ORDINANCE NO. 1328

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

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

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

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

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

THE CITY OF CANBY ORDAINS AS FOLLOWS:

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

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

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

Kimberly Scheafer, CMC
City Recorder

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

YEAS 5 NAYS 0

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

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

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

FRANCHISE AGREEMENT BETWEEN
THE CITY OF CANBY, OREGON
AND
CANBY DISPOSAL FOR SOLID WASTE, RECYCLABLE MATERIALS, AND YARD DEBRIS COLLECTION SERVICES

This Franchise Agreement (Agreement) is entered into this _____ day of _____2010, by and between the City of Canby, Oregon (City) and Canby Disposal (Company) for the collection, transportation, and disposal of solid waste and the collection, transportation, and processing of recyclable materials and yard debris.

RECITALS

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

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

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

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

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

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

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

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

ARTICLE 1
DEFINITIONS

1.1 Agreement

"Agreement" means this franchise agreement between City and Company for collection, transportation, and disposal of solid waste and the collection, transportation, and processing of recyclable materials and yard debris, including all exhibits and attachments, and any amendments thereto.

1.2 Approved Disposal Site

"Approved Disposal Site" means the Columbia Ridge Landfill and the Riverbend Landfill, both of which are owned and operated by Waste Management Incorporated, a subcontractor to the Company, and Coffin Butte in Benton County unless the City designates a different disposal site in accordance with Section 3.3 or accepts the Company's proposal for an alternative disposal site in accordance with Section 5.8.4.

1.3 Approved Recyclable Material Processing Site

"Approved Recyclable Material Processing Site" means the K.B. Recycling, Inc. which is owned and operated by Fred Kahut and located in Clackamas, Oregon, and which was selected by Company and approved by the City, unless the City designates a different disposal site in accordance with Section 3.3, or accepts the Company's proposal for an alternative recyclable material processing site in accordance with Section 5.8.4..

1.4 Approved Yard Debris Processing Site

"Approved Yard Debris Processing Site" means Recology, Inc., located in West Linn, Oregon and which was selected by Company and approved by the City, unless the City designates a different processing site in accordance with Section 3.3, or accepts the Company's proposal for an alternative yard debris processing site in accordance with Section 5.8.4.

1.5 Approved Transfer Station

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

1.6 Billings

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

1.7 Cart

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

1.8 City

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

1.9 Collection

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

1.10 Commencement Date

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

1.11 Commercial Premises

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

1.12 Commingled

"Commingled" means a mix of recyclable materials.

1.13 Company

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

1.14 Company's Compensation

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

1.15 Container

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

1.16 Curbside

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

1.17 Disposal

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

1.18 Disposal Site

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

1.19 Drop Box

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

1.20 Effective Date

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

1.21 Environmental Laws

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

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

1.22 Exchange

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

1.23 Facility

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

1.24 Fair Market Value

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

1.25 Fiscal Year

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

1.26 Franchise

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

1.27 Franchise fee

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

1.28 Generator

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

1.29 Gross revenues

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

1.30 Hazardous Substance

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

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

1.31 Hazardous Waste

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

1.32 Holidays

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

1.33 Household Hazardous Waste

"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 and is generated by the household. "Household Hazardous Waste" may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

1.34 Infectious Waste

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

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

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

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

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

1.35 Legislation

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

1.36 Missed Pick-up

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

1.37 Multi-Family Dwelling Unit

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

1.38 Non-Putrescible Solid Waste

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

1.39 ORS

"ORS" means the 2009 Oregon Revised Statutes.

1.40 Owner

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

1.41 Party or Parties

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

1.42 Person

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

1.43 Premises

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

1.44 Principal Recyclable Materials

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

1.45 Processing

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

1.46 Purchase

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

1.47 Processing Site

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

1.48 Putrescible Solid Waste

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

1.49 Rate Period

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

1.50 **Rates**

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

1.51 Receptacles

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

1.52 Recycling

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

1.53 Recyclable Material

"Recyclable Material" 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. Recyclable materials are a subset of solid waste.

1.54 Residential Premises

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

1.55 Single-Family Dwelling Unit

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

1.56 Solid waste

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

(a) Hazardous waste as defined in ORS 466.005.

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

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

1.57 Source Separated

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

1.58 Subcontractors

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

1.59 Term

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

1.60 Transfer Station

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

1.61 Yard debris

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

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

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

2.2 Company Authorization

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

2.3 Agreement Duly Executed

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

2.4 No Conflict with Applicable Law or Other Documents

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

a) Conflicts with, violates, or will result in a violation of any existing applicable law; or

b) Conflicts with, violates, or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Company is a party, or by which Company or any of Company's properties or assets is bound; or

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

2.5 No Litigation

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

2.6 No Material Change in Financial Ability

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

2.7 Expertise

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

2.8 Company's Investigation

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

ARTICLE 3
TERM AND SCOPE OF FRANCHISE

3.1 Term of Agreement

3.1.1 Effective Date and Commencement Date

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

3.1.2 Term of Agreement

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

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

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

3.1.3 Conditions to Effectiveness of Agreement

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

a) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true, and correct on and as of the effective date of this Agreement.

b) Absence of Litigation. There is no litigation pending or threatened in any court challenging the award of this franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.

c) Furnishing of Insurance. Company has furnished evidence of the insurance required by Article 10.

d) Effectiveness of City Council Action. City Ordinance No. 1328 which approves this Agreement shall have become effective pursuant to the State of Oregon law prior to the effective date.

3.2 Franchise

3.2.1 Grant and Acceptance of Franchise

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

3.2.2 Scope of Franchise

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

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

b) Solid waste, recyclable materials, or yard debris that is hauled by a contractor or City as an incidental activity associated with work performed by the company for a resident or business or work performed by City such as, but limited to, a construction and demolition debris hauled by a company that is hired to remodel a home, or yard debris hauled by a landscaper that services a commercial business.

c) Recyclable materials and yard debris generated by commercial premises, including City facilities, which are collected by a person (or company) through a private arrangement with the generator and the generator is compensated for the materials collected;

d) Source separated, principal recyclable materials as defined in ORS 459A and the rules promulgated there under, which have been purchased or exchanged for fair market value, unless said principal recyclable materials create a public nuisance;

e) Reusable beverage containers as defined in ORS 459A unless mixed with solid waste;

f) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;

g) Recyclable materials removed from any premises with permission from generator by charitable or non-profit organizations; and,

h) Abandoned cars removed from any premises by a licensed towing company authorized to do so by City.

3.2.3 Limitations

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

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

3.2.4 Acceptance of Franchise

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

3.3 City's Right to Direct Changes

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

3.4 Ownership of Solid waste

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

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

ARTICLE 4
FRANCHISE FEE AND OTHER SURCHARGES

4.1 City Franchise Fee

4.1.1 Franchise Fee Amount

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

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

4.1.2 Time and Method of Payment

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

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

4.1.3 Adjustment to Franchise fee

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

ARTICLE 5
DIRECT SERVICES

5.1 Solid Waste Collection

5.1.1 General

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

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

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

5.1.2 Single-Family Dwelling Unit

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

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

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

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

5.1.3 Commercial and Multi-Family Dwelling Units

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

A. Cart or Container Service

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

B. Drop Box and Compactor Service

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

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

5.1.4 City Facilities

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

5.2 Recyclable Materials Collection

5.2.1 General

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

5.2.2 Single-Family Dwelling Unit

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

5.2.3 Commercial and Multi-Family Dwelling Unit

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

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

A. Cart or Container Service

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

B. Drop Box and Compactor Service

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

5.2.4 City Facilities

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

5.3 Yard Debris Collection

5.3.1 General

Company shall offer all customers yard debris collection services.

5.3.2 Single-Family Dwelling Unit

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

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

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

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

5.3.3 Commercial and Multi-family Dwelling Unit

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

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

A. Cart or Container Service

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

B. Drop Box and Compactor Service

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

5.3.4 City Facilities

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

5.4 Operations

5.4.1 Schedules

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

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

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

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

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

5.4.2 Vehicles

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

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

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

D. Cleaning and Maintenance

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

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

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

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

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

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

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

5.4.3 Receptacles

A. Single-Family Dwelling Unit Solid Waste Receptacles

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

B. Single-Family Dwelling Unit Recyclable Materials Receptacles

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

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

C. Single-Family Dwelling Unit Residential Yard Debris Receptacles

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

D. Non-Residential Receptacles

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

E. Removal of Receptacles

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

F. Cart Requirements

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

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

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

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

4. **Cart Design Requirements**

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

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

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

c. **Identification Markings.**

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

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

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

5. Cart Performance Requirements

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

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

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

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

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

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

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

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

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

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

- Prevent damage to the cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid must be designed and constructed such that it prevents physical injury to the user while opening and closing the cart.

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

5.4.4 Litter Abatement

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

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

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

5.4.5 Collection Standards

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

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

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

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

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

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

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

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

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

5.4.6 Personnel

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

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

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

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

5.4.7 Identification Required

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

5.4.8 Fees and Gratuities

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

5.4.9 Non-Discrimination

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

5.4.10 Change in Collection Schedule

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

5.4.11 Report of Accumulation of Solid Waste; Unauthorized Dumping

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

5.5 Contingency Plan

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

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

5.6 Recyclable Materials and Yard Debris Processing

5.6.1 Processing

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

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

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

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

5.6.2 Transfer

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

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

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

5.6.4 Marketing

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

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

5.6.5 Disposal of Recyclable Materials and Yard Debris Prohibited

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

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

5.6.6 Record Keeping

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

5.7 Disposal of Solid Waste

5.7.1 Disposal

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

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

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

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

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

5.7.2 Transfer

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

5.7.3 City Right to Select Disposal Site

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

5.7.4 Company Right to Propose Alternative Sites

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

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

5.7.5 Record Keeping

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

5.8 Service Exceptions; Hazardous Waste Notifications

5.8.1 Hazardous Waste Inspection and Reporting

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

5.8.2 Generator Notification

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

5.8.3 Hazardous Waste Diversion Records

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

5.9 Collection from City Facilities at no charge to City.

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

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

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

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

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

5.10 Annual Cleanup Day

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

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

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

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

5.11 Motor Oil Collection

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

5.12 Infectious Waste Collection

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

ARTICLE 6
OTHER SERVICES

6.1 Services and Customer Billing

6.1.1 Service Description

Company shall annually, and with every service start, prepare and distribute, subject to the direction of City, a notice to each owner or occupant of property entitled to service under this Agreement the annual holiday schedule, and a general summary of services required to be provided hereunder and optional service which may be furnished by Company. Such notice shall be in a form subject to City's approval prior to its distribution and may be included with billings made by Company. Collection rates and a list of services offered will be provided to customers who request such information directly from Company.

6.1.2 Billing

Company shall bill and collect from persons receiving collection services at rates set by City. City shall approve the form and content of the billing statements, with such approval not to be unreasonably withheld. Billing shall be performed monthly, every other month, or quarterly for each account, but in no event less frequently than once per quarter. Company may terminate collection service to solid waste accounts that become more than 60 calendar days past due, following 30 calendar days written notice. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent.

6.1.3 Customer Billing List

Company shall prepare a complete customer billing list (containing the number of accounts by service category) annually and submit such list to the City in accordance with Section 9.3.3.

6.1.4 Review of Billings

At least annually, Company shall review its billing records to determine that the amount the Company bills each customer is correct in terms of the level of

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

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

6.2 Customer Service

6.2.1 Company Office

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

6.2.2 Complaint Documentation and Response

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

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

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

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

6.2.3 Resolution of Customer Complaints

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

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

6.2.4 Liaisons

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

6.3 Public Education

6.3.1 Education Requirements

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

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

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

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

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

6.3.2 Format of Promotional Materials

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

6.3.3 Cooperation with County Efforts

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

6.4 Waste Generation and Characterization Studies

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

ARTICLE 7
COMPANY'S COMPENSATION AND RATES

7.1 Company's Compensation

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

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

7.2 Rates

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

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

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

7.3 Annual Adjustment of Rates

7.3.1 Annual Adjustment

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

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

7.3.2 Adjustment of the Operating Component

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

CPI-U Parameters:

- Area – Portland - Salem, OR - WA
- Item – All Items
- Base Period – Current 1982-84=100
- Not seasonally adjusted
- Periodicity – Semi-annual

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

Change in Half1 CPI-U = ((Most current Half1 CPI-U - previous 12-month Half 1 CPI-U)/previous 12-month Half1 CPI-U)) x 0.80) or 0.05, whichever is less

Step 2: Calculate the Adjusted Operating Component as follows:

Adjusted Operating Component = Then-current Operating Component x (1 + the Change in Half1 CPI-U as calculated in Step 1 above)

The Operating Component shall be rounded to the nearest cent.

For example, assuming:

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

Change in Half1 CPI-U = ((186.0 - 183.5)/183.5) x 0.80 = 0.0109, which is less than 0.05; therefore, the Change in Half1 CPI-U is 0.0109

Adjusted Operating Component = $5.00 x (1 + 0.0109) = $5.05

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

7.3.3 Adjustment of the Tipping Fee Component

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

Adjusted Tipping Fee Component	=	Then-current Tipping Fee Component x (Current Approved Tipping Fee / Prior Approved Tipping Fee)

For example, assuming:

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

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

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

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

7.3.4 Calculation of Adjusted Rates

Adjusted Rates shall be calculated as follows:

Adjusted Rate	=	Adjusted Operating Component + Adjusted Tipping Fee Component

For example, assuming:

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

Adjusted collection rate = $5.05 + $1.57 = $6.62

7.4 Annual Rate Application Process

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

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

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

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

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

7.5 Special Rate Review

7.5.1 Eligible Items

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

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

1. Documented significant changes in the cost to provide services required in this Agreement as a result of an agreed-upon, City-directed change in scope, as provided for under Section 3.3.

2. Flood, earthquake, other acts of nature, war, civil insurrection, riots, or other similar catastrophic events beyond the control of Company.

3. Change in law after the effective date that: (1) was not reasonably known to the Company before the effective date, and (2) the Company substantiates such claim.

4. The number and type of customers differs significantly from the number and type of customers being serviced by the Company on the date this Agreement is executed, and Company submits an application for a special rate review for this reason no later than September 1, 2010.

5. The calculated change in Half1 CPI-U in accordance with Step 1 of Section 7.3.2 is equal to or greater than 0.05.

6. Fuel price increases that result in a direct increase of more than 3% in the Company's cost of providing services required by this Agreement.

7.5.2 Ineligible Items

The Company will not be compensated over the term for:

1. Increases in the cost of solid waste, recyclable materials, or yard debris collection, transportation, processing, or disposal costs in excess of the increases provided through the annual adjustment mechanism described in Section 7.3 unless cost increases are related to eligible items listed in Section 7.5.1.

2. Increases in the cost of solid waste, recyclable materials, or yard debris collection, transportation, processing, or disposal costs that may be impacted by change in approved disposal location, approved transfer station, or approved processing site operating conditions, unless such change is initiated by or at the direction of the City.

3. Decreases in revenues from the sale of recyclable materials or yard debris.

4. Growth or decline in the number of customers or their subscription levels; however, the Company shall be entitled to bill all customers at the rates set forth herein and retain all rate revenues net fees due to City collected from its customers for collection services provided under this Agreement.

5. Changes in the number of accounts related to receptacle sizes or frequency of collection; however, the Company shall be entitled to bill all customers at the rates set forth herein and retain all rate revenues net fees due to City collected from Company's customers for collection services provided under this Agreement.

6. Change in the tonnage or composition of solid waste, recyclable materials, or yard debris.

7.5.3 Review of Costs

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

7.5.4 Submittal of Request

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

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

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

7.5.5 Burden of Justification

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

7.5.6 Grant of Request

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

7.6 Rates for Changes in Scope

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

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

7.7 Notice of Rate Adjustments

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

7.8 Market Test of Rates

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

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

ARTICLE 8
REVIEW OF SERVICES AND PERFORMANCE

8.1 Performance Hearing

Annually City may, but is not required to, hold a public hearing on or about 90 calendar days after receipt of the Company's annual report (required by Section 9.3.3) at which time Company shall be present and shall participate, to review the solid waste, recyclable materials, and yard debris collection services and overall Company's performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in collection to achieve a continuing, advanced solid waste, recyclable materials, and yard debris collection system; and to ensure services are being provided with adequate quality, effectiveness, and economy.

Forty-five calendar days after receiving notice from City of a solid waste, recyclable materials, and yard debris collection services and performance review hearing, Company shall, at a minimum, submit a report to City indicating the following:

a) Changes recommended and/or new services to improve collection services and to contain costs and minimize impacts on rates.

b) Any specific plans for provision of changed or new services by Company.

The reports required by Section 9.3.2 of this Agreement regarding customer complaints may be used as one basis for review. Company may submit other relevant performance information and reports for consideration. City may request, and Company shall submit, specific information related to the performance for the hearing. In addition, any customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the collection services and performance preview hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, regulatory

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

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

ARTICLE 9
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

9.1 General

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

9.2 Records

9.2.1 General

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

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

9.2.2 Financial Records

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

9.2.3 Solid Waste, Recyclable Materials, and Yard Debris Records

Records shall be maintained by Company for City relating to:

a) Customer services and billings;

b) Weight and volume of solid waste, recyclable materials and yard debris collected. Information is to be separated between single-family dwelling unit, commercial premises, and drop box collection service. If solid waste, recyclable materials, and yard trimmings collected in the City are combined with materials collected from other jurisdictions, Contractor shall allocate weight and volume of such material to the City's collection program based on volume or tonnage using a method approved by the City.

c) Routes;

d) Facilities, equipment, and personnel used;

e) Facilities and equipment operations, maintenance and repair;

f) Disposal of solid waste;

g) Processing of recyclable materials;

h) Processing of yard debris;

i) Complaints; and,

j) Missed pick-ups.

9.2.4 CERCLA Defense Records

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

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

9.2.5 Disposal Records

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

9.3 Reports

9.3.1 Report Formats and Schedule

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

a) Determine and set rates and evaluate the financial efficacy of operations;

b) Evaluate past and expected progress towards achieving diversion goals and objectives;

c) Determine needs for adjustment to programs; and,

d) Evaluate customer service and complaints.

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

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

All reports shall be submitted to:

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

9.3.2 Quarterly Reports

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

A. Regular Services

1) Solid waste collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the disposal site used.

2) Recyclable materials collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the processing facility used.

3) Yard debris collected monthly by Company in tons, listed separately for single-family dwelling units and commercial premises and the processing facility used.

4) Complaint summary, for month and cumulative for rate period, summarized by nature of complaints.

5) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

6) A summary or copy of the hazardous waste records required in Section 5.8.

7) Other information or reports that City may reasonably request or require.

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

9.3.3 Annual Report

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

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

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

9.4 Adverse Information

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

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

ARTICLE 10
INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

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

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

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

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

10.2 Hazardous Substances Indemnification

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

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

10.3 Insurance

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

10.3.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

1) Comprehensive general liability or commercial general liability insurance.

2) Automobile liability insurance.

3) Workers' Compensation insurance as required by the State of Oregon and employer's liability insurance.

10.3.2 Minimum Limits of Insurance

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

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

2) Automobile liability: Five Million Dollars ($5,000,000) aggregate, One Million Dollars ($1,000,000) combined single limit per accident for bodily injury and property damage.

3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the State of Oregon and Employer's liability limits of One Million Dollars ($1,000,000) per accident.

4) Environmental Impairment Liability: Five Million Dollars ($5,000,000) combined single limit per occurrence for the release of pollution into the environment.

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

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

1) General Liability, Automobile Liability, and Environmental Impairment Liability Coverage

a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

b) Company's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its

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

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

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

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

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

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

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

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

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

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

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

10.3.8 Required Endorsements

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

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

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

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

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

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of City as an additional insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

ARTICLE 11
CITY'S RIGHT TO PERFORM SERVICE

11.1 General

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

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

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

Company further agrees that in such event:

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

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

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

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

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

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

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

11.2 Temporary Possession of Company's Property

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

11.3 Billing and Compensation to City During City's Possession

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

11.4 City's Right to Relinquish Possession

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

11.5 Duration of City's Possession

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

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

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default

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

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

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

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

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

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

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

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

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

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

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

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

12.2 Right to Terminate Upon Default

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

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

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

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

12.3 Liquidated Damages

12.3.1 General

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

12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

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

Company	City
Initial Here_____	Initial Here_____

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

A. Collection Reliability

1) For each failure to commence service to a new customer account within seven calendar days after ordered by customer which exceeds 12 such occurrences annually: $150.00

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

3) For each failure to collect solid waste, recyclable materials, or yard debris which has been properly set out for collection, from the same customer on two consecutive scheduled pickup days which exceeds 12 such occurrences annually: $150.00

B. Collection Quality

1) For each occurrence of damage to private property which exceeds 12 such occurrences annually: $250.00

2) For each occurrence of failure to properly return empty receptacles to avoid pedestrian or vehicular traffic impediments which exceeds 12 such occurrences annually: $150.00

3) For each occurrence of excessive noise or discourteous behavior which exceeds 12 such occurrences annually: $250.00

4) For each failure to clean up solid waste, recyclable materials, or yard debris spilled from receptacles which exceeds 12 such failures annually: $150.00

5) For each occurrence of collecting solid waste, recyclable materials, or yard debris during unauthorized hours which exceeds 12 such occurrences annually: $250.00

C. Customer Responsiveness

1) For each failure to initially respond to a customer complaint within one business day which exceeds 12 such failures annually: $100.00

2) For each failure to process customer complaints to City as required by Section 6.2 which exceeds 12 such failures annually: $100.00

1

D. Timeliness of Submissions to City

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

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

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

12.3.3 Process

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

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

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

12.3.4 Amount

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

12.3.5 Timing of Payment

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

12.4 Excuses from Performance

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

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

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

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

12.5 Notice, Hearing and Appeal of City Breach

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

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

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

ARTICLE 13
OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

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

13.2 Compliance with Law

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

13.3 Governing Law

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

13.4 Jurisdiction

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

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

13.5 Assignment

13.5.1 Company's Assignment

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

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

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

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

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

1. Company shall undertake to pay the City the reasonable expenses for attorneys' and consultants' fees and costs necessary to investigate the suitability of any proposed assignee, and reasonable expenses incurred in reviewing and finalizing any documentation required for approving any such assignment proffered;

2. Company shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

3. Company shall furnish the City with satisfactory proof that: (i) the proposed assignee has directly related solid waste management collection experience; (ii) in the last five (5) years, the proposed assignee has not suffered any material citations or other material censure from any federal, state, or local agency having jurisdiction over its collection, processing, transfer station or landfill operations due to any significant failure to comply with federal, state or local waste management laws and that the assignee has provided the City with a complete list of any citations and censures (whether material or not); (iii) the proposed assignee has at all times conducted its collection, processing, transfer station, and landfill operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its solid waste collection, processing, transfer station, and landfill management practices in material compliance with all federal, state, and local laws regulating the collection, processing, transfer and disposal of solid

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

13.5.2 City's Assignment

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

13.6 Contracting or Subcontracting

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

13.7 Binding on Assigns

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

13.8 Transition to Next Company

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

13.9 Parties in Interest

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

13.10 Condemnation

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

13.11 Notice

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

If to City:

City Administrator
City of Canby
P.O. Box 930
Canby, OR 97013

If to Company:

General Manager
Canby Disposal
P.O. Box 550
Canby, OR 97013

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

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

13.12 Representatives of the Parties

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

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

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

13.13 City Free to Negotiate with Third Parties

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

13.14 Compliance with Municipal Code

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

13.15 Privacy

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

13.16 Attorney Fees and Cost Recovery

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

ARTICLE 14
MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement

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

14.2 Article and Section Headings

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

14.3 References to Laws and Other Agreements

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

14.4 Interpretation

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

14.5 Agreement

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

14.6 Severability

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

14.7 Exhibits

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

14.8 Waiver

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

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

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

COMPANY

By Fred A Kahut

Name: Fred A. Kahut

Title: president

CITY OF CANBY, OREGON

A Municipal Corporation

By Melody Thompson

Name: MELODY THOMPSON

Title: Mayor

APPROVED AS TO FORM:

John H Kelley

John H. Kelley

City Attorney

ATTEST:

Kimberly Scheafer

Kimberly Scheafer, CMC

City Recorder

EXHIBIT 1

CITY FACILITIES

Exhibit 1

City Facilities

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

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

EXHIBIT 2

RATES FOR RATE PERIOD

JULY 1, 2010 THROUGH JUNE 30, 2011

EXHIBIT 2

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

Residential Service:

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

Commercial Service:

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

Extra Hauling:

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

Mobile Home Courts and Apartments

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

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

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

Extra Charge for Stairs:

Service Type	
One flight of stairs	25% add'l
Two flights of stairs	50% add'l

Hourly Hauling Rates:

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

**Note: Does not include disposal charges*

Major Appliances

Service Type	Current Rate	Increase	Proposed Rate	Percent Increase
Small	$ 4.17	$ 0.08	$ 4.25	2%
Large	$ 35.00	$ 0.70	$ 35.70	2%

Tires:

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

**Note: Does not include disposal charges*

Container Service - Loose:

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

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

Cleanup Containers:

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

**Note: Price is per dump*

Drop Box Services - Loose:

Permanent Accounts

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

Occasional Accounts

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

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

Drop Box Services - Compacted:

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

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

Demurrage Charge:

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

Mileage Fee:

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

Transaction Fee:

Service Type	Current Rate	Increase	Proposed Rate	Percent Increase
Transaction fee per drop box haul	$ 3.00	$ 0.06	$ 3.06	2%

EXHIBIT 3

NOTARY CERTIFICATION

Exhibit 3

Notary Certification

STATE OF OREGON

COUNTY OF CLACKAMAS

On 06.17.10 (insert date), before me, Lisa Potter, Notary Public (insert name and title of officer (e.g., "Jane Doe, Notary Public")), the undersigned, a Notary Public in and for the State of Oregon, personally appeared Fred A. Kahut, Canby Disposal Co. (insert name(s) of signer(s)), known to me to be the president (insert title of signer(s)) of Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such Company executed the same.

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

OFFICIAL SEAL
LISA A POTTER
NOTARY PUBLIC-OREGON
COMMISSION NO. 426506
MY COMMISSION EXPIRES MARCH 4, 2012

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