

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING THE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT AND COLLECTION WITHIN THE CITY CREATED BY ORDINANCE NO. 814 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:

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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 or Solid Waste Management and Collection Administrative Rules. All standards and rules adopted by the City Council upon adoption of this Ordinance defining specific operating rules and procedures that support and ensure compliance with this Ordinance, and which may be amended from time to time by the City Manager or designee upon review with Franchisee as provided in t~~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 involve new or emerging technology or that are part of a pilot project or are prototypes of potential new fleet vehicles, such as electric Solid Waste trucks;**
- 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,

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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 Fiscal Yearcalendar year, as more particularly described in Article XI, Section 3 herein.
- 4. Bi-Annual Informational Report. The report submitted by Franchisee to the City at the end of each quarter, as more particularly described in Article XI, Section 2.
- 5. City. The City of Wilsonville.

6. Commercial. Stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, ~~manufacturing and industrial buildings and complexes~~ and other non-manufacturing entities. “Commercial” does not include ~~business, other~~ manufacturing activities or business, or processing activities ~~that occur in Residential-residential~~ dwellings.
7. 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, Multi-Family, 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, Multi-Family, 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.
8. Council. The City Council of the City of Wilsonville.
9. CPI. The ~~March to March~~-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, for the twelve-month period ending as of the most recent September 1.
10. 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.

11. Customer(s). Individuals, groups, businesses, corporations, or other recognized entities receiving ~~Solid-Waste management services~~Service from the Franchisee within the City.
12. DEQ. State of Oregon Department of Environmental Quality.
13. EPA. United States Environmental Protection Agency.
- ~~14.~~ Extraordinary Rate Increases. Service Rate charged by Franchisee to its Customers sought to be increased by Franchisee under Article VIII of this Ordinance.
- ~~15.~~ 14. Fiscal Year. ~~July 1 to June 30 of any year.~~
- ~~16.~~ 15. Franchise. A contract with the City allowing ~~the Franchisee to use any City-owned~~ of public right-of-way to collect, transport, process, and dispose of ~~Solid-Waste, Recyclable Materials, Yard Debris, and food scraps~~ and to perform other responsibilities ~~as defined~~set out in this Ordinance and the Administrative Rules.
- ~~17.~~ 16. Franchise Fee. Franchise Fee is defined in Article VII of this Ordinance.
- ~~18.~~ 17. 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.
- ~~19.~~ 18. 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; ~~and~~
- ~~20.~~ 19. 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 defoliant, 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~~ 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.

e.d. To the extent not covered by the preceding subsections of this Section 19, 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.

~~21.~~20. Multifamily. Any multi-dwelling building or group of buildings that contains ~~three~~ five or more dwellings on a single ~~tax~~-lot.

~~22.~~21. Operating Margin. Gross Revenues minus Allowable Expenses within the applicable calendar year~~Fiscal Year~~.

~~23.~~22. 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, Yard Debris, paper, and putrescible materials which are generally a source of food for bacteria.

~~24.~~23. Other Materials. Materials that the City and Franchisee agree Franchisee will collect, transport, treat, utilize, process, or otherwise haul from its Customers

pursuant to the Solid Waste Management and Collection Administrative Rules as further identified in Article XV herein, but excluding Recycle+ Materials.

~~25.~~24. Person. An individual, partnership, association, corporation, limited liability company, sole proprietorship, cooperative, estate, trust, firm, ~~estate~~governmental unit, or any other entity legal private entity in law or fact.

~~26.~~25. 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.

~~27.~~26. 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.

27. Recycle+ Collection Service. An optional recycling service offered by Franchisee for the collection of Recycle+ Materials for reuse or recycling.

28. Recycle+ Materials. Recyclable Materials that are acceptable by Franchisee pursuant to the Recycle+ Collection Service, which are listed in the Administrative Rules.

~~28.~~29. Recycling. ~~Any process by which Solid Waste materials are reused or transformed into new products in a manner that the original products may lose their identity.~~The collection, transportation, storage, and processing of Recyclable Materials.

~~29.~~30. Residential. A single-family dwelling unit or duplex (i.e., an attached two-dwelling unit) on a single ~~tax~~ lot.

~~30.~~31. Resource Recovery. The process of obtaining useful material or energy resources from ~~Solid~~ Waste, including energy recovery, materials recovery, Recycling, or reuse of ~~Solid~~ Waste.

~~31.~~32. Service. ~~Collection~~The collection, transportation, transfer, disposal ~~of~~, or Resource Recovery of ~~Solid~~ Waste, ~~Recyclable Materials, Yard Debris, Organic Materials, and Other Materials~~ by Franchisee pursuant to this Franchise Agreement, ~~and the Administrative Rules.~~

33. Service Rate. The cost Customers pay for Service provided by Franchisee as stated in **Attachment 2** to this Ordinance and as adjusted pursuant to Article VIII of this Ordinance.

~~32.~~ _____

~~33.~~34. **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 ~~home residential, commercial,~~ and industrial appliances (to the extent that such appliances do not contain Freon or other refrigerants); manure; equipment and furniture; ~~manure;~~ 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;
- ~~e.~~ Reusable beverage containers;
- ~~d.~~ Cardboard generated by a Person that is the generator or source, and baled and transported to a Resource Recovery facility— (Such such Person will be is deemed to have transported cardboard when it is hauled by a vehicle used in regular deliveries of merchandise to the cardboard generator's—Person's business);
- ~~e.~~ Material used for fertilizer or other productive purposes in agricultural operations;
- ~~e.~~ Discarded or abandoned vehicles or parts of vehicles; ~~or~~
- f. Tires;
- g. Recyclable Materials, Organic Materials, Other Materials, or Alternative Recycling/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 ~~attached hereto and incorporated herein as Attachment 1.~~

~~34.~~35. **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.

~~35.~~36. Source Separated Materials. ~~Sorting of different material~~ Material comprising a waste (such as glass, metals, paper, plastics) that has been separated at its point of generation, ~~for a simpler and more efficient Recycling or final disposal.~~

~~36.~~37. 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.

~~37.~~38. Unallowable Expenses. Includes the following:

~~a.~~ All charitable and political contributions;

~~a-b.~~ Charitable expenses that are not expressly approved by the City as an Allowable Expense;

~~b-c.~~ Fines and penalties incurred by Franchisee, including, without limitation, judgments for violation of applicable laws.

~~e-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;

~~d-e.~~ Accruals for future unknown regulatory changes;

~~e-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;

~~f-g.~~ Principal or interest payments on the acquisition of any new Service routes;

~~g-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;

~~h-i.~~ State and federal income taxes, and any federal, state, local or other taxes or fees not expressly listed as an Allowable Expense;

~~i-j.~~ Fees paid to a Franchisee's Board of Directors;

~~j-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;

~~k.l.~~ Operation of community access recycling depot not physically located or operated in conjunction with Franchisee’s transfer station;

~~l.m.~~ Recycling operations expenses already calculated and incorporated into Franchisee’s tipping fees;

~~m.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;

~~n.o.~~ Donated Services, including the “Wilsonville Clean-Up Days” and the “Fall Leaf Clean-Up” events identified in the Administrative Rules ~~attached hereto as Attachment 1~~, except for Disposal costs associated with these Services;

~~o.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.

~~38.~~39. 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.

40. 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.

39-41. 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 residential property. “Yard Debris” does not include stumps, rocks, ~~or~~ bulky wood materials, sod, or dirt.

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. In particular, Franchisee will provide Solid Waste, Recycling, and Yard Debris Service to the City’s Residential, Multi Family, and Commercial Customers and will provide the option for Commercial Customers to have Organic Materials Service provided by Franchisee. 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

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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 ~~Yard Debris, other~~ Recyclable Materials, Organic Materials, Solid Waste, ~~or~~ 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.
- ~~6. Rejection of Unacceptable Waste. If Unacceptable Waste is discovered before it is collected by Franchisee, Franchisee may refuse to Service the entire Solid Waste, Recyclable Material, Yard Debris, or Organic Material container that contains the Unacceptable Waste.~~
- ~~a. In such situations, Franchisee will contact the Customer and the Customer must undertake appropriate action prior to the next scheduled Service day to ensure that such Unacceptable Waste is removed and properly disposed.~~
 - ~~b. In the event Unacceptable Waste is present but not discovered until after Service by Franchisee, Franchisee may, in its sole discretion, remove, transport, and dispose of such Unacceptable Waste at a facility authorized to accept such Unacceptable Waste in accordance with applicable law and charge the Customer or generator of such Unacceptable Waste for all direct and indirect~~

~~costs incurred due to the removal, remediation, handling, transportation, delivery, and disposal of such Unacceptable Waste. To the extent practicable, the City will assist Franchisee to determine the identity of the Customer or generator of the Unacceptable Waste.~~

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ARTICLE VI

Franchise Term

The rights, privileges, and Franchise herein granted will ~~continue for the Franchisee for a period of ten (10) years, commencing July 1, 2018~~ 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. Initial Franchise Fee.~~ In consideration of the Franchise by this Ordinance, ~~for the first year of this Franchise,~~ the Franchisee shall ~~currently pay~~ must pay to the City ~~five three~~ 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.
- ~~2.1. Franchise Fee Increase.~~ Beginning January 1, 2020, the initial Franchise Fee will increase to five percent (5%) of the Gross Revenue. ~~The Franchise Fee increase may be passed on to the Customers. The Franchise Fee is an Allowable Expense and, as such, will be included in determining Franchisee's Operating Margin.~~
- ~~3.2. 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 ~~June 30~~ December 31 of each year for the prior ~~calendar year~~ Fiscal Year.

~~4.3.~~ Late Payments; Interest. Should Franchisee fail or neglect to make the quarterly payment on the payment date stated in Section 3 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. Initial-Current Service Rate. The ~~initial~~ Service Rate Franchisee charges to Customers for its Service during the 2024 calendar year is set forth in **Attachment 2** to this Ordinance, which is incorporated by reference herein. Amendments to Attachment 2 to this Ordinance may be made by Council by resolution.
- ~~2. First Service Rate Adjustment. On October 1, 2018, the initial Service Rate will be increased by three and one quarter percent (3.25%).~~
- ~~3. Second Service Rate Adjustment. Prior to July 1, 2019, the City will undertake a review of Franchisee's books, records, and accounts to adjust the Service Rate to set a new Service Rate that achieves an Operating Margin equal to ten percent (10%) of Gross Revenues. The Service Rate may be adjusted higher or lower in order to achieve the Operating Margin equal to ten percent (10%) of Gross Revenues. The initial Service Rate will be charged to Customers from July 1, 2018 through and including September 30, 2018. The first Service Rate adjustment will be charged to Customers from October 1, 2018 through and including June 30, 2019. The second Service Rate adjustment will be charged to Customers from July 1, 2019 through and including June 30, 2020. The annual Service Rate adjustment~~

provided in Section 4 of this Article does not apply to the first or second Service Rate adjustments. For clarity, the table below illustrates the timing and adjustment of each of the Service Rates discussed in Sections 1 through 3 of this Article:

Title	Time	Service Rate
Initial Service Rate	July 1, 2018-September 30, 2018	Listed in Attachment 2
First Service Rate Adjustment	October 1, 2018-June 30, 2019	Service Rate increased by 3.25%
Second Service Rate Adjustment	July 1, 2019-June 30, 2020	Service Rate adjusted to achieve 10% Operating Margin

4.2. Annual Service Rate Adjustment. It is the goal of this Franchise 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 Sections 2, 3, or 5 of this Article, the Service Rate will be adjusted annually under the following circumstances:

- a. Service Rates will not ~~increase~~ ~~change~~ in the next ~~Fiscal Year~~ calendar year if the expected Operating Margin in the next ~~calendar year~~ Fiscal Year is equal to or greater than twelve percent (12%) of Gross Revenues.
- b. If the expected Operating Margin in the next ~~calendar year~~ Fiscal 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~~ Fiscal 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 seventy-five percent (100%) of the percentage increase, if any, in the CPI.
- d. If the expected Operating Margin in the next ~~calendar year~~ Fiscal Year is less than eight percent (8%) of Gross Revenues and Franchisee is not entitled to an Extraordinary Rate Increase provided in Section 5 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~~Fiscal Year.
- f. Franchisee will provide, in writing, its calculation of its expected Operating Margin for the next ~~calendar year~~Fiscal Year, together with supporting documentation, to the City Manager or designee no later than ~~May 1~~August 15. The City Manager or designee will certify the CPI and Service Rate adjustment, if any, in writing, to Franchisee ~~by June 1~~on or about October 15. Any Service Rate adjustment allowed under this Section 4 will take effect at the beginning of the next ~~calendar year~~Fiscal Year commencing on ~~July~~January 1. Attachment 2 to this Franchise Agreement will be amended by the City Manager or designee to reflect the current Service Rates.
- g. 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.

5-3. 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

Commented [DS4]: Dates updated to reflect shift from fiscal year to calendar year

Extraordinary Rate Increase must be approved by ~~City~~ 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 ~~53~~. 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.

~~6.4.~~ 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, other than the surcharge identified in subsection (a) herein, 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.

~~a. Recycling Surcharge. This Ordinance adopts a surcharge for recycling costs, which surcharge is stated in Attachment 2 to this Ordinance. The recycling surcharge will be reviewed by Council on or before January 1, 2019, at which time Council will adopt a resolution to continue the surcharge to a later review date, modify the surcharge, or terminate the surcharge. Approval of a continuing or modified surcharge shall not be unreasonably withheld by the Council.~~

Commented [DS5]: Deleted because it is obsolete language – City Council eliminated this surcharge in 2021.

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 City Council. ~~In particular, Franchisee will provide Solid Waste, Recycling, and Yard Debris Service for Residential, Multi Family, and Commercial Customers and will provide Commercial Customers the option of Organic Materials Service.~~
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](#)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, Multi-Ffamily, 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. ~~Give reasonable attention to the needs of physically handicapped Customers so that they may avail themselves of the Service offered without any additional charge.~~
 - e. 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:

Commented [DS6]: Deleted because minimum service levels are stated with greater clarity in rules

Commented [DS7]: Deleted because is stated in rules

- 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 ~~City~~ 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, ~~Yard Debris~~, Organic Materials, ~~and~~ 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, ~~Yard Debris~~, Organic Materials, ~~or~~ 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. Bi-Annual Informational Reports. Franchisee must complete and remit to the City Manager or designee a Bi-Annual Informational Report no later than forty-five (45) days after each June 30 for the period of the immediately preceding January 1 to and including June 30- and no later than forty five (45) days after December 31 for

Commented [DS8]: Need for this report and its scope are discussion points for City Council.

the period of the immediately preceding July 1 to and including December 31. The Bi-Annual Informational Report must include the following information:

- a. The quantities of Solid Waste, Recyclable Materials, ~~Yard Debris~~, Organic Materials, and Other Materials by Customer classification collected within the City during the reporting period, 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;
- b. A summary of communication, marketing, and educational outreach conducted by Franchisee during the reporting period; and
- c. The number of Customer complaints and a summary of the type of complaints received, along with a summary of Franchisee's response to Customer complaints.

3. Annual Franchise Reports. Franchisee must complete and remit to the City Manager or designee an Annual Franchise Report, no later than forty-five (45) days after the last calendar day of the current ~~Fiscal Year~~calendar year (each ~~June 30~~December 31), with the following information:

- a. Franchisee must report its Gross Revenues and Allowable and Unallowable Expenses in an income statement format and provide information about Customer counts, Services provided, disposal volumes, and Recycling activities for all Customer classifications and for all programs identified in this Ordinance. Franchisee must report totals for all operations necessary to adequately verify compliance with the Service Rate allocation methodology as defined 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.
- b. The Annual Franchise Report will also include a synopsis of the operations of the current ~~calendar year~~Fiscal Year, 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~~Fiscal 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. The Annual Franchise Report will also describe and quantify communication, outreach, and educational activities performed by Franchisee.

e.d. The Annual Franchise Report will summarize 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).

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 Franchise 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~~Fiscal 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 ~~City~~-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~~~~Fiscal 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 ~~City~~-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 ~~attached hereto and incorporated herein as Attachment 1~~, 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 City-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 City-Council entered upon the basis of findings at the public hearing, the City-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 City 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 ~~City~~ 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 ~~operation-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 ~~with the reasonable cost of such additional counsel to be borne by the Franchisee~~.
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 3**. A failure on the part of Franchisee to provide

Commented [DS9]: 1 of 2 changes requested by RS.

Commented [DS10]: 2 of 2 changes requested by RS.

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 Nos. ~~204, 281, 424, and 443~~ and ~~Resolutions Nos. 1077 and 2566814~~ are-is hereby repealed, and upon acceptance by the Franchisee, all rights and obligations arising under Ordinance Nos. ~~204, 281, 424, and 443~~ and ~~Resolutions Nos. 1077 and 2566814~~ shall terminate.

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

Kimberly Veliz, City Recorder

ENACTED by the City Council on the ____ day of _____ 2023, by the following votes: Yes: _____ No: _____

Kimberly Veliz, City Recorder

DATED and signed by the Mayor the ____ day of _____ 2023.

JULIE FITZGERALD, MAYOR

SUMMARY OF VOTES:
Mayor Fitzgerald
Council President Akervall

ORDINANCE NO. _____

Councilor Linville
Councilor Berry
Councilor Dunwell

Attachments:

Attachment 1 – Solid Waste Management and Collection Administrative Rules

Attachment 2 – Rate Schedule

Attachment 3 – Written Acceptance of Ordinance No. ____

ORDINANCE NO. _____