4, but not empty

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containers so marked;

- 2.52.12. Any waste that requires extraordinary management or special handling. Examples of such special wastes are: chemicals, liquids, sludge and dust from commercial and industrial operations; municipal waste water treatment plant grits, screenings and sludge; contaminated soils; tannery wastes, empty pesticide containers, and dead animals or by-products; or,
- 2.52.13. Medical waste.
- 2.53. **Unacceptable Waste** means: (1) oils, fats, other liquids, and semi-solid wastes; (2) Hazardous Waste; and (3) any radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, or toxic waste as defined by applicable law or any otherwise regulated waste.
- 2.54. **Waiver** means the waiver that a Covered Business may obtain, pursuant to the requirements of Section 7.3.3, to temporarily waive the obligation to comply with the requirements of the Metro Business Food Waste Program.
- 2.55. **Waste** means material that is no longer usable or that is no longer wanted by the source Generator of the material, which material is to be utilized or Disposed of by another person. For the purpose of this paragraph, “utilized” means the productive use of wastes through recycling, Reuse, salvage, resource recovery, composting, energy recovery, or land filling for reclamation, habilitation or rehabilitation of land. “Waste” includes Solid Waste, Recyclable Materials, Other Materials (and thus, Bulky Waste, tires, Infectious Waste, Unacceptable Waste, Household Hazardous Waste, and Special Waste), Organic Materials (and thus, Food Waste and Yard Debris), and Recycle+ Materials.
- 2.56. **Yard Debris** means grass clippings, leaves, hedge trimming, and similar vegetative waste of no greater than 4 inches in diameter and 36 inches in length, and other similar vegetative waste generated from landscaping activities or from residential property. “Yard Debris” does not include stumps, rocks, or bulky wood materials. “Yard Debris” also does not include sod or dirt in excess of de minimis amounts (e.g., dirt that surrounds the root ball of a plant).

### Section 3: Franchisee General Requirements

#### 3.1. Mandatory Services.

- 3.1.1. Residential Collection. Franchisee must offer the following Services to Residential Customers, with Curbside collection, which may be billed on a monthly or bi-monthly basis, except as specified below, subject to the terms and conditions of the Franchise and these Administrative Rules:
  - 3.1.1.1. Solid Waste – regularly scheduled weekly Service.
  - 3.1.1.2. Organic Materials – regularly scheduled Service on the same day as Solid Waste collection.
  - 3.1.1.3. Co-mingled Recycling – regularly scheduled Service on the same day as Solid Waste collection.
  - 3.1.1.4. Glass Recycling – regularly scheduled Service on the same day as Solid



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## Waste collection.

- 3.1.1.5. Battery Recycling – regularly scheduled Service on the same day as Solid Waste collection.
- 3.1.2. Multifamily Collection. Franchisee must offer the following Services to Multifamily Customers, which may be billed on a monthly or bi-monthly basis, subject to the terms and conditions of the Franchise and these Administrative Rules:
  - 3.1.2.1. Solid Waste – Service of no less than 20 gallons per unit per week, no less than once per week.
  - 3.1.2.2. Co-mingled Recycling – Service of no less than 20 gallons per unit per week, no less than once per week.
  - 3.1.2.3. Glass Recycling – Service of no less than 1 gallon per unit per week, no less than once per week.
- 3.1.3. Commercial Collection. Franchisee must offer the following Services to Commercial Customers, which may be billed on a monthly basis, except as specified below, subject to the terms and conditions of the Franchise and these Administrative Rules:
  - 3.1.3.1. Solid Waste – regularly scheduled Service.
  - 3.1.3.2. Co-mingled Recycling – regularly scheduled Service.
  - 3.1.3.3. Organic Materials – regularly scheduled Service. For clarity, Yard Debris is not included in Organic Materials Service for Commercial Customers, unless that is specifically agreed by Franchisee.
  - 3.1.3.4. Glass Recycling – regularly scheduled Service
- 3.1.4. Drop Off Service for Recyclable Materials. Location where certain specified Recyclable Materials can be dropped-off by Customers. Franchisee will make information regarding which Recyclable Materials may be dropped-off to Customers no less frequently than once per year.
- 3.1.5. Special Waste. Franchisee must offer Special Waste collection service to all Customers as an on-call collection service.
- 3.2. **Optional Services.** Franchisee is permitted to offer other additional services to the public that promote and increase Resource Recovery, waste prevention, and Recycling and that conform to local, state, and federal statutes and regulations. The optional services and their associated rates and fees must be reviewed and approved by the City Manager or designee, and must comply with the requirements of the Franchise Agreement. Such optional services include, but are not limited to, the Recycle+ Services described in Section 8.
- 3.3. **Notification to New Customers.** The Franchisee must provide City-approved written notification to all new Customers within seven (7) days of sign up. Notification materials must include a packet of educational material that contains information on all available Services; rates for these Services, including an explanation of extra charges; a listing of the Recyclable Materials

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collected; the schedule of collection; the proper method of preparing materials for collection; the reasons that Persons should Source Separate Recycling Materials; and reference information directing Customers to the City's website regarding Solid Waste Management and Collection. Franchisee must provide Customers with prior written notice of any changes in service.

### 3.4. Hours/Days for Collection Activity.

3.4.1. Residential and Multifamily Service. Service to Customers in predominantly Residential or Multifamily areas must comply with the following rules:

- 3.4.1.1. Service to Residential or Multifamily Customers must occur Monday through Friday, except during holiday weeks and times of hazardous weather conditions.
- 3.4.1.2. Service to a particular Residential Customer must be offered on the same day(s) of the week.
- 3.4.1.3. Service may occur only between 6:00 a.m. and 6:00 p.m., unless hazardous weather or holiday schedules require extended hours.
- 3.4.1.4. Regularly scheduled Service must occur at least once each week.

3.4.2. Commercial Service. Service to Customers in predominantly Commercial or industrial areas must comply with the following rules:

- 3.4.2.1. Service must occur Monday through Saturday, except during holiday weeks and times of hazardous weather conditions.
- 3.4.2.2. Service may occur only between 4:30 a.m. and 8:00 p.m., unless hazardous weather or holiday schedules require extended hours.
- 3.4.2.3. Regularly scheduled Service must occur at least once each week.

3.4.3. Mixed Residential and Commercial Service. Service to Customers located in areas that contain a mix of Residential, Multifamily, or Commercial properties must comply with the following rules:

- 3.4.3.1. Service must occur Monday through Saturday, except during holiday weeks and times of hazardous weather conditions.
- 3.4.3.2. Service may occur only between 5:30 a.m. and 7:00 p.m., unless hazardous weather or holiday schedules require extended hours.
- 3.4.3.3. Regularly scheduled Service must occur at least once each week.

3.4.4. Service on Holidays. Service is not required on Thanksgiving Day, December 25th, or January 1st. Residential Service for these days will run one day late. Commercial Service for these days will run one day late except for Commercial Customers that receive Service six (6) days each week; in those cases, the Commercial Customer will receive Services five (5) days in the holiday week.

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3.4.5. **Hazardous Weather Conditions.** Collection schedules may be adjusted due to hazardous weather conditions. A Customer whose collection date is adjusted or delayed due to hazardous weather conditions is not entitled to a bill reduction or credit. Hazardous weather conditions exist on any day in which the West Linn-Wilsonville School District cancels classes due to weather conditions, or on portions of routes that are located on steep hills where a driving hazard may exist even though local public schools are open. When weather conditions make driving or collection hazardous, Franchisee may postpone collection as provided below:

3.4.5.1. Franchisee must notify the City Manager or designee by phone or email no later than noon (12 pm) on the day hazardous weather conditions exist if collection schedules are expected to change. The information provided by Franchisee must include geographical areas affected and the anticipated make-up day or new schedule. If the affected geographic area(s) or make-up schedule changes, then Franchisee must update the information furnished to the City. Franchisee must also provide information to Customers through phone recordings and website/email/text messaging systems.

3.4.5.2. In the case of Solid Waste Services, Franchisee must make reasonable effort to pick up prior to the next regularly scheduled Service Day. Recyclable Materials and Organic Materials Service may be postponed until the next regularly scheduled Service Day. If Solid Waste Service is delayed more than two (2) days, the Solid Waste Service may be delayed until the next regular Service Day, with one extra Solid Waste Container being accepted by Franchisee at no additional cost to the Customer.

3.4.6. **Change of Schedule for Service Day.** Franchisee may change a Customer's designated Service Day. No later than fourteen (14) days prior to the change, Franchisee must provide written notice to the Customer indicating the intent to change the Customer's designated Service Day and inform the Customer of the new Service Day. Notice must also be given to all service addresses if different than the billing addresses. Each Multifamily Customer must be notified of the change in Service Day if each unit receives individualized Service.

### 3.5. **Billing Procedures.**

3.5.1. **Billing Period.** The Franchisee may bill Customers either once per month or once every two months, but must not bill more than sixty (60) days in advance or in arrears of Service provided. The Franchisee may require payment at time of Service for Service requested by Customers that are less frequent than monthly. The provisions of this Section 3.5.1 do not apply to efforts made to collect unpaid, outstanding balance of any bills.

3.5.2. **Billing Due Date.** Customer payments must not be due more than thirty-one (31) days before the end of the Service period being billed, nor less than twenty-one (21) days after the date of the postmark on the billing.

3.5.3. **Vacation Credit.** The Franchisee must give a pro-rata credit to a Residential Customer that requests a temporary stop to Services in accordance with Section 4.1.3 (e.g., if a Residential Customer properly requests a three-week stop to Services,

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Franchisee must give that Customer a refund equal to three-quarters of one month's fee for Services).

- 3.5.4. **Billing Policy.** The Franchisee must have a written policy for billing procedures and reinstatement for non-payment, which policy must be consistent with Section 3.5 and 3.6, and must address how a Customer may resolve disputed billings. The Franchisee must make available its billing policies to its Customers. The Franchisee must also provide a copy of all billing policies to the City for review and prior approval.

### 3.6. Termination of Service

- 3.6.1. **Billing Past Due.** The Franchisee may terminate Service to any Customer if the Customer has not paid a bill within ninety (90) days of the billing due date.
- 3.6.2. **Notice of Termination of Service.** The Franchisee must not terminate Service without first notifying the Customer in writing of the intention to terminate Service postmarked not less than ten (10) days prior to the date of intended termination of Service.
- 3.6.3. **Disputed Billings.** The Franchisee must not take any action to collect any portion of a bill subject to a dispute until there is a resolution to the dispute pursuant to Section 12.

- 3.7. **Automation of Services.** Franchisee must acquire and utilize equipment that allows for the mechanical collection of Receptacles, except for Receptacles for glass Recycling. Franchisee must utilize this type of equipment for Service to all Customers.

- 3.8. **Supplying Receptacles.** The Franchisee must provide to its Customers Receptacles that are capable of being mechanically collected, except for Compactors and Receptacles for glass Recycling, which are manually collected. The Customer may arrange with the Franchisee to provide a Compactor.

- 3.8.1. **Residential Customers.** The Franchisee must provide the following Receptacles to Residential Customers:

- 3.8.1.1. At least one Receptacle, with a capacity of at least 20 gallons, for the collection of all acceptable Solid Waste;
- 3.8.1.2. At least one Receptacle, with a capacity of at least 60 gallons, for the collection of all acceptable Recyclable Materials, except glass and motor oil;
- 3.8.1.3. At least one Receptacle, with a capacity of at least 5 gallons, for the collection of source-separated glass materials; and,
- 3.8.1.4. At least one Receptacle, with a capacity of at least 60 gallons, for the collection of all Organic Materials.

- 3.8.2. **Multifamily Customers.** The Franchisee must provide Receptacles to Multifamily Customers that meet the following standard:

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- 3.8.2.1. At least one Receptacle, with a capacity of at least 35 gallons, for the collection of all acceptable Solid Waste;
- 3.8.2.2. All plastic receptacles provided to Multifamily Customers after the date of these Administrative Rules for Solid Waste, Recyclable Materials, Yard Debris, or Food Waste must contain at least 30% post-consumer recycled content;
- 3.8.2.3. Receptacles for Solid Waste must be gray or black;
- 3.8.2.4. Receptacles for Recyclable Materials must be blue;
- 3.8.2.5. Receptacles for Organic Materials must be green; and,
- 3.8.2.6. All Receptacles must be labeled with the correct Metro-approved regional decals for acceptable recyclable materials, glass, yard debris, and garbage, and all previous decals must be removed from each Receptacle and replaced with correct and approved regional decals.
- 3.8.3. **Commercial Customers.** The Franchisee must provide Receptacles for use by Commercial Customers or may approve Commercial Customers to use Receptacles that comply with the Receptacle requirements of these Administrative Rules and Metro Solid Waste Administrative Rules AR 5.15-3000 through 4085, most recently revised February 1, 2021. In particular:
  - 3.8.3.1. Such Receptacles must be correctly labeled, and easily identifiable;
  - 3.8.3.2. Food Waste Receptacles must be green; and,
  - 3.8.3.3. A Receptacle provided to a Customer for Organic Materials or Recyclable Materials must have the same or less volume as the Receptacle provided to the same Customer for Solid Waste.
- 3.8.4. **Standards Applicable to Receptacles Provided to Any Customer.** Receptacles provided by the Franchisee must be designed for safe handling, non-absorbent, vector-resistance, durable, easily cleanable, and except for Drop Boxes and glass Recycling Receptacles, provided with tight fitting watertight lids or covers that can be readily removed or opened.
- 3.8.5. **Ownership of Receptacles.** Receptacles provided by the Franchisee are the property of the Franchisee.
- 3.9. **Missed Service.** The Franchisee must respond promptly to reports of missed Service. A complaint of missed Service received by the Franchisee from the Customer or the City must be remedied by collecting the material within twenty-four (24) hours (excluding Saturdays, Sundays, holidays, and periods of hazardous weather conditions) of the Customer's or City's report, at no extra charge. The 24-hour deadlines does not apply where the missed collection occurred due to late or improper set-out by the Customer (see Sections 4.5 and 4.7 regarding improper set out and location of Receptacles).
- 3.10. **Refusal of Collection Service**

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- 3.10.1. **Hazardous Conditions.** The Franchisee may refuse Service where there is a hazardous weather condition, as provided in Section 3.4.5. Franchisee's refusal of Service due to hazardous conditions does not constitute a missed collection.
- 3.10.2. **Improperly Prepared Materials.** The Franchisee may refuse Service to a Customer that has not complied with the preparation requirements of these Administrative Rules.
- 3.10.3. **Overweight Receptacles.** The Franchisee may refuse to Service a Receptacle that is over the Receptacle weight requirements of these Administrative Rules. If the Customer requests, the Franchisee will provide the actual weight of the overweight Receptacle by 5:00 p.m. on the business day following the request. When a Receptacle is overweight, it is the Customer's responsibility to separate materials into additional Receptacles to comply with applicable weight limits.
- 3.10.4. **Improper Location of Receptacles.** The Franchisee may refuse Service when a Receptacle is in a location that does not satisfy the requirements of these Administrative Rules.
- 3.11. Notice for Refusal of Service.** If a Customer is refused Service for any reason other than hazardous weather conditions, Franchisee must provide the Customer with a written notice stating the reasons for refusal. The written notice must describe the specific reason for refusing Service, the actions needed to resume Service, and the pickup options for the materials not collected. Franchisee must leave the notice securely attached to the Customer's Receptacle, to the materials, or to the Customer's front door at the time of the refused Service. Franchisee must document the date, time, and reason(s) for refusal of any Service. Franchisee will also provide the City notice of any refused Service not later than seven (7) business days after Franchisee's refusal of Service of any Customer.
- 3.12. Payment for Refusal of Service Materials.** Franchisee must charge the normal Service Rates when there is a refusal of Service and must provide collection options for these materials, except for circumstances when a Customer improperly located the Receptacle(s). If a Customer did not set out or improperly placed the Receptacle, Franchisee must offer the Customer the following options:
  - 3.12.1. Immediate Service at the City-approved go-back Rate; or
  - 3.12.2. Service at no extra charge the following week on the designated Service Day.
- 3.13. Fees Payable for Contamination.** Customer must ensure that only Organic Materials are placed in any Organic Materials Receptacle. If Customer improperly includes other materials (e.g., Solid Waste or Recyclable Materials) in an Organic Materials Receptacle, Franchisee may Dispose of the improperly comingled material as Solid Waste, and charge the Customer any fees specified on the City's then-current rate sheet.
- 3.14. Cleanup on Route.** The Franchisee must make reasonable effort to pick up all material blown, littered, broken, or leaked during the course of collection subsequent to being set out by the Customer.
- 3.15. Prevention of Leaking and Spilling Loads.** Franchisee's vehicles must be constructed, loaded,

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operated, and maintained in a manner to reduce, to the greatest extent practicable, dropping, leaking, blowing, sifting, or escaping of Waste, or vehicle fuel, hydraulic fluid, or lubricants from the vehicle onto private property and public streets while stationary or in transit, excepting a normal leakage of fuel, hydraulic fluid, or lubricants typically associated with a properly maintained vehicle. Franchisee must make a reasonable effort to clean up all dropped, leaked, blown, or escaped Waste, or spilled vehicle fuel, hydraulic fluid, or lubricants as soon as practicable. When leaking or spills occur, Franchisee must provide notice to appropriate Oregon or federal agencies when applicable as required by Oregon or federal laws and regulations and provide the City with any and all copies of such notice.

- 3.16. Covers for Open Body Vehicles.** All open body collection vehicles must have a cover that is either an integral part of the vehicle or a separate cover for the vehicle. This cover must be used while in transit, except during the transportation of Bulky Wastes, including but not limited to stoves, refrigerators, and similar kitchen appliances.
- 3.17. Unnecessary Noise.** The Franchisee must make a reasonable effort to avoid creating any loud, disturbing, or unnecessary noise in the City.
- 3.18. Maintaining Passage on Public Streets.** To the greatest extent practicable, Franchisee must avoid stopping Service vehicles anywhere that blocks the passage of other vehicles and pedestrians on public streets and sidewalks.
- 3.19. Compliance with Federal, State, and Local Regulations.** Franchisee must comply with all applicable federal, state, and local laws and regulations relating to driving, Disposal, and processing of Waste.
- 3.20. Safety and Maintenance.** All Service equipment must be maintained and operated in compliance with all federal, state, and local statutes, ordinances, and regulations including compliance with regulations related to the safety of the collection crew and the public.
- 3.21. Compliance with Zoning Ordinances.** Facilities for storage, maintenance, and parking of any vehicles or other equipment must comply with all applicable zoning ordinances and all other applicable federal, state, and local statutes, ordinances, and regulations.
- 3.22. Location of Receptacles**
  - 3.22.1. General.** The Franchisee must place Receptacles (including drop boxes) in a location that does not obstruct mailboxes, water meters, sidewalks, fire hydrants, or driveways; within bicycle lanes; or in a location that impedes traffic flow. The Franchisee is responsible to close the Receptacle as securely as possible to prevent the lid from blowing away or rain getting into the Receptacle.
  - 3.22.2. Drop Boxes.** When possible, the Franchisee must place drop boxes on private property locations such as driveways or yards. The Franchisee must not place a drop box in a public right-of-way, street, alley, bicycle lane, or roadside unless the Customer has received approval from the City.
- 3.23. Customers with Physical Disabilities.** The Franchisee must give reasonable attention to the needs of customers with physical disabilities without any additional charge based on Franchisee needing to travel a greater distance to reach the Customer's Receptacle.

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**3.24. Promotion and Education**

- 3.24.1. Franchisee must comply with all City and DEQ requirements for notice to Customers concerning Recycling Services and opportunities, and any other notices the City or DEQ requires Franchisee to provide to Customers.
- 3.24.2. Franchisee must participate in City-directed promotion and education efforts as identified below:
  - 3.24.2.1. Franchisee will conduct no less than two educational outreach events per year to West Linn-Wilsonville School District schools within the City. Franchisee will make all reasonable efforts to conduct such events at different schools each year until it has performed an educational event at all West Linn-Wilsonville School District schools within the City.
  - 3.24.2.2. Franchisee will make all reasonable efforts to participate in City-sponsored outreach events when requested by the City and to conduct other educational outreach programs when requested by other organizations or Persons.
- 3.24.3. The City and Franchisee will collaborate to create educational materials for the City's solid waste management webpage regarding the types of and appropriate preparation of Solid Waste, Recyclable Materials, Organic Materials, Other Materials, and Recycle+ Materials.

- 3.25. **Damage to Pavement.** Franchisee is not responsible for any damage to the City's or Customer's pavement, curbing or other driving surfaces resulting from Franchisee's Service, except to the extent caused by Franchisee's negligence or willful misconduct, which is subject to Article XVI, Section (1) of the Franchise Agreement.

**Section 4: Customer Responsibility****4.1. Payment Responsibility**

- 4.1.1. Responsible Party. Any Person who receives Service is responsible for payment for said Service in accordance with these Rules, including, but not limited to, Section 3.5.
- 4.1.2. Missed Collections. A Customer may not deduct the cost of past unreported missed Service from the Customer's Service bills.
- 4.1.3. Vacation Credit. A Residential Customer may request that Franchisee temporarily stop Service for a period of no less than three (3) weeks, and may make such a request no more than four (4) times per calendar year. Such a request must be made at least seven (7) days prior to the date the Customer wants the Service to stop and will result in Franchisee applying a credit to the Customer's Service bill. Multifamily Customers and Commercial Customers are not eligible for vacation credits.

- 4.2. **Notification of Missed Service and Billing Errors.** The Customer is responsible for notifying the Franchisee about a missed Service or billing error. In such cases, Franchisee will respond in



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accordance with Section 3.9 (regarding missed Service), or in accordance with Section 3.6.3 and Section 12 (regarding dispute resolution).

#### 4.3. Receptacles

4.3.1. Residential Customers. Residential Customers must use only Receptacles provided by the Franchisee for Solid Waste, Recyclable Materials, Organic Materials, and Recycle+ Materials.

4.3.2. Commercial and Multifamily Customers. Commercial and Multifamily Customers must use only Receptacles provided by the Franchisee.

4.3.3. Compactors. A Commercial or Multifamily Customer may provide a Compactor used for Services. All Compactors must comply with applicable federal, state, and local laws and regulations, must be compatible with Franchisee equipment, and must be approved by the Franchisee.

4.4. **Repair or Replacement of Franchisee-Supplied Receptacles.** The Customer must ensure that Hazardous Waste, Infectious Waste, or hot ashes are not put into a Cart, Container, Drop Box, or other Receptacle used in connection with Franchisee's Service. A Customer must use reasonable care to prevent abuse, fire damage, vandalism, excessive wear, or other unreasonable damage to a Cart, Container, Drop Box, or Receptacle owned by the Franchisee; the Franchisee may bill a Customer for the cost to repair or replace such a Cart, Container, Drop Box, or Receptacle.

4.5. **Set Out and Removal of Receptacle from Service Location.** The Customer is prohibited from setting out a Receptacle for Service more than twenty-four (24) hours prior to Service. The Customer must remove emptied Receptacles from the set out location and return the Receptacle to the Customer's yard or permanent storage area not later than twenty-four (24) hours after Service. For example, if Service is performed at 7:00 am on a Thursday, the Receptacle must be returned to the Customer's yard or storage area not later than 7:00 am on Friday.

4.6. **No Right to Take Receptacles.** A Customer that moves must leave any Receptacles owned by Franchisee at the Service address when the Customer moves.

#### 4.7. Location of Receptacles

4.7.1. Residential Customers. For Residential Customers, Franchisee may require that Carts, Containers, Drop Boxes, or other Receptacles used in connection with Franchisee's Service be placed on Curbside to enhance efficiency of the Service. Under no circumstances may Customer or Franchisee place Receptacles in marked bicycle lanes or in such a manner that they obstruct the flow of traffic. The Customer must place Receptacles in a location that does not obstruct mailboxes, water meters, sidewalks, fire hydrants, or driveways other than Customer's driveway. The Customer should provide for adequate vertical clearance for Receptacle(s) picked up away from the curbside or roadside.

4.7.2. Disabled Customers. Franchisee must arrange for a mutually convenient location and method for Service to disabled Customers, which includes provision of non-Curbside Service for all materials. The Customer and Franchisee must mutually agree upon a set-out location. In most cases, the preferred location will be visible from the street. If not, the Customer must provide Franchisee with a signal that is visible from the

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street that there are materials to be collected.

4.7.3. Residential Service on a Private Street.

4.7.3.1. For Curbside Service on a private street or flag drive serving multiple residences, the street must meet the following standards: access may not be limited by a gate; it must be named and posted with a street sign; it must be paved to a width of at least twelve (12) feet, exclusive of any areas where parking is permitted; and if a dead-end, the turnaround must have a sixty (60) foot diameter or a “hammerhead” or other feature that provides adequate turnaround space for standard Service vehicles. There must be at least fourteen (14) feet of vertical clearance. On such private streets, Customers entitled to Curbside Service must have their address on the private street. Franchisee may require a damage waiver from Customers being serviced on private streets if, in the opinion of Franchisee, there is a reasonable probability that property damage could occur through no fault of Franchisee other than the normal course of providing Service. If these criteria are not met, Customers must bring their materials to the intersection of the private street and the closest public street. Containers must be marked with the appropriate Customer address.

4.7.3.2. If a Customer obstructs a private street that otherwise meets the above requirements, such as several parked vehicles, sporting equipment, or other barrier, which makes Franchisee’s ability to Service the private street unsafe, Franchisee may refuse collection of Service pursuant to Section 3.10. If these obstructions are not moved or removed by the Customer so that Franchisee may safely Service the private street, the Customer may be found to be in violation of these Administrative Rules and may be fined pursuant to Article XV, Section (2) of the Franchise Agreement.

4.7.4. Service on Public Alleys. Service on public alleys is encouraged, but is at the discretion of Franchisee.

4.7.5. Service from In-Ground Cans. Service from in-ground cans is prohibited.

4.7.6. Location of Empty Receptacles.

4.7.6.1. After providing Service, Franchisee must return all Receptacles, except for Drop Boxes, to the location where the Customer placed them without leaving Service remnants or other disturbance to existing site conditions, unless the Customer placed the Receptacle(s) in a prohibited location. In such a case, Franchisee may place the Receptacle in a location allowed under these Administrative Rules.

4.7.6.2. When possible, Franchisee must place Drop Boxes on private property locations such as driveways or yards. Prior to Franchisee’s delivery of the Drop Box, the Customer must receive a permit from the City to place a Drop Box in a public right-of-way, street, alley, or roadside.

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- 4.7.7. Placement of Compactors. The Customer must place Compactors at a location that protects the privacy, safety, and security of Customers, that provides access needed to prevent unnecessary physical and legal risk to the Franchisee, and that is agreed upon by the Customer and the Franchisee.

**4.8. General Preparation of Materials**

- 4.8.1. The Customer must place all waste subject to collection by Franchisee safely and securely in the appropriate Receptacle to prevent lightweight materials from blowing away prior to and while being dumped into the Service vehicle or Receptacle. The Customer must load the contents of a Receptacle in such a manner that they fall freely from the Receptacle when emptied by Franchisee. Franchisee is not responsible for digging out the contents of a Receptacle. The Customer may not overfill a Cart or Container so that the lid is open, or compact the contents of a Cart or Container. The Customer is responsible for closing the Receptacle as securely as possible to prevent the lid or materials from blowing away or rain from getting into the Receptacle. The Customer must loosely place materials in a Receptacle to minimize damage to the Receptacle and to facilitate Service.
- 4.8.2. Glass. The Customer must Source Separate glass from all other Recyclable Materials.
- 4.8.3. Batteries. The Customer must place Batteries in a one (1) quart, zip-sealed, see-through plastic bag placed in the glass receptacle, on top of glass bottles and jars, and tape the terminal ends of all Batteries other than standard alkaline batteries.
- 4.8.4. Drainage Requirement. The Customer must drain all Waste of surplus liquid.
- 4.8.5. Ashes. Ashes must be cool and must be securely wrapped or bagged before the ashes are deposited in any Container.
- 4.8.6. Animal Wastes. The Customer must bag animal wastes and kitty litter separately from other Solid Wastes. The Customer may Dispose of animal wastes in the Solid Waste Receptacle.
- 4.8.7. Compactors. The Customer must load any Compactor to be within safe loading design limit, operation limit, and weight limit of the collection vehicles used by the Franchisee.
- 4.8.8. Persons, other than the Generator of the materials placed in a Receptacle for Service or an employee of the Franchisee, must not interfere with or remove any Waste from any Receptacle where it has been placed by the Generator for collection; further, they must not remove, alter or compact either manually or mechanically, the contents of the Receptacle, including Recyclable Materials and Solid Waste.
- 4.8.9. The Customer must not place chemicals, liquid waste, paint, corrosive materials, hot ashes, or Other Materials into a Receptacle placed for Service. The Franchisee may charge a Customer a fee to repair or replace any Receptacle that is damaged by the Customer's violation of this section.

- 4.9. Access for Renters.** Each property owner must ensure that if his or her property is rented by a

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third party, that third party has access to garbage and recycling collection service provided by Franchisee.

## **Section 5: Solid Waste Service Requirements**

### **5.1. Franchisee Responsibility**

5.1.1. **Service Responsibility.** The Franchisee must provide the opportunity for Solid Waste Service as defined and provided for in these Administrative Rules for all Persons within its Service Area, except as set forth below.

5.1.1.1. **Unacceptable Waste.** Notwithstanding anything to the contrary in the Franchise Agreement or these Rules, the Franchisee is not responsible for the collection of Unacceptable Waste or Infectious Waste in connection with Curbside Service. Refer to Section 9 for collection options for Unacceptable Waste.

5.1.1.2. **Hazardous Waste.** Notwithstanding anything to the contrary in the Franchise Agreement or these Rules, the Franchisee is not responsible for the collection of Hazardous Waste. To the extent that Franchisee collects Household Hazardous Waste or unknowingly collects Hazardous Waste, Franchisee must comply with all Federal, State, and Metro regulations applicable to the collection and Disposal of Household Hazardous Waste and Hazardous Waste.

5.1.1.3. **Bulky Wastes.** Notwithstanding anything to the contrary in the Franchise Agreement or these Rules, the Franchisee is not responsible for the collection of Bulky Wastes in connection with Curbside Service.

5.1.2. **Service of Extra Receptacles.** The Franchisee must Service occasional extra Solid Waste Receptacles set at the curb as an “extra” beyond the Customer’s subscribed Service level. The Franchisee may charge the fee established by the City for such “extras,” except in cases of missed Service. The Franchisee may require the Customer to give prior notification of an extra set out that would require extraordinary time, labor, or equipment.

5.1.3. **Disposal of Solid Waste Materials.** Franchisee must Dispose of the Solid Waste collected within its Service Area at a Metro-approved facility. Franchisee must not mix Solid Waste for Disposal with any properly prepared Source Separated Materials.

### **5.2. Customer Responsibility**

5.2.1. **Weight of Receptacles.** The Customer must limit the weight of a Solid Waste Receptacle to the maximum weights listed as follows:

<b>Receptacle/Type Capacity</b>	<b>Maximum Weight</b>
Up to and including 20 gallons	35 lbs.

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Over 20 gallons, up to and including 34 gallons	60 lbs.
Roll carts up to and including 40 gallons	60 lbs.
Roll carts over 40, up to and including 60 gallons	100 lbs.
Roll carts over 60, up to and including 90 gallons	120 lbs.

- 5.2.2. Weight of Containers and Drop Boxes. The weight of Solid Waste put into a Container or Drop Box, whether compacted or not, must not exceed the lifting capacity of the Franchisee's equipment, and the weight must not put the Franchisee over the weight limit for the loaded vehicle. The Franchisee must furnish the Customer with information concerning limitations on Franchisee's equipment, upon request. The Franchisee is not required to collect containers exceeding 300 pound gross loaded contents per loose cubic yard.
- 5.2.3. Putrescible Waste Storage. The Customer must not store putrescible materials in a Receptacle in excess of seven (7) days.

## Section 6: Recycling Service Requirements

### 6.1. Franchisee Responsibility

- 6.1.1. Service Responsibility. The Franchisee must provide the opportunity for Recycling Service as outlined in these Administrative Rules for all Persons with its Service Area.
- 6.1.2. "Recycling Only" Residential Customers. The collection frequency for a Residential Customer without Solid Waste Service must be on the same day as Solid Waste Service for the Customer's neighborhood or as agreed upon by the Franchisee and the Customer.
- 6.1.3. Collection of Recyclable Materials. The Franchisee must collect materials that are on the City's Recyclable Materials List for any Residential Customer that subscribes for Recycling Service, provided the Customer complies with the preparation requirements and other requirements set forth in these Administrative Rules.
- 6.1.4. Processing of Collected Recyclable Materials. The Franchisee must transport and market collected Recyclable Materials. The Franchisee must deliver all properly prepared and collected Recyclable Materials to a processor or broker of Recyclable Materials or to an end-use market. The Franchisee must not deliver, or cause to be delivered, any collected Recyclable Materials for Disposal, unless the Recyclable Materials are improperly prepared or permission is granted by the City and DEQ.
- 6.1.5. Diversion Goal. Franchisee must make every effort to meet the Recycling goals of the Regional Solid Waste Management Plan adopted by Metro, promote ongoing efforts as other Recycling "best practices" become available, and help identify methods of Reuse when applicable. The City will make all reasonable efforts to assist Franchisee in meeting such Recycling goals.
- 6.1.6. Recyclable Materials List. Franchisee must provide Customers with educational

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materials approved by the City that reference the current Recyclable Materials List at the Customer's request. Franchisee may respond to Customer requests for such information electronically (e.g., by email).

**6.2. Customer Responsibility****6.2.1. Preparation of Recycled Materials.**

6.2.1.1. Residential Customers. Residential Customers must prepare Recyclable Materials to avoid contamination with other waste materials.

6.2.1.2. Multifamily Customers. Multifamily Customers must prepare Recyclable Materials to avoid contamination with other waste materials. The Franchisee and Multifamily Customer may decide any exceptions or restrictions to the types, quantity, and volume of Recyclable Materials so long as such exceptions or restrictions comply with all applicable laws and regulations, including the Oregon Recycling Act, and all City codes and administrative rules.

6.2.1.3. Commercial Customers. Commercial Customers must comply with the Recycling requirements set forth in Metro Code Chapter 5.15, including, but not limited to, the following:

6.2.1.3.1. Commercial Customers must Source Separate from other Solid Waste all recyclable paper, cardboard, glass, and plastic bottles and jars, and aluminum and tin cans for Reuse or Recycling.

6.2.1.3.2. Commercial Customers must ensure the provision of Recycling containers for internal maintenance or work areas where Recyclable Materials may be collected, stored, or both.

6.2.1.3.3. Commercial Customers must post accurate signs where Recyclable Materials are collected or stored that identify the materials that the Commercial Customer must Source Separate for Reuse or Recycling and that provide Recycling instructions.

6.2.1.3.4. A Commercial Customer may seek exemption from the requirements of Section 6.2.1.3 by providing access to a recycling specialist selected by the City for a site visit and establishing that it cannot comply with the requirements of Section 6.2.1.3 for reasons that include, without limitation, space constraints and extenuating circumstances.

6.2.1.3.5. A Commercial Customer that does not, in the sole determination of the City, comply with the requirements of Section 6.2.1.3 is subject to the enforcement process outlined in Section 7.3.

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- 6.3. Landlord or Property Owner Responsibility.** Persons and entities that own, manage, or operate with tenants that are Commercial Customers, and that provide areas for the tenant's Receptacles for Solid Waste, must provide space for Recycling Receptacles adequate to enable the tenant to comply with these Administrative Rules, including, but not limited to, Section 6.2, and Metro's Solid Waste Administrative Rules, including, but not limited to, Metro AR 5.15-3000 through 3055.

## **Section 7: Organic Materials Service Requirements**

### **7.1. Franchisee Responsibility**

- 7.1.1. Service Responsibility. The Franchisee must provide the opportunity for Organic Materials Service as provided in these Administrative Rules for all Persons within its Service Area.
- 7.1.2. "Organic Materials Only" Customers. The collection frequency for a Person without Solid Waste collection service must be on the same day as Solid Waste collection for the Customer's neighborhood or as agreed upon by the Franchisee and the Customer.
- 7.1.3. Special Collection of Organic Materials. The Franchisee must provide special collection of Organic Materials at the City's reasonable request.
- 7.1.4. Collection of Organic Materials. The Franchisee must collect Organic Materials provided the Organic Materials comply with the preparation requirements and other requirements set forth in these Administrative Rules.
- 7.1.5. Collection of Extra Organic Materials Receptacles. The Franchisee must collect clearly marked occasional extra Organic Materials Receptacles set at the curb as an "extra" beyond the Customer's subscribed Service level. The Franchisee may charge the fee established by Franchisee and approved by the City for such "extras," except in cases of missed Service. For example extra containers may be needed for Yard Debris, including leaves, during certain times years due to the need to Dispose of additional organic landscaping materials.
- 7.1.6. Collection of Organic Materials from Commercial Customers. The Franchisee must collect Organic Materials, including Food Waste, from Commercial Customers to whom Franchisee agrees to provide such Service or to whom Metro requires Franchisee to provide such Service so long as the Organic Materials comply with the preparation requirements and other requirements set forth in these Administrative Rules.
- 7.1.6.1. Food Waste Service.
- 7.1.6.1.1. For Covered Businesses, the Franchisee must collect Food Waste at least once each week. If additional regularly scheduled Service is necessary, as determined by the Covered Business, Franchisee, or the City, then Franchisee will provide such additional regularly scheduled Service to the Covered Business.
- 7.1.6.1.2. The Franchisee must provide the opportunity for Covered

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Businesses to Dispose of Food Waste in a separate Receptacle. For all other Commercial Customers, Franchisee may provide the opportunity to Commercial Customers to Dispose of Organic Materials in a separate Receptacle.

- 7.1.6.1.3. Franchisee must provide Receptacles for Disposal of Food Waste, and, if agreed to by Franchisee and the Commercial Customer, receptacles for Disposal of Organic Materials.
- 7.1.6.1.4. Once each year a Covered Business may request that its Organic Materials Receptacle be cleaned or replaced with a clean Receptacle by the Franchisee.
- 7.1.6.1.5. Franchisee must provide to Covered Businesses City or County-approved education regarding Disposal of Food Waste.

7.1.7. Processing of Organic Materials. The Franchisee must transport and market collected Organic Materials. The Franchisee must deliver all properly prepared and collected Organic Materials to a state-approved processor or composting facility. In addition, the Franchisee must deliver Food Waste to a facility that complies with applicable federal, state, regional, and local laws and regulations. The Franchisee must not deliver or cause the delivery of any collected Organic Materials for Disposal unless the Organic Materials are improperly prepared or Franchisee obtains permission from DEQ for such Disposal.

## 7.2. Customer Responsibility

### 7.2.1. Preparation of Organic Materials.

#### 7.2.1.1. Residential Customers.

- 7.2.1.1.1. Residential Customers must place Organic Materials, including Yard Debris and Food Waste, in the cart provided by the Franchisee for Organic Materials.
- 7.2.1.1.2. Occasional extra Organic Material may be placed in Cart, "Kraft" type and "Epic" brand bags, or bundles. Such Containers must have a maximum volume of 40 gallons or less. The Customer must not use plastic bags to contain Organic Materials.

#### 7.2.1.2. Covered Businesses. Any Covered Business receiving Service from Franchisee for the collection of Food Waste must:

- 7.2.1.2.1. Source Separate Food Waste from all other waste for collection;
- 7.2.1.2.2. Recover Food Waste that is controlled by the Covered Business, or its agents or employees;



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7.2.1.2.3. If the Covered Business collects Food Waste from its customers, ensure that the Food Waste is free of non-food items; and

7.2.1.2.4. Place the Food Waste in the Receptacle provided by Franchisee.

7.2.1.3. Other Commercial Customers. Any other Commercial Customer receiving Organic Materials Service from Franchisee must place Organic Materials in the acceptable Receptacle provided by Franchisee.

7.2.1.4. Acceptable Materials. The Customer must include only those materials that meet the definitions and requirements of these Administrative Rules, including the definition of Food Waste and Organic Materials, in the Receptacle provided by the Franchisee for Organic Materials.

7.2.2. Weight of Organic Materials Receptacles. The Customer must limit the weight of a Receptacle and its contents to the maximum weights listed as follows:

<b>Receptacle Type/Capacity</b>	<b>Maximum Weight</b>
Roll carts up to and including 40 gallons	60 lbs.
Roll carts over 40, up to and including 60 gallons	100 lbs.
Roll carts over 60, up to and including 90 gallons	120 lbs.

### **7.3. Enforcement of Metro's Business Food Waste Program**

#### **7.3.1. Business Assistance.**

7.3.1.1. The City must develop educational materials for Covered Businesses, which must, at a minimum, include: (i) Labels for collection containers that clearly communicate what is allowed in the Food Waste collection system, (ii) signs or posters that provide clear and simple instructions, (iii) all signs and program materials must be designed to be understood by people with limited English proficiency, and (iv) program contact phone number for businesses to call for program assistance.

7.3.1.2. The City must offer technical assistance to Covered Businesses to assist with program set-up, understanding program requirements, and separation standards, which must, at a minimum, include: (i) Education and assistance with Food Waste prevention techniques and edible food donation programs, (ii) assisting with Food Waste collection program set up and training on-site at the business, (iii) assisting with mitigating issues arising from program participation such as odors or vectors, and (iv) ensuring correct labeling of all Food Waste collection receptacles, and (v) serving as a facilitator between the business and solid waste hauler, as needed, to assist with the provision of appropriate collection receptacles and service frequency.

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- 7.3.2. **Communication.** For Commercial Customers receiving Food Waste Service from Franchisee, if the Franchisee observes a contaminated Receptacle, the Franchisee will inform the Commercial Customer and the City, or its designee, of the contaminated Receptacle as soon as reasonably possible, generally within one (1) business day, after the date of observation, and will send a photograph of the contaminated Receptacle to the City. If the Franchisee has an email address for the Commercial Customer, it will also send the photograph by email to the Commercial Customer.
- 7.3.2.1. In the first two (2) instances where contamination is an issue, the Franchisee is approved to Dispose of the material as Solid Waste, and may charge the Commercial Customer for any additional cost(s) associated with Solid Waste disposal.
- 7.3.2.2. In subsequent instances, the City, Clackamas County, and/or the Franchisee will inform the Commercial Customer and any tenant business(es) of options the City, Clackamas County, and/or the Franchisee is pursuing to encourage compliance and material quality, including, but not limited to, charging the Commercial Customer to Dispose of the material as Solid Waste, assessing a contamination fee or fine, pursuing a Code Compliance process as provided in Section 7.3.4, and/or abating any issues that pose a serious health, safety, or welfare concern.
- 7.3.3. **Waiver.** A Covered Business may seek a Waiver, which excuses compliance with the Metro Business Food Waste Program, by submitting a waiver application as provided below.
- 7.3.3.1. To request a Waiver, a Covered Business must submit a Waiver application to Clackamas County's Sustainability & Solid Waste Program. Upon receipt of the Waiver application, Clackamas County will arrange a site visit to observe the circumstances and discuss the waiver request.
- 7.3.3.2. Clackamas County will forward its recommendation regarding the Waiver to the City's Code Compliance Coordinator. The City will make, in its sole discretion, a decision regarding whether to grant the Waiver. If a Waiver is granted, it is valid for a term ending no later than one (1) year from the date the City granted the Waiver.
- 7.3.3.3. **Elements Considered for Granting Waiver.** In determining whether to grant a Waiver, the City will consider the following factors:
- 7.3.3.3.1. The Receptacle enclosures or other spacing constraints that affect the Covered Business;
- 7.3.3.3.2. Whether the Covered Business is a tenant or owns the property where it is located;
- 7.3.3.3.3. What efforts the Covered Business has made to attempt to comply with the Metro Business Food Waste Program; and

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## 7.3.3.3.4. Any other information the City deems relevant.

7.3.4. **Enforcement of Metro Business Food Waste Program.** Every effort will be made by the City and the Franchisee to allow a Covered Business to establish compliance with the Metro Business Food Waste Program. The City will undertake the following enforcement action on a Covered Business or other responsible party that does not comply with Metro Ordinance No. 18-1418:

7.3.4.1. The City will send a Notice of Non-Compliance to the Covered Business or responsible party.

7.3.4.2. Upon sending the Notice of Non-Compliance, the City may perform a site visit, contact the Covered Business or responsible party, and/or contact the Franchisee to confirm non-compliance. If the City determines that the Covered Business or responsible party is not compliant, the City will send a Notice of Violation to the Covered Business or responsible party.

7.3.4.3. The Covered Business or responsible party must obtain collection Service for Food Waste, or obtain a waiver as provided in Section 7.3.3, and provide evidence of either to the City not later than ten (10) business days after the Date of Delivery of the Notice of Violation.

7.3.4.4. If the Covered Business or responsible party does not obtain collection Service for Food Waste within the time described in Section 7.3.4.3, the City will issue a written citation for violation of the Metro Business Food Waste Program and these Administrative Rules, and will require the Covered Business or responsible party to appear in the City of Wilsonville Municipal Court.

7.3.4.5. The City of Wilsonville Municipal Court may issue an assessment, fee, penalty, or fine intended to recover administrative costs and/or to incentivize the Covered Business or responsible party to correct the violation. The City of Wilsonville Municipal Court may also impose an assessment, fee, penalty, or fine for each day that the Covered Business or responsible party continues to not comply with the Metro Business Food Waste Program and these Administrative Rules.

**7.4. Landlord or Property Owner Responsibility.** Persons and entities that own, manage, or operate with tenants that are Commercial Customers must allow for or facilitate Franchisee's provision of Food Waste Service for the tenant, and otherwise enable the tenant to comply with these Administrative Rules, including, but not limited to, Section 7.2, and Metro's Solid Waste Administrative Rules, including, but not limited to, Metro AR 5.15-4000 through 4085.

## **Section 8: Recycle+ Service Requirements.**

**8.1. Optional Service.** Franchisee may offer, and a Residential Customer may subscribe for, Recycle+ Collection Service.

**8.2. Franchisee Responsibility**

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- 8.2.1. Collection Location. Franchisee will collect Recycle+ Materials Curbside. A Customer may request collection at an alternative location for an additional fee.
- 8.2.2. Collection Frequency. Franchisee will collect materials pursuant to the Recycle+ Collection Service no less than every other week.
- 8.2.3. Receptacles; Bags. The Franchisee must provide all Recycle+ Collection Service Customers with:
  - 8.2.3.1. One City-approved, 15 to 25-gallon receptacle with a lid; and,
  - 8.2.3.2. Clear, plastic collection bags to be used by Customers to source-separate any Recycle+ Collection Service materials. These bags must contain at least thirty (30) percent recycled content, if available.
- 8.2.4. Materials List. The Franchisee must provide collection of the following materials pursuant to the Recycle+ Collection Service:
  - 8.2.4.1. Compact fluorescent lightbulbs;
  - 8.2.4.2. Plastic film (#2 HDPE and #4 LDPE);
  - 8.2.4.3. Textiles; and,
  - 8.2.4.4. Clear plastic, hinged, clamshells (#1 PET/PETE).

The City may adjust the materials collected in the Recycle+ Collection Service program in consultation with Franchisee, in response to changes in recycling processing capacity or availability of recycling markets.

### 8.3. Customer Responsibility

- 8.3.1. Subscription. Recycle+ Collection Service is considered an on-call collection service. A Customer must request this service from Franchisee. Franchisee is not obligated to provide this service with less than two (2) business days of notice.
- 8.3.2. Fee for Service. A Residential Customer that subscribes for Recycle+ Collection Service must pay Franchisee an additional fee.
- 8.3.3. Source Separation Requirement. A Residential Customer that subscribes for Recycle+ Collection Service must source-separate Recycle+ Materials, and bag such materials separately, in accordance with directions provided by Franchisee or the City.

**8.4. Additional Collection Drives.** The Franchisee must participate in special collection drives to collect Recycle+ Materials, as part of this service, up to four (4) times per year, as approved by the City. The Franchisee may choose to participate in more than four (4) collection drives.

**8.5. Service to Multifamily Customers.** The Franchisee may offer Recycle+ Collection Service to Multifamily Customers, subject to owner, property manager, or Homeowner Association approval.

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**Section 9: Other Materials Service Requirements****9.1. Franchisee Responsibility**

- 9.1.1. Service Responsibility. The Franchisee must provide Service for Other Materials for all Persons within its Service Area.
- 9.1.2. Service of Other Materials. The Franchisee must provide Service for Other Materials so long as the Customer complies with the preparation requirements and other requirements set forth in these Administrative Rules.
- 9.1.3. Collection of Infectious Wastes. The Franchisee may provide for collection of Infectious Wastes or may subcontract for this Service. In either case, the Franchisee must conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transportation, storage, treatment, and Disposal of Infectious Wastes.

**9.2. Customer Responsibility**

- 9.2.1. Subscription. A Customer must request collection service for Other Materials from Franchisee. Franchisee is not obligated to provide this service with less than seven (7) business days of notice.
- 9.2.2. Fee for Service. Franchisee may charge a Customer that requests collection of Other Materials, and the Customer must pay Franchisee, a fee in accordance with the City's then-current rate sheet.
- 9.2.3. Disposal of Other Materials. Franchisee may prescribe reasonable preparation and source separation requirements for Other Materials. The Customer must place Other Materials in a location agreed upon by Customer and Franchisee and in a Receptacle (if applicable) approved by Franchisee. The location must not obstruct mailboxes, water meters, sidewalks, fire hydrants, or driveways; must not be within bicycle lanes; and must not be in a location that impedes traffic flow. Other Materials may not be set out by the Customer more than twenty-four (24) hours prior to Service.

**Section 10: Community Clean-Up Days****10.1. The Franchisee must agree to deposit the number and size of Drop Boxes and stage the below events at locations agreed to between the Franchisee and the City; and to haul away and replace as many times as may be necessary for:**

- 10.1.1. The one week period during which the "Wilsonville Clean-Up Days" will take place, including a "Bulky Waste Day" event. The "Wilsonville Clean-Up Days" event will take place once per year in the Spring. The Spring "Bulky Waste Day" will occur within the "Wilsonville Clean-Up Days" on a date set by the City for a reasonable time of day and duration of time, will be coordinated by the City and Franchisee, and will be advertised by the City and Franchisee;
- 10.1.2. The City and Franchisee will also coordinate a second "Bulky Waste Day" to occur each year in the Fall. The Fall "Bulky Waste Day" will occur on a date set by the

## Attachment 1 to Ordinance No. 883

City for a reasonable time of day and duration of time, will be coordinated by the City and Franchisee, and will be advertised by the City and Franchisee; and

- 10.1.3. The “Fall Leaf Clean-Up” event, which will take place once per year in the Fall, on a date set by the City for a reasonable time of day and duration of time, will be coordinated by the City and Franchisee, and will be advertised by the City and Franchisee.

- 10.2. All costs, except Disposal cost, incurred during the Community Clean-Up days by the Franchisee will be at the entire expense of the Franchisee.

## **Section 11: Customer Service – Access to Information**

- 11.1. **Franchisee’s Website.** To the extent practicable, Franchisee’s website must contain information regarding the following:

- 11.1.1. For new Customers: how to sign up for Services.
- 11.1.2. For all potential, new, and current Customers: access to the Franchise Agreement and these Administrative Rules. Franchisee may provide this information through a link to the City’s solid waste informational webpage.
- 11.1.3. For current Customers: local contact information if a Customer complaint or concern is not fully resolved through Franchisee’s call center.
- 11.1.4. For current Customers: information regarding Wilsonville Clean-Up Days and any other events planned by Franchisee within the City.
- 11.1.5. For all current Commercial Customers: City-approved information regarding Business Recycling Requirements.
- 11.1.6. For Covered Businesses; City-approved information regarding Food Waste Requirements

- 11.2. The City will also provide the information in Sections 11.1.2 through 11.1.4 on its solid waste webpage.

- 11.3. **Franchisee Communication to New Customers.** Franchisee will send to all new Customers a communication that includes short summary of Franchisee’s Services and any key information regarding the Franchise Agreement and these Administrative Rules, which communication will be approved by the City Manager or designee prior to Franchisee delivering the communication to new Customers. The communication may be sent via electronic mail or regular mail.

- 11.4. **Franchisee Communication to Current Customers.** Prior to any Service Rate increase or new, modified, or removed surcharge, Franchisee will send to all current Customers a communication explaining the Service Rate increase or surcharge. The communication must be approved by the City Manager or designee prior to Franchisee delivering the communication to current Customers. The communication may be sent via electronic mail or regular mail.

- 11.5. Any disputes regarding Franchisee’s Customer service are subject to Section 12 and Article XIII, Section (1) of the Franchise Agreement.

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**Section 12: Dispute Resolution**

- 12.1. Information and Complaint Resolution.** The Franchisee must respond with twenty-four (24) hours or by the next business day to Customer calls and telephonic or online complaints. Both office and on-route staff must be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding Services. The Franchisee must respond in writing to any written complaint on Service within five (5) working days from receiving the written complaint.
- 12.2. Disputed Billing Policy.** The Franchisee must have a written policy for resolving disputed billings pursuant to Section 3.5.4. The Franchisee must provide a copy of disputed billing policies to the City for review and approval.
- 12.3. Unresolved Disputes.** Any disputes between Franchisee and Customer that remain unresolved for thirty (30) days or more are subject to the procedures contained in Article XIII, Section (1) of the Franchise Agreement.

Attachment 2 to Ordinance No. 883

**WRITTEN ACCEPTANCE OF ORDINANCE NO. 833  
CITY OF WILSONVILLE, OREGON**

**TO THE MAYOR AND COUNCIL OF THE CITY OF WILSONVILLE:**

WHEREAS, on the 6th day of November, 2023, the Council of the City of Wilsonville, Oregon adopted Ordinance No. 833 entitled:

“An Ordinance of the City of Wilsonville Adopting a Franchise Agreement for Solid Waste Management and Collection within the City and Repealing Ordinance No. 814;” and

WHEREAS, said Ordinance grants Keller Drop Box, Inc., dba Republic Services of Clackamas and Washington Counties (“Franchisee”) an exclusive franchise within the City to provide management and collection services for solid waste, recyclable materials, yard debris, organic materials, and other materials pursuant to the terms and conditions stated in said Ordinance; and

WHEREAS, said Ordinance was granted upon the condition that Franchisee shall submit to the City Recorder of the City of Wilsonville its written acceptance of all the terms and conditions of said Ordinance within fourteen (14) days after the effective date of the Ordinance;

NOW, THEREFORE, Franchisee does hereby acknowledge and accept Ordinance No. 833 and all the terms and conditions stated therein.

IN WITNESS WHEREOF, Keller Drop Box, Inc. dba Republic Services of Clackamas and Washington Counties has caused this Written Acceptance to be executed on \_\_\_\_\_, 2023.

**Keller Drop Box, Inc. dba Republic Services  
of Clackamas and Washington Counties**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

Employer I.D. No. \_\_\_\_\_