



Franchise Agreement
Between
City of Sandy, Oregon
And
Hoodview Disposal & Recycling, Inc.
For
Solid Waste, Recyclable Materials
And Yard Debris Collection Services

July 1, 2014

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Exhibits

1	CITY FACILITIES
2	RATES FOR RATE PERIOD MAY 1, 2005 THROUGH DECEMBER 31, 2006
3	FAITHFUL PERFORMANCE BOND
4	NOTARY CERTIFICATION

1 **FRANCHISE AGREEMENT BETWEEN**

2 **THE CITY OF SANDY**

3 **AND**

4 **HOODVIEW DISPOSAL & RECYCLING, INC. FOR SOLID WASTE,**
5 **RECYCLABLE MATERIALS,**

6 **AND YARD DEBRIS COLLECTION SERVICES**

7 This Franchise Agreement (Agreement) is entered into this 1st day of October 2004, by
8 and between the City of Sandy, Oregon (City) and Hoodview Disposal & Recycling, Inc.
9 (Company) for the Collection, transportation, and Disposal of Solid Waste and the
10 Collection, transportation, and Processing of Recyclable Materials and Yard Debris.

11 **RECITALS**

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

13 WHEREAS, City issued a Request for Proposals (RFP) and Draft Franchise Agreement
14 for Solid Waste, Recyclable Materials, and Yard Debris Collection Services on January 20,
15 2004; and,

16 WHEREAS, Company prepared and submitted a proposal dated April 8, 2004 to provide
17 the services outlined in City's RFP and Draft Franchise Agreement; and,

18 WHEREAS, City has reviewed Company's proposal, relied on the representations
19 therein, and has determined that Company's proposal, as revised during negotiations
20 between City and Company, best meets the goals and objectives of City for Solid Waste,
21 Recyclable Materials, and Yard Debris Collection services; and,

22 WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of the 1993
23 Oregon Revised Statutes (ORS), has declared that it is a matter of statewide concern for
24 local agencies to make adequate provisions for Solid Waste handling and the opportunity
25 to Recycle within their jurisdictions; and,

26 WHEREAS, the City Council of City has determined that the public health, safety, and
27 well-being require that an exclusive Franchise be awarded to a qualified company for the

1 Collection, transportation, and Disposal of Solid Waste and the Collection,
2 transportation, and Processing of Recyclable Materials, and Yard Debris; and,

3 WHEREAS, City and Company are mindful of the provisions of the laws governing the
4 safe Collection, transfer, and Disposal of Solid Waste, ORS 459 and ORS 459A, the
5 Resource Conservation and Recovery Act (RCRA), and the Comprehensive
6 Environmental Response, Compensation and Liability Act ("CERCLA"); and,

7 WHEREAS, City and Company desire to leave no doubts as to their respective roles, and
8 by entering into this Agreement, City is not thereby becoming a "generator" or an
9 "arranger" as those terms are used in CERCLA § 107(a)(3), and it is Company, not City,
10 which is "arranging for" the Collection, removal, transportation, and Disposal of Solid
11 Waste which may contain Hazardous Substances; and,

12 WHEREAS, the City Council of City declares its intention of maintaining reasonable
13 Rates and quality service related to the Collection, transportation, and Disposal of Solid
14 Waste, the Collection, transportation, and Processing of Recyclable Materials and Yard
15 Debris, and other services; and,

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

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

1 **ARTICLE 1**
2 **DEFINITIONS**

3 **1.1 Agreement**

4 "Agreement" means this Franchise Agreement between City and Company for
5 Collection, transportation, and Disposal of Solid Waste and the Collection,
6 transportation, and Processing of Recyclable Materials and Yard Debris, including
7 all Exhibits and attachments, and any amendments thereto.

8 **1.2 Approved Disposal Site**

9 "Approved Disposal Site" means the Columbia Ridge Landfill and the Riverbend
10 Landfill, both of which are owned and operated by Waste Management
11 Incorporated, a Subcontractor to the Company, unless the City designates a
12 different Disposal Site in accordance with Section 3.3 or accepts the Company's
13 proposal for an alternative Disposal Site in accordance with Section 5.8.4.

14 **1.3 Approved Recyclable Material Processing Site**

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

21 **1.4 Approved Yard Debris Processing Site**

22 "Approved Yard Debris Processing Site" mean the Pacific Land Clearing
23 Company, Inc, which is owned and operated by Pacific Land Clearing company,
24 Inc and located in Oregon City, Oregon and which was selected by Company and
25 approved by the City, unless the City designates a different Processing Site in
26 accordance with Section 3.3, or accepts the Company's proposal for an alternative
27 Yard Debris Processing Site in accordance with Section 5.8.4.

28 **1.5 Approved Transfer Station**

29 "Approved Transfer Station" means the Recycle America Transfer Station, which
30 is owned and operated by Waste Management Inc. and located in Troutdale,

1 Oregon and which was selected by Company and approved by the City, unless
2 the City designates a different Transfer Station in accordance with Section 3.3 or
3 accepts the Company's proposal for an alternative Transfer Station in accordance
4 with Section 5.8.4.

5 **1.6 Billings**

6 "Billings" means any and all statements of charges for services rendered,
7 howsoever made, described or designated by City or Company, or made by others
8 for City or Company, to Owners or occupants of property, including Residential
9 Premises and Commercial Premises, served by Company for the Collection of
10 Solid Waste, Recyclable Materials, or Yard Debris.

11 **1.7 Cart**

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

15 **1.8 City**

16 "City" means City of Sandy, Oregon, a municipal corporation, and all the territory
17 lying within the municipal boundaries of City as presently existing or as such
18 boundaries may be modified during the Term of this Agreement.

19 **1.9 Collection**

20 "Collection" (or variations thereof) means a service providing for collection of
21 Solid Waste, Recyclable Materials, and/or Yard Debris but does not include that
22 part of a business operated under a certificate issued under ORS 822.110.

23 **1.10 Commencement Date**

24 "Commencement Date" means the date specified in Section 3.1.1 when Collection,
25 transportation, Processing, and Disposal services required by this Agreement shall
26 be provided by Company.

27 **1.11 Commercial Premises**

28 "Commercial Premises" means commercial and industrial property upon which
29 business activity is conducted, including, but not limited to, retail sales, services,

1 wholesale operations, manufacturing and industrial operations, but excluding
2 businesses conducted upon Residential Premises which are permitted under
3 applicable zoning regulations and are not the primary use of the property.

4 **1.12 Commingled**

5 "Commingled" means a mix of Recyclable Materials.

6 **1.13 Company**

7 "Company" means Hoodview Disposal & Recycling Inc., a corporation organized
8 and operating under the laws of the State of Oregon and its officers, directors,
9 employees, agents, and Subcontractors.

10 **1.14 Company's Compensation**

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

14 **1.15 Container**

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

17 **1.16 Curbside**

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

21 **1.17 Disposal**

22 "Disposal" (or variations thereof) means the ultimate disposition of Solid Waste
23 collected by Company at the Approved Disposal Site in full regulatory
24 compliance.

25 **1.18 Disposal Site**

26 "Disposal Site" means land and facilities used for the Disposal, handling or transfer
27 of, or energy recovery, material recovery and Recycling from Solid Wastes,
28 including but not limited to dumps, landfills, sludge lagoons, sludge treatment

1 facilities, disposal sites for septic tank pumping or cesspool cleaning service,
2 Transfer Stations, energy recovery facilities, incinerators for Solid Waste delivered
3 by the public or by a collection service, composting plants and land and facilities
4 previously used for solid waste disposal at a land disposal site; but the term does
5 not include a facility authorized by a permit issued under ORS 466.005 to 466.385
6 to store, treat or dispose of both Hazardous Waste and Solid Waste; a facility
7 subject to the permit requirements of ORS 468B.050 or 468B.053; a site which is
8 used by the owner or person in control of the premises to dispose of soil, rock,
9 concrete or other similar nondecomposable material, unless the site is used by the
10 public either directly or through a collection service; or a site operated by a
11 wrecker issued a certificate under ORS 822.110.

12 **1.19 Drop Box**

13 "Drop Box" means any storage Receptacle ranging from 10 to 40 cubic yards which
14 is designed for storage and collection of Solid Waste, Recyclable Materials, or Yard
15 Debris. A Drop Box may be an open-top container or an enclosed container with
16 a compaction unit.

17 **1.20 Effective Date**

18 "Effective Date" means the date on which the latter of the two Parties signs the
19 Agreement and the date on which Company may begin to take actions and incur
20 costs in preparation to provide Collection, transportation, Processing, and
21 Disposal services required by this Agreement.

22 **1.21 Environmental Laws**

23 "Environmental Laws" means all federal and state statutes and regulations, and
24 county, local and City ordinances concerning public health, safety and the
25 environment including, by way of example and not limitation, the Comprehensive
26 Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601
27 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the
28 Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act,
29 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.;
30 the Oregon Solid Waste Management Act, ORS Chapter 459; the Oregon Reuse
31 and Recycling Act, ORS 459A; the Oregon Employment Safety and Health Act,
32 ORS Chapter 654; and the Oregon Workers' Compensation Act, ORS 656, as

1 currently in force or as hereafter amended, and all rules and regulations
2 promulgated thereunder.

3 **1.22 Exchange**

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

7 **1.23 Facility**

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

10 **1.24 Fair Market Value**

11 "Fair Market Value" means the cash price (or its equivalent in terms of savings on
12 Collection and Disposal fees) that is at least equal to the cost of Collection and
13 Disposal of a Recyclable Materials or group of Recyclable Materials, that would be
14 Purchased or Exchanged between the collector of said Recyclable Material or
15 group of Recyclable Materials and the Generator of said Recyclable Material or
16 group of Recyclable Materials.

17 **1.25 Fiscal Year**

18 "Fiscal Year" means a 12-month period commencing January 1 and concluding
19 December 31 of the subsequent year.

20 **1.26 Franchise**

21 "Franchise" includes a franchise, certificate, contract or license issued by a local
22 government unit authorizing a person to provide Solid Waste, Recyclable
23 Materials, and Yard Debris Collection and management services.

24 **1.27 Franchise Fee**

25 "Franchise Fee" means the fee paid by Company to City for the right to hold the
26 Franchise for Solid Waste, Recyclable Materials, and Yard Debris Collection
27 services that are granted by this Agreement.

1 **1.28 Generator**

2 "Generator" means any Person whose act or Process produces Solid Waste,
3 Recyclable Materials, or Yard Debris or whose act first causes Solid Waste,
4 Recyclable Materials, or Yard Debris to become subject to regulation.

5 **1.29 Gross Revenues**

6 "Gross Revenues" means any and all revenue or compensation in any form
7 actually remitted by customers to the Company for the Collection and
8 transportation of Solid Waste, Recyclable Materials, and Yard Debris pursuant to
9 this Agreement. Gross Revenues shall be determined in accordance with
10 Generally Accepted Accounting Principles and shall include actual monthly
11 customer fees received for Collection of Solid Waste, Recyclable Materials, and
12 Yard Debris, without deductions for Franchise Fees.

13 **1.30 Hazardous Substance**

14 "Hazardous Substance" shall mean any of the following: (a) any substances
15 defined, regulated or listed (directly or by reference) as "Hazardous Substances",
16 "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic
17 substances" or similarly identified as hazardous to human health or the
18 environment, in or pursuant to (i) the Comprehensive Environmental Response,
19 Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the
20 Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource
21 Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33
22 USC §1251 et seq.; (v) the Oregon Hazardous Waste and Hazardous Materials II
23 Act, ORS 466.005; and (vi) the Clean Air Act, 42 USC §7901 et seq.; (b) any
24 amendments, rules or regulations promulgated thereunder to such enumerated
25 statutes or acts currently existing or hereafter enacted; and (c) any other hazardous
26 or toxic substance, material, chemical, waste or pollutant identified as hazardous
27 or toxic or regulated under any other applicable federal, state or local
28 environmental laws currently existing or hereinafter enacted, including, without
29 limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum,
30 natural gas and synthetic fuel products, and by-products.

31 **1.31 Hazardous Waste**

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

1 **1.32 Holidays**

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

4 **1.33 Household Hazardous Waste**

5 "Household Hazardous Waste" means any discarded, useless or unwanted
6 chemical, material, substance or product that is or may be hazardous or toxic to
7 the public or the environment and is commonly used in or around households and
8 is generated by the household. "Household Hazardous Waste" may include, but
9 is not limited to, some cleaners, solvents, pesticides, and automotive and paint
10 products.

11 **1.34 Infectious Waste**

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

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

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

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

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

1 **1.35 Legislation**

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

6 **1.36 Missed Pick-up**

7 "Missed Pick-Up" means failure of Company to pick up Solid Waste, Recyclable
8 Materials, or Yard Debris that has been set out by the customer in accordance with
9 this Agreement, and at the prescribed level of service, as mutually agreed upon by
10 the customer and Company.

11 **1.37 Multi-Family Dwelling Unit**

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

15 **1.38 Non-Putrescible Solid Waste**

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

19 **1.39 ORS**

20 "ORS" means the 1997 Oregon Revised Statutes.

21 **1.40 Owner**

22 "Owner" means the Person holding the legal title to the real property constituting
23 the Premises to which Solid Waste, Recyclable Materials, or Yard Debris Collection
24 service is to be provided under this Agreement.

25 **1.41 Party or Parties**

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

1 **1.42 Person**

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

5 **1.43 Premises**

6 "Premises" means any land, or building, in City where Solid Waste, Recyclable
7 Materials, or Yard Debris is generated or accumulated.

8 **1.44 Principal Recyclable Materials**

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

11 **1.45 Processing**

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

14 **1.46 Purchase**

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

18 **1.47 Processing Site**

19 "Processing Site" means any plant or site used for the purpose of sorting,
20 cleansing, treating or reconstituting Recyclable Materials or Yard Debris for the
21 purpose of making such material available to end-use markets or for reuse.

22 **1.48 Putrescible Solid Waste**

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

1 **1.49 Rate Period**

2 "Rate Period" means the 12-month period commencing January 1 and concluding
3 December 31 of the subsequent year with the exception that the first Rate Period
4 will be a 21-month period commencing May 1, 2005 and concluding December 31,
5 2006.

6 **1.50 Rates**

7 "Rates" means the unit to be charged customers by Company for providing Solid
8 Waste Collection and Disposal, Recyclable Materials Collection and Processing
9 services, and Yard Debris Collection and Processing services. Rates may be
10 adjusted from time to time in accordance with this Agreement.

11 **1.51 Receptacles**

12 "Receptacles" means any and all types of Solid Waste, Recyclable Materials, and
13 Yard Debris receptacles including cans, bags, bins, Carts, Containers, Drop Boxes,
14 and compactors or any other means of containment of Solid Waste, Recyclable
15 Materials, or Yard Debris.

16 **1.52 Recycling**

17 "Recycling" means any Process by which Solid Waste materials are transformed
18 into new products where the Solid Waste materials may lose their identity.

19 **1.53 Recyclable Material**

20 "Recyclable Material" means any material or group of materials that can be
21 collected and sold for Recycling at a net cost equal to or less than the cost of
22 Collection and Disposal of the same material. Recyclable Materials are a subset of
23 Solid Waste.

24 **1.54 Residential Premises**

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

1 **1.55 Single-Family Dwelling Unit**

2 "Single-Family Dwelling Unit" means each Residential Premises used for or
3 designated as a single-family residential dwelling, including each unit of a duplex,
4 triplex, fourplex, or town house in all cases in which there is separate or individual
5 Solid Waste and Recyclable Materials Collection service using cans or Carts.

6 **1.56 Solid Waste**

7 "Solid Waste" means all useless, unwanted, or discarded Putrescible Solid Waste
8 and Non-Putrescible Solid Waste, including, but not limited to, garbage, rubbish,
9 refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool
10 pumpings or other sludge, useless or discarded commercial and industrial,
11 demolition and construction materials, discarded or abandoned vehicles or parts
12 thereof, discarded home and industrial appliances, manure, vegetable or animal
13 solid and semisolid materials, dead animals and Infectious Waste as defined in
14 ORS 459.386. "Solid Waste" does not include:

15 (a) Hazardous Waste as defined in ORS 466.005.

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

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

22 **1.57 Source Separated**

23 "Source Separated" means the segregation, by the Generator, of materials
24 designated for separate Collection for some form of Recycling, Composting,
25 recovery, or reuse.

26 **1.58 Subcontractors**

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

1 **1.59 Term**

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

4 **1.60 Transfer Station**

5 “Transfer Station” means a fixed or mobile facility other than a collection vehicle
6 where Solid Waste, Recyclable Materials, and/or Yard Debris is deposited
7 temporarily after being removed from the site of generation but before being
8 transported to a final disposal or Processing location.

9 **1.61 Yard Debris**

10 "Yard Debris" includes grass clippings, leaves, hedge trimmings and similar
11 vegetative waste generated from Residential Premises or landscaping activities,
12 but does not include stumps or similar bulky wood materials. Yard Debris is a
13 subset of Solid Waste.

1 **ARTICLE 2**
2 **REPRESENTATIONS AND WARRANTIES OF COMPANY**

3 **2.1 Company Status**

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

8 **2.2 Company Authorization**

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

13 **2.3 Agreement Duly Executed**

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

19 **2.4 No Conflict with Applicable Law or Other Documents**

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

- 22 a) Conflicts with, violates, or will result in a violation of any existing
23 applicable law; or
- 24 b) Conflicts with, violates, or will result in a breach or default under any term
25 or condition of any existing judgment, order or decree of any court,
26 administrative agency or other governmental authority, or of any existing
27 agreement or instrument to which Company is a party, or by which
28 Company or any of Company's properties or assets is bound; or

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

4 **2.5 No Litigation**

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

13 **2.6 No Material Change in Financial Ability**

14 Company has sufficient financial resources to perform all aspects of its obligations
15 hereunder. Company has provided City with reviewed financial statements for
16 fiscal period ending 2003, which present fairly, in accordance with Generally
17 Accepted Accounting Principles, the financial resources of Company. There has
18 been no material adverse change in Company's financial circumstances since the
19 date of the most recent financial statements.

20 **2.7 Expertise**

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

23 **2.8 Company's Investigation**

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

1 **ARTICLE 3**
2 **TERM AND SCOPE OF FRANCHISE**

3 **3.1 Term of Agreement**

4 **3.1.1 Effective Date and Commencement Date**

5 The effective date of this Agreement shall be May 1, 2015 ("effective date").

6 **3.1.2 Term of Agreement**

7 Unless grounds exist for suspension, modification or revocation of the Agreement,
8 the Agreement shall be considered as a continuing ten (10) year term. Beginning
9 on July first (1st) of each year, the Agreement will be considered renewed for an
10 additional ten (10) year term, unless at least thirty (30) days prior to July first (1st)
11 on any year the City notifies the Company of intent to terminate the Agreement.
12 Upon the filing of such notice, the Company will have an Agreement which will
13 terminate on July 1st which is ten years from the date of the last renewal prior to
14 the notice of termination. The City may initiate proceedings for suspension,
15 modification, or revocation of the Agreement at any time based on the terms and
16 conditions of the Agreement.

17 **3.1.3 Options to Extend Term**

18 **3.1.4 Conditions to Effectiveness of Agreement**

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

- 24 a) Accuracy of Representations. Representations and warranties made by
25 Company throughout this Agreement are accurate, true, and correct on and
26 as of the Effective Date of this Agreement.
- 27 b) Absence of Litigation. There is no litigation pending or threatened in any
28 court challenging the award of this Franchise to Company or the execution
29 of this Agreement or seeking to restrain or enjoin its performance.

- 1 c) Furnishing of Insurance and Bonds. Company has furnished evidence of
2 the insurance and bonds required by Article 10.
- 3 d) Effectiveness of City Council Action. City Ordinance No. 2004-04, which
4 approves this Agreement, shall have become effective pursuant to the State
5 of Oregon law prior to the Effective Date.

6 **3.2 Franchise**

7 **3.2.1 Grant and Acceptance of Franchise**

8 Subject to Section 3.2.2, the City hereby grants to Company the exclusive
9 Franchise, right and privilege to Collect and transport Solid Waste, Recyclable
10 Materials, and Yard Debris accumulating in City that is required to be
11 accumulated and offered for Collection to Company in accordance with this
12 Agreement and such rules and regulations set forth by ordinances of City that are
13 not inconsistent with this Agreement.

14 **3.2.2 Scope of Franchise**

15 The Franchise for the Collection and transportation of Solid Waste, Recyclable
16 Materials, and Yard Debris granted to Company shall be exclusive except as to the
17 categories of Solid Waste, Recyclable Materials, and Yard Debris listed in this
18 Section.

- 19 a) Solid Waste, Recyclable Materials, or Yard Debris removed from any
20 Premises by the Generator, and transported personally by the Owner or
21 occupant of such Premises (or by his or her full-time employees) to any
22 Processing Facility or Disposal Site with the exception that the Owner of an
23 apartment may not remove and transport materials generated by a tenant;
- 24 b) Solid Waste, Recyclable Materials, or Yard Debris that is hauled by a
25 contractor or City as an incidental activity associated with work performed
26 by the company for a resident or business or work performed by City such
27 as, but limited to, a construction and demolition debris hauled by a
28 company that is hired to remodel a home, or yard debris hauled by a
29 landscaper that services a commercial business.
- 30 c) Recyclable Materials and Yard Debris generated by Commercial Premises,
31 including City facilities, which are Collected by a Person (or company)

1 through a private arrangement with the Generator and the Generator is
2 compensated for the materials Collected;

- 3 d) Source separated, Principal Recyclable Materials as defined in ORS 459A
4 and the rules promulgated thereunder, which have been Purchased or
5 Exchanged for Fair Market Value, unless said Principal Recyclable
6 Materials create a public nuisance;
- 7 e) Reusable beverage containers as defined in ORS 459A unless mixed with
8 Solid Waste;
- 9 f) By-products of sewage treatment, including sludge, sludge ash, grit and
10 screenings;
- 11 g) Recyclable Materials removed from any Premises with permission from
12 Generator by charitable or non-profit organizations; and,
- 13 h) Abandoned cars removed from any Premises by a licensed towing
14 company authorized to do so by City.

15 Company acknowledges and agrees City may permit other Persons besides
16 Company to collect any or all types of the Solid Waste, Recyclable Materials, and
17 Yard Debris listed in this Section as exemptions from this Franchise, without
18 seeking or obtaining approval of Company under this Agreement.

19 **3.2.3 Limitations**

20 This grant to Company of an exclusive Franchise, right and privilege to Collect,
21 transport, and Dispose of Solid Waste, and Collect, transport, and Process
22 Recyclable Materials and Yard Debris shall be interpreted to be consistent with
23 state and federal laws, now in effect and adopted during the Term of the
24 Agreement; and the scope of this exclusive Franchise shall be limited by current
25 and developing state and federal laws with regard to Solid Waste, Recyclable
26 Materials, and Yard Debris handling, exclusive Franchise, Solid Waste flow
27 control, and related doctrines. In the event that future interpretations of current
28 law, enactment or developing legal trends limit the ability of City to lawfully
29 provide for the scope of Franchise services as specifically set forth herein,
30 Company agrees that the scope of the Franchise will be limited to those services
31 and materials which may be lawfully provided for under this Agreement, and that

1 City shall not be responsible for any lost profits claimed by Company to arise out
2 of further limitations of the scope of the Agreement set forth herein. In such an
3 event, it shall be the responsibility of Company to minimize the financial impact
4 to other services being provided as much as possible.

5 **3.2.4 Acceptance of Franchise**

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

9 **3.3 City's Right to Direct Changes**

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

16 **3.4 Ownership of Solid Waste**

17 Once Solid Waste, Recyclable Materials, or Yard Debris is placed in Receptacles
18 and properly placed at the designated Collection location, ownership and the right
19 to possession of such material shall transfer directly from the Generator to
20 Company by operation of this Agreement. Subject to the provisions of this
21 Agreement, Company shall have the right to retain any benefit resulting from its
22 right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable
23 Materials, and Yard Debris which it Collects. Solid Waste, Recyclable Materials,
24 Yard Debris, or any part thereof, which is disposed of at a Disposal Site or Facility
25 (whether landfill, transformation Facility, transfer station, Processing Facility or
26 material recovery Facility) shall become the property of the Owner or operator of
27 the Disposal Site(s) or Facility once deposited there by Company. City may obtain
28 ownership or possession of Solid Waste, Recyclable Materials, or Yard Debris
29 placed for Collection upon written notice of its intent to do so, however, nothing
30 in this Agreement shall be construed as giving rise to any inference that City has
31 such ownership or possession unless such written notice has been given to
32 Company. If the City exercises its right to own or possess some or all of materials

1 placed for Collection, the City's right to materials shall be handled as a City-
2 directed change in accordance with Section 3.3, and the Company's compensation
3 shall be adjusted to reflect changes in costs incurred by the Company.

1 **ARTICLE 4**
2 **FRANCHISE FEE AND OTHER SURCHARGES**

3 **4.1 City Franchise Fee**

4 **4.1.1 Franchise Fee Amount**

5 In consideration of the exclusive Franchise provided in Section 3.2 of this
6 Agreement, Company shall pay to City three percent (or another amount as
7 provided in Section 4.1.3) of the Gross Revenues collected by Company from
8 services provided in City.

9 **4.1.2 Time and Method of Payment**

10 On or before the last day of the month following the end of each calendar quarter,
11 Company shall calculate and pay the Franchise Fee due to City for revenues
12 received during the preceding calendar quarter and provide written statement of
13 the Gross Revenues received for each month during the quarter and the
14 Company's calculation of the Franchise Fee payment. The City shall review the
15 Company's Franchise Fee statement and may request, and Company shall
16 provide, supporting documents related to the statement provided. If the City
17 identifies adjustments to the statement or calculations, the City shall notify
18 Company no later than 30 calendar days after receipt of Franchise Fee payment
19 and shall seek an explanation for any apparent differences. If the Franchise Fee is
20 not paid on or before the last day of the month following the end of each calendar
21 quarter, Company shall pay to City a late payment fee in an amount equal to 2%
22 of the amount owing for that month; plus an additional 2% owing on any unpaid
23 balance for each additional 30-calendar-day period the fee remains unpaid. In the
24 event of a dispute between the City and Company, the Company shall pay all fees
25 due in accordance with Article 4 accompanied by a statement indicating such
26 payment is made under protest and identifying the date the related claim was
27 filed. If the Company prevails in the dispute settlement, the City shall pay
28 Company any fees paid under protest plus interest compounded daily, where
29 interest shall be calculated using the most-recently published average daily
30 interest rate for the Oregon Local Government Investment Pool (LGIP) published
31 by the Oregon State Treasurer's office. If the Company does not prevail in the
32 dispute settlement, the City shall retain the fees paid under protest.

1 **4.1.3 Adjustment to Franchise Fee**

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

6 **4.2 Other City Fees**

7 **4.2.1 Establishing Other Fees**

8 City has incurred, and will continue to incur, expenses for other Solid Waste,
9 Recyclable Materials, and Yard Debris programs and Franchise administration.
10 These expenses may be determined and a fee may be calculated to reimburse City
11 for some or all of such expenses. The City may set "other" fees, as it deems
12 necessary.

13 If other fees are assessed by the City, the Company will follow City's procedures
14 in City's enabling legislation to collect these amounts from customers.

15 **4.2.2 Time and Method of Payment**

16 On or before the last day of the month following the end of each calendar quarter,
17 the Company shall pay City the fees identified in Section 4.2.1 in the same manner
18 as that described for Franchise Fees in Section 4.1.2 unless otherwise directed by
19 City.

20 **4.2.3 Adjustment to Other Fees**

21 City may adjust the amount of the fees identified in Section 4.2.1 annually or more
22 frequently. Such adjustment shall be reflected in the Rates that Company is
23 allowed to charge and collect from customers in accordance with Article 7.

1 **ARTICLE 5**
2 **DIRECT SERVICES**

3 **5.1 Solid Waste Collection**

4 **5.1.1 General**

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

11 The work to be performed by Company pursuant to this Agreement shall be
12 accomplished in a thorough and professional manner so that the residents and
13 businesses within City are provided reliable, courteous, and high-quality Solid
14 Waste, Recyclable Materials, and Yard Debris Collection services at all times. The
15 enumeration of, and specification of requirements for, particular aspects of service
16 quality shall not relieve Company of the duty of accomplishing all other aspects
17 in the manner provided in this Section, whether such other aspects are enumerated
18 elsewhere in the Agreement or not.

19 Company agrees to actively identify Receptacles Collected from Commercial
20 Properties containing significant quantities of Recyclable Materials or Yard Debris
21 and offer the Generator commercial Recyclable Materials or Yard Debris
22 Collection service.

23 **5.1.2 Single-Family Dwelling Unit**

24 Company shall Collect Solid Waste (at the service level subscribed to and paid for
25 by its customers) from the Receptacles that have been delivered for Collection to
26 the Curbside by the Generator. The Company shall offer residential customers the
27 choice of the following service levels:

- 28 • Weekly 20-, 35-, 60-, or 90-gallon (or similar sizes) Cart Collection
29 service
- 30 • Monthly 35-gallon (or similar size) Cart Collection service

- 1 • On-call, 35-gallon cart collection service for customers that do not
2 subscribe to weekly or monthly Solid Waste Collection service.
- 3 • Extra 32-gallon can or bag Collection service (on the day of regularly
4 scheduled Solid Waste Collection) from customers that subscribe to
5 regular service

6 The Company shall provide Receptacles to all customers that subscribe to weekly
7 Cart service. The Company shall use semi-automated or automated Collection
8 vehicles to perform the Collection services, unless another method is approved by
9 City. City approval will not be unreasonably withheld. Notwithstanding the
10 foregoing, Company shall Collect Solid Waste from the side or back yard of those
11 Single-Family Dwelling Units that qualify as handicapped as defined by City, or
12 that pay the approved Rate for backyard service, provided that such customers
13 place the Solid Waste Cart in a location that is visible from the street.

14 **5.1.3 Commercial and Multi-Family Dwelling Units**

15 Company shall Collect Solid Waste from all Commercial Premises and Multi-
16 Family Dwelling Unit Premises as frequently as scheduled by the customer, but
17 not less than once per week. Company shall Collect Solid Waste from Receptacles
18 at a location selected by the customer and approved by the Company and City,
19 provided that in the case of a dispute, the City shall designate the Collection
20 location. Company shall allow each Commercial and Multi-Family customer to
21 select a Collection service methodology that best suits the needs of its Premises.
22 Specifically, the Company shall offer the following Collection service
23 methodologies to Commercial Properties and Multi-Family Dwelling Unit
24 Premises:

25 **A. Cart or Container Service**

26 Company shall allow each Commercial Premises or Multi-Family Dwelling Unit
27 Premises to use Carts or Containers for Solid Waste Collection. Company shall
28 provide each customer with a choice of one or more Carts with capacities ranging
29 from 35 to 90 gallons (or similar sizes) or Containers with capacity ranging from 1
30 to 8 cubic yards (or similar sizes).

31 **B. Drop Box and Compactor Service**

1 Company shall allow a customer to use a Drop Box or Compactor for Solid Waste
2 Collection to meet the customer's Disposal needs. In such case, Company shall
3 provide customer with a choice of Receptacle capacities ranging from 10 to 40
4 cubic yards. Company shall offer customers the option to purchase or lease
5 Compactors through either the Company or an outside vendor. Company shall
6 Collect Solid Waste at the subscribed service level from Company-provided Solid
7 Waste Receptacles in compliance with any and all local ordinances in existence as
8 of the Effective Date of this Agreement.

9 Special consideration shall be given when determining the pick up area for
10 Commercial, and/or Multi-Family Dwelling Unit accounts to ensure that the flow
11 of traffic is not impeded by Collection operations and that it does not result in
12 aesthetic degradation of an area. Additionally, if in City's opinion the location of
13 an existing pick up area is inappropriate, City may require the customer to relocate
14 the pick up area.

15 Franchise fees calculated on drop box and compactor services will be limited to the Company's
16 operating component of the fee(s). Tipping fees will not be included in the franchise fee
17 calculation as they are to be considered pass through expenses to the drop box/compactor
18 customer.

19 **5.1.4 City Facilities**

20 Company shall Collect Solid Waste from City facilities as described in Section 5.10 and
21 shall provide all Receptacles necessary for such Collection. The Company will also
22 provide an annual curbside Spring Clean-up program for all customers in the City at no
23 charge to the City or to the Company's customers. The Company will coordinate this
24 program with the City to facilitate safe and efficient service delivery. The collection
25 schedule and Spring Clean-up program may be modified from time to time as mutually
26 agreed upon by Company and City. The City and the Company will coordinate the Spring
27 Clean-up program with other government agencies to make the program eligible for grant
28 funding, if available.

29

1 **5.2 Recyclable Materials Collection**

2 **5.2.1 General**

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

14 **5.2.2 Single-Family Dwelling Unit**

15 Company shall Collect Source Separated Recyclable Materials weekly from
16 customers that have subscribed to Solid Waste Collection service, as well as
17 monthly and on-call customers, and such service shall include Collection of
18 Commingled Recyclable Materials except glass which shall be separately
19 Collected. Company shall provide such customers 95-gallon Carts (or similar size)
20 for Commingled Recyclable Materials and a 14-gallon (or similar size) bin for glass
21 Collection. Company shall Collect Recyclable Materials placed Curbside by the
22 customer for Collection in Company-provided Receptacles in accordance with
23 instructions provided by the Company. Recyclable Materials Collection shall be
24 on the same day of the week as Solid Waste Collection service. Notwithstanding
25 the foregoing, Company shall Collect Recyclable Materials from the side or back
26 yard of those Single-family Dwelling Units that qualify as handicapped as defined
27 by City, provided that such customers place the Recyclable Materials Cart in a
28 location that is visible from the street.

29 **5.2.3 Commercial and Multi-Family Dwelling Unit**

30 Company shall Collect Recyclable Materials at the subscribed service level from
31 Company-provided Receptacles.

1 Company shall Collect Recyclable Materials from Commercial Premises and
2 Multi-Family Dwelling Unit Premises as frequently as scheduled by customer, but
3 not less than once per week. Company shall allow Commercial Customers to
4 select a Collection service method that best suits the needs of its Premises.
5 Specifically, the Company shall offer the following choices to Commercial
6 Customers:

7 **A. Cart or Container Service**

8 Company shall allow Commercial and Multi-Family Dwelling Unit customers to
9 use Cart(s) or Container(s) for Source Separated Recyclable Materials Collection,
10 and Company shall Collect Commingled Recyclable Materials with the exception
11 of glass that shall be separately Collected. Company shall provide each customer
12 with a choice of one or more Carts with capacities of 35 or 90 gallons (or similar
13 sizes), or Containers with capacity of four cubic yards (or similar sizes).

14 **B. Drop Box and Compactor Service**

15 Company shall allow Commercial and Multi-Family Dwelling Unit customers to
16 use a Drop Box or Compactor for Source Separated Recyclable Materials Collection
17 to meet customer's permanent needs, and Company shall Collect Commingled
18 Recyclable Materials with the exception of glass that shall be separately Collected.
19 In such case, Company shall provide customers with a choice of Receptacle
20 capacities ranging from 10 to 40 cubic yards. Company shall offer customers the
21 option to purchase or lease Compactors through Company or an outside vendor.

22 **5.2.4 City Facilities**

23 Company shall Collect all Source Separated Recyclable Materials from City
24 facilities as described in Section 5.10, and shall provide all Receptacles necessary
25 for such Collection. Company shall Collect Commingled Recyclable Materials
26 with the exception of glass that shall be separately Collected

27 **5.3 Yard Debris Collection**

28 **5.3.1 General**

29 Company shall offer all customers Yard Debris Collection services.

1 In accordance with Section 3.3, the City may request Company to Collect Food
2 Waste during the Term. In such case, the Company shall not receive additional
3 compensation for Collection services if the Food Waste is placed by the Generator
4 in the Yard Debris Receptacle. Company shall receive additional compensation
5 for Processing costs, if Company can demonstrate an increase in such costs.

6 **5.3.2 Single-Family Dwelling Unit**

7 Company shall Collect Source Separated Yard Debris from Single-Family
8 Dwelling Units weekly throughout the year round if the customer subscribes to
9 and pays for such service. Company shall provide each customer with a 64-gallon
10 (or similar size) Cart. Company shall provide weekly curbside Collection of Green
11 Waste on the same day as Solid Waste Collection from the Service Area's Single-
12 Family Dwelling Units. Company shall use semi-automated or automated
13 Collection vehicles, unless another method is approved by City. City approval
14 will not be unreasonably withheld. Notwithstanding the foregoing, Company
15 shall Collect Yard Debris from the side or back yard of those Single-Family
16 Dwelling Units that qualify as handicapped as defined by City, provided that such
17 customers place the Yard Debris Cart in a location that is visible from the street.

18 Company shall Collect Source Separated Yard Debris from customers that do not
19 subscribe to weekly Yard Debris Collection Services on an on-call basis as
20 requested by the customer. In such cases, customers shall place Source Separated
21 Yard Debris Curbside in 60-gallon carts for Collection and Company shall Collect
22 the Yard Debris and bill the customer for the service.

23 Company shall Collect Source Separated Yard Debris, from customers that
24 subscribe to regular Yard Debris Collection service, in excess of that placed in the
25 customers 64-gallon Cart. In such cases, the customers shall place the extra Yard
26 Debris Curbside in a 32-gallon can or bag for Collection on the day of regularly
27 scheduled Yard Debris Collection, and Company shall Collect the Yard Debris and
28 bill the customer for the extra service.

29 **5.3.3 Commercial and Multi-Family Dwelling Unit**

30 Company shall Collect Source Separated Yard Debris from Commercial Properties
31 and Multi-Family Dwelling Units if the customer subscribes to and pays for such

1 service. Collection shall be performed as frequently as scheduled by customer, but
2 not less than every other week.

3 Company shall allow Commercial and Multi-Family Dwelling Unit Customers to
4 select a Collection service method that best suits the needs of its Premises.
5 Specifically, the Company shall offer the following choices to Commercial and
6 Multi-Family Dwelling Unit customers:

7 **A. Cart or Container Service**

8 Company shall allow Commercial Premises and Multi-Family Dwelling Unit
9 Premises to use Cart(s) or Container(s) for Source Separated Yard Debris
10 Collection. Company shall provide each Customer with a 60-gallon cart (or similar
11 sizes).

12 **B. Drop Box and Compactor Service**

13 Company shall allow Premises to use a Drop Box or Compactor for Source
14 Separated Yard Debris Collection to meet customer's needs. In such case,
15 Company shall provide Premises with a choice of Receptacle capacities ranging
16 from 10 to 40 cubic yards. Company shall offer customers the option to purchase
17 or lease compactors through Company or an outside vendor.

18 **5.3.4 City Facilities**

19 Company shall Collect Source Separated Yard Debris from City Facilities in
20 accordance with Section 5.10, and shall provide all Receptacles necessary for such
21 Collection.

22 **5.4 Operations**

23 **5.4.1 Schedules**

24 To preserve peace and quiet, no Solid Waste, Recyclable Materials, or Yard Debris
25 shall be Collected between 6:00 p.m. and 7:00 a.m., except for those commercial or
26 institutional customers which the City Manager and the Company have mutually
27 agreed can be serviced outside of these hours. The Company shall Collect Solid
28 Waste, Recyclable Materials, and Yard Debris Monday through Friday from
29 Residential Premises and may Collect Solid Waste, Recyclable Materials, and Yard
30 Debris from Commercial Premises Monday through Saturday. Company, at its

1 sole discretion, may choose not to provide Collection services on a Holiday. In
2 such event, Company shall provide Collection services on the day following the
3 Holiday. The Company shall provide customers notice of Holiday-related
4 changes in Collection schedules at least a 10 days prior to the change; but in no
5 case, shall Company notify customers 60 days prior to the change. The City
6 reserves the right to limit the notification of customers from 60 days prior to the
7 change to 30 days prior to the change upon written notification of the Company.
8 Annually, at least 10 calendar days preceding the affected Holiday, Company shall
9 notify City and customers in writing of the alternate Collection day when the
10 regularly scheduled Collection day falls on a Holiday.

11 Company shall be prepared to review its operations plan outlining the Collection
12 routes, intervals of Collection and Collection times for all Solid Waste, Recyclable
13 Materials, and Yard Debris Collected under this Agreement with City once
14 annually upon 30-day written notice requesting said review. More frequent
15 reviews may be required if the City determines operations are not satisfactory
16 based on documented observations or reports or complaints. If the City
17 determines that operations are inadequate, the Company shall revise the
18 operations plan, incorporating any City-requested changes into a revised plan,
19 and review the revised operations plan with City within 30 calendar days from the
20 date City provides Company written request to revise the operations plan.

21 When notified of a missed pick-up by the customer within two business days of
22 the regular scheduled collection day, Company shall Collect the Solid Waste,
23 Recyclable Materials, or Yard Debris on or before 5:00 p.m. of the business day
24 following receipt of the complaint. For residential service, a business day shall
25 mean Monday through Friday, excluding Holidays.

26 **5.4.2 Vehicles**

27 **A. General.** Company shall provide Collection vehicles sufficient in number
28 and capacity to efficiently perform the work required by the Agreement in strict
29 accordance with its terms. Company shall have available on Collection days
30 sufficient back-up vehicles for each type of Collection vehicle (e.g., Cart service
31 and Container service) used to perform Collection services, and respond to
32 complaints and emergencies.

1 **B. Specifications.** All vehicles used by Company in providing Solid Waste,
2 Recyclable Materials, and Yard Debris Collection services shall be registered with
3 the State of Oregon Department of Motor Vehicles. All such vehicles shall have
4 bodies designed to prevent leakage, spillage, or overflow.

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

10 **D. Cleaning and Maintenance**

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

14 2) Vehicles used in the Collection of Solid Waste, Recyclable Materials,
15 and Yard Debris shall be painted, thoroughly washed, and
16 thoroughly steam cleaned on a regular basis so as to present a clean
17 appearance. Upon reasonable notice, City may inspect vehicles at
18 any time to determine compliance with this Agreement. Company
19 shall repaint or refurbish to the reasonable satisfaction of City all
20 vehicles used in the Collection of Solid Waste, Recyclable Materials,
21 and Yard Debris within 30 calendar days' notice from the City, if the
22 City reasonably determines their appearance warrants painting.
23 Company shall also make vehicles available to the Clackamas
24 County Health Department and State of Oregon Department of
25 Transportation for inspection, at any frequency it requests.

26 3) Company shall inspect each vehicle daily to ensure that all
27 equipment is operating properly. Vehicles that are not operating
28 properly shall be removed from service until repaired and operating
29 properly. Company shall repair, or arrange for the repair of, all of
30 its vehicles and equipment for which repairs are needed because of
31 accident, breakdown or any other cause so as to maintain all
32 equipment in a safe and operable condition. If an item of repair is
33 covered by a warranty, Company shall obtain warranty

1 performance. Company shall maintain accurate records of repair,
2 which shall include the date and operating hours, nature of repair
3 and the verification by signature of a maintenance supervisor that
4 the repair has been properly performed.

5 4) Company shall perform all scheduled maintenance functions in
6 accordance with the manufacturer's specifications and schedule.
7 Company shall keep accurate records of all vehicle maintenance,
8 recorded according to date and operating hours and shall make such
9 records available to City upon request.

10 5)

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

15 Equipment shall comply with United States Environmental Protection Agency (US
16 EPA) noise emission regulations, currently codified at 40 CFR Part 205 and other
17 applicable noise control regulations, and shall incorporate noise control features
18 throughout the entire vehicle. Noise levels of equipment used for Collection shall
19 comply with City ordinance.

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

22 **5.4.3 Receptacles**

23 **A. Single-Family Dwelling Unit Solid Waste Receptacles**

24 Company shall provide each Single-Family Dwelling Unit that pays for the basic
25 Collection service package, as well as monthly and on-call customers, with a 20-
26 gallon, 35-gallon, 60-gallon, or 90-gallon Cart (or similar size Carts) for Solid Waste
27 Collection. Carts must have a useful life of 10 years as evidenced by
28 manufacturer's warranty or other documentation acceptable to City.

29 **B. Single-Family Dwelling Unit Recyclable Materials Receptacles**

1 Company shall provide each Single-Family Dwelling Unit that pays for the basic
2 Collection service package, as well as monthly and on-call customers, with a 95-
3 gallon Cart (or similar size Cart) for the Collection of Commingled Recyclable
4 Materials and a 14-gallon Receptacle for the Collection of glass. Additional 95-
5 gallon Carts and/or 14-gallon Receptacles will be provided at no charge upon
6 customer request and demonstration of need.

7 **C. Single-Family Dwelling Unit Residential Yard Debris Receptacles**

8 Company shall provide one 60-gallon Cart (or similar size Cart) for Collection of
9 Yard Debris to each Single-Family Dwelling Unit that pays for solid waste
10 collection free of charge. Each additional Cart shall be charged at the rate of \$5.00
11 per month. Carts must have a useful life of 10 years as evidenced by
12 manufacturer's warranty or other documentation acceptable to City.

13 **D. Non-Residential Receptacles**

14 Company shall provide customers appropriate Receptacles to Collect Solid Waste,
15 Recyclable Materials, and Yard Debris at Multi-Family Dwelling Unit Premises
16 and Commercial Premises upon customer request. Company shall offer such
17 customers 60-gallon and 90-gallon Carts; Containers with capacity of 1 to 8 cubic
18 yards; or Drop Boxes with capacity of 10 to 40 cubic yards. The kind, size, and
19 number of Receptacles furnished to a particular customer shall be as determined
20 mutually by the customer and Company. Receptacles which are serviced by front-
21 loading collection vehicles shall have attached lids. All Receptacles with a capacity
22 of one cubic yard or more shall meet applicable regulations for Solid Waste
23 Container safety, shall have reflective markings (unless the Receptacle is normally
24 located in an enclosure), shall be maintained in good repair with neatly and
25 uniformly painted surfaces, and shall prominently display the name and
26 telephone number of Company.

27 **E. Removal of Receptacles**

28 Upon termination of the franchise agreement, early or otherwise, the Company
29 shall remain the owner of all receptacles. The Company shall be responsible for
30 removing all Receptacles in service from Premises and reusing or Recycling such
31 Receptacles.

1 **F. Cart Requirements**

2 **1. Specifications.** Company will provide Collection services with new Carts
3 having the specifications, design and performance standards described in this
4 Section 5.4.3.F and meet requirements of Applicable Law with respect to
5 stability. Carts must have a useful life of 10 years as evidenced by
6 manufacturer’s warranty or other documentation acceptable to City.
7 Company will depreciate Carts on a straight-line basis over no greater than 7
8 years.

9 **2. Materials Identification and Decals.** Carts or their lids must be in bright,
10 readily identifiable colors to facilitate customer's ready recognition of Solid
11 Waste, Recyclable Materials, and Yard Debris, subject to City approval as
12 described in this Section 5.4.3.F.

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

15 **4. Cart Design Requirements**

16 **a. General.** Carts must be manufactured by injection or rotational
17 molding and meet the Cart design and performance requirements
18 specified in this Section 5.4.3.F. Company must submit Cart orders
19 (including material and design specifications, colors and
20 identification marks) to City for City approval prior to submitting
21 the order to the manufacturer.

22 **b. Cart Handles.** The Cart handles and handle mounts may be an
23 integrally molded part of the Cart body or molded as part of the lid.
24 The Cart handles must provide comfortable gripping area for
25 pulling or pushing the Cart or lifting the lid. Handles may not have
26 pinch points.

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

- 30 • Prevents the intrusion of rainwater, rodents, birds, and flies;
- 31 • Prevents the emission of odors;
- 32 • Enables the free and complete flow of material from the Cart
33 during the dump cycle without interference with the material

1 already deposited in the truck body or the truck body itself and
2 its lifting mechanism;

- 3 • Permits users of the Cart to conveniently and easily open and
4 shut the lid throughout the serviceable life of the Cart;
- 5 • The lid handle must be an integrally molded part of the lid;
- 6 • The lid (and body) must be of design and weight that prevents
7 an empty Cart from tilting backward when flipping the lid open;
8 and,
- 9 • The lid must be hinged to the Cart body in such a manner so as
10 to enable the lid to be fully opened, free of tension, to a position
11 whereby it may rest against the backside of the Cart body.

12 **d. Cart Colors.** The lids of the Solid Waste, Recyclable Materials, and
13 Yard Debris Carts must be differentiated by color. The colors must
14 be colorfast and resistant to fading as a result of weathering or
15 ultraviolet degradation. Solid Waste Cart lids must be black, brown
16 or gray. Recyclable Materials Cart lids must be blue. Yard Debris
17 Cart lids must be green. Company may propose other colors for
18 Carts lids or Carts, which are subject to approval by the City.

19 **e. Identification Markings.**

20 In addition to the requirements in Section 5.4.3.F.2, an arrow (at least
21 3 inches by 5 inches) hot stamped in white color must be placed on
22 the lid, indicating the direction of Cart placement.

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

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

30 **5. Cart Performance Requirements**

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

1 **b. Cart Load Capacity.** Depending on the capacity, the Carts must
2 have a minimum load capacity as noted below without Cart
3 distortion, damage, or reduction in maneuverability or any other
4 Service.
5

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

6
7 **c. Cart Durability.** At a minimum, Carts must meet the following
8 durability requirements to satisfy its intended use and performance,
9 for the Term:

- 10 • Maintain its original shape and appearance;
- 11 • Be resistant to kicks and blows;
- 12 • Require no routine maintenance and be designed to be
13 maintenance free;
- 14 • Not warp, crack, rust, discolor, or otherwise deteriorate over time
15 in a manner that will interfere with its intended use;
- 16 • Resist degradation from ultraviolet radiation;
- 17 • Be incapable of penetration by biting or clawing of household
18 pets (i.e., dogs and cats);
- 19 • The bottoms of Cart bodies must remain impervious to any
20 damage, that would interfere with the Cart's intended use after
21 repeated contact with gravel, concrete, asphalt or any other
22 rough and abrasive surface;
- 23 • All wheel and axle assemblies are to provide continuous
24 maneuverability and mobility as originally designed and
25 intended; and,

- 1 • Resist degradation by other airborne gases or particulate matter
2 currently present in the ambient air of the City.
3

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

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

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

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

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

- 19 • Prevent damage to the Cart body, the lid itself or any component
20 parts through repeated opening and closing of the lid by
21 residents or in the dumping process as intended;

- 22 • Remain closed in winds up to 25 miles per hour from any
23 direction. All lid hinges must remain fully functional and
24 continually hold the lid in the original designed and intended
25 positions when either opened or closed or any position between
26 the two extremes; and,

- 27 • Lid must be designed and constructed such that it prevents
28 physical injury to the user while opening and closing the Cart.

29 **g. Repairability.** Minor cracks, holes, and other damages to hinges,
30 wheels, axle, hardware, and other component parts must be readily
31 repairable by the Company personnel. Company must repairs or
32 restore damaged Carts to their full functionality to meet the design
33 and performance requirements as set for in this Agreement.

1 **5.4.4 Litter Abatement**

2 **A. Minimization of Spills.** Company shall use due care to prevent Solid
3 Waste, Recyclable Materials, Yard Debris, or fluids from leaking, being spilled,
4 and/or scattered during the Collection or transportation process. If any Solid
5 Waste, Recyclable Material, Yard Debris, or fluids leak or are spilled during
6 Collection, Company shall promptly clean up all such materials. Each Collection
7 vehicle shall carry a broom and shovel at all times for this purpose.

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

11 **B. Clean Up.** During the Collection or transportation process, Company shall
12 clean up litter in the immediate vicinity of any Solid Waste, Recyclable Materials,
13 and Yard Debris storage area (including the areas where Collection Containers are
14 stored for Collection). Company shall discuss instances of repeated spillage not
15 caused by Company directly with the Generator responsible and will report such
16 instances to City. City will attempt to rectify such situations with the Generator if
17 Company has already attempted to do so without success.

18 **5.4.5 Collection Standards**

19 **A. Servicing Receptacles.** Company shall pick up and return each Receptacle
20 to the location where the Owner or occupant properly placed the Receptacle
21 for Collection. Company shall place the Receptacles upright with lids properly
22 secured. Company shall use due care when handling Receptacles. Company
23 shall not throw, roughly handle, damage, or break Receptacles.

24 Company, at the request of customers, shall provide special services including:
25 unlocking Receptacles; accessing Receptacle enclosures with a key; or pulling
26 or pushing Receptacles to the Collection vehicle. Company shall charge
27 Customers for extra services in accordance with City-approved rates.

28 **B. Allocation of City Materials.** Solid Waste, Recyclable Materials, and Yard
29 Debris Collected in the City, which are combined with materials collected from
30 other jurisdictions, shall be allocated by Company to the City's Collection
31 program based on volume or tonnage using a method approved by the City.

1 **C. Instructions to Customer.** Company shall instruct Customers as to any
2 preparation of Solid Waste, Recyclable Materials, or Yard Debris and the
3 proper placement of Receptacles. If Customers are not adhering to Company's
4 instructions, Company shall notify such Customers. In cases of extreme or
5 repeated failure to comply with the instructions, Company may decline to
6 pick-up the Solid Waste, Recyclable Materials, or Yard Debris provided that
7 Company leaves a tag at least two inches by six inches (2" x 6") in size on the
8 Receptacle indicating the reason for refusing to Collect the material. Such tag
9 shall also identify the steps Generator must take to recommence Collection
10 service. If Recyclable Materials contain 5% or greater (measured by volume)
11 of Solid Waste or Yard Debris contain 1% or greater (measured by volume) of
12 Solid Waste, Company shall not Collect materials and shall leave a notice for
13 the Customer identifying reason for non-Collection. Company shall report to
14 the City on a monthly basis any warning notices issued to Customers, and may
15 terminate Recyclable Materials and Yard Debris Collection service upon
16 written notification of the City if, after 10 business days, high contamination
17 levels continue, unless instructed otherwise by the City.

18 **D. Overages.** Company shall direct its employees not to Collect Solid Waste
19 beyond each customer's subscription level of service including scheduled extra
20 pick-ups unless the business office of Company has granted prior
21 authorization to make such Collection.

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

26 City shall refer complaints about damage to private property to Company.
27 Company shall repair all damage to private property caused by its employees.
28 Company shall repair any damages to public property caused by its employees
29 to its previous condition. In the event of repeat occurrences of property
30 damage, the Company shall pay liquidated damages in accordance with
31 Section 12.3.2.

32 **F. Noise.** All Collection operations shall be conducted as quietly as possible and
33 shall conform to applicable federal, state, county and City noise level

1 regulations. Company will promptly resolve any complaints of noise during
2 the morning or evening hours of the day to the satisfaction of the City.

3 **5.4.6 Personnel**

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

10 Company also agrees to establish and vigorously enforce an educational program
11 that will train Company's employees in the identification of Hazardous Waste and
12 Infectious Waste. Company's employees shall not knowingly place such
13 Hazardous Waste in the Collection vehicles or dispose of such Hazardous Wastes
14 and Infectious Waste at the Disposal Site, Processing Facilities, or transfer
15 Facilities.

16 Company shall train its employees in customer courtesy, shall prohibit the use of
17 loud or profane language, and shall instruct Collection crews to perform the work
18 quietly. Company shall use its best efforts to assure that all employees present a
19 neat appearance and conduct themselves in a courteous manner. If any employee
20 is found to be discourteous or not to be performing services in the manner required
21 by this Agreement, Company shall take all necessary corrective measures
22 including, but not limited to, transfer, discipline or termination. If City has
23 notified Company of a complaint related to discourteous or improper behavior,
24 Company will consider reassigning the employee to duties not entailing contact
25 with the public while Company is pursuing its investigation and corrective action
26 process.

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

30 **5.4.7 Identification Required**

31 Company shall provide its employees and Subcontractors with identification for
32 all individuals who may make face-to-face contact with residents or businesses in

1 City. City may require Company to notify customers yearly of the form of said
2 identification. Company shall provide a list of current employees and
3 Subcontractors to City upon request.

4 **5.4.8 Fees and Gratuities**

5 Company shall not, nor shall it permit any agent, employee, or Subcontractors
6 employed by it, to request, solicit, demand, or accept, either directly or indirectly,
7 any compensation or gratuity for the Collection and transportation of Solid Waste,
8 Recyclable Materials, or Yard Debris. Compensation or gratuity shall exclude
9 holiday gifts.

10 **5.4.9 Non-Discrimination**

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

15 **5.4.10 Change in Collection Schedule**

16 Company shall notify the City at least 30 calendar days prior to, and residential
17 customers not later than 2 weeks prior to, any change in the residential Collection
18 schedule which results in a change in the day on which Solid Waste, Recyclable
19 Materials, and Yard Debris Collection occurs. Company will not permit any
20 customer to go longer than the customer's scheduled service frequency in
21 connection with a Collection schedule change. City's approval of any change in
22 residential Collection is required prior to such change, and such approval will not
23 be withheld unreasonably.

24 **5.4.11 Report of Accumulation of Solid Waste; Unauthorized Dumping**

25 Company shall direct its drivers to note (1) the addresses of any Premises at which
26 they observe that Solid Waste, Recyclable Materials, or Yard Debris is
27 accumulating and is not being delivered for Collection; and (2) the address, or
28 other location description, at which Solid Waste, Recyclable Materials, or Yard
29 Debris has been dumped in an apparently unauthorized manner. Company shall
30 deliver the address or description to City within five business days of such
31 observation.

1 **5.6 Contingency Plan**

2 Company shall submit to City a written contingency plan demonstrating
3 Company's arrangements to provide vehicles and personnel and to maintain
4 uninterrupted service during breakdowns, and in case of natural disaster or other
5 emergency (not including a labor dispute), including the events described in
6 Section 12.4.

7 **5.7 Recyclable Materials and Yard Debris Processing**

8 **5.7.1 Processing**

9 Company agrees to transport and deliver all Recyclable Materials and Yard Debris
10 it Collects in the City to the Approved Processing Sites. Company shall arrange
11 for separate Processing of Commingled Recyclable Materials and glass. Company
12 shall arrange for Disposal of residue from the Recyclable Materials and Yard
13 Debris at a Disposal Site selected by Company.

14 Company shall select Processing Sites and secure sufficient capacity to Process
15 Recyclable Materials and Yard Debris Collected under this Agreement. Company
16 shall provide the City, upon request, with documentation demonstrating
17 availability of such capacity. Company shall pay all costs associated with
18 transporting Recyclable Materials and Yard Debris to the Processing Site(s) as well
19 as any Processing costs. The Processing Sites selected by Company shall be
20 approved by the City at least 90 days prior to use of such sites.

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

24 If Company elects to use a Processing Site that is different from the Approved
25 Processing Site, it shall secure prior written approval from the City. The City shall
26 not compensate the Company for any increased transportation and Processing
27 costs associated with the use of Processing Site(s) different from the Approved
28 Processing Site(s).

29 **5.7.2 Transfer**

30 If the Company (i) transports Recyclable Materials or Yard Debris to a Transfer
31 Station where the materials will be unloaded from Collection vehicles and loaded

1 into large-capacity vehicles and transported to the Processing Site(s) or (ii) pulls
2 two or more Collection trailers in tandem with one truck, and the Company is
3 unable to do so then the Company shall be responsible for making other
4 transportation arrangements. In such event, Company shall not be compensated
5 for any additional costs. If the Company plans to change its transfer method,
6 Company shall obtain written approval from the City prior to making the change.
7 The City shall approve the transfer method and the facility(ies) Company
8 proposes to use.

9 If Company uses a Transfer Station, Company shall select the Transfer Station and
10 secure sufficient capacity to transfer Recyclable Materials and Yard Debris
11 Collected under this Agreement. Company shall provide the City, upon request,
12 with documentation demonstrating availability of such capacity. All costs
13 associated with transporting Recyclable Materials and Yard Debris to the Transfer
14 Station as well as any transfer costs shall be paid by Company. Company agrees
15 to use Approved Transfer Station and such site approval shall be obtained from
16 the City at least 90 days prior to use of such site.

17 **5.7.3 Cooperation with Operator**

18 Company shall cooperate with the operator of the Transfer Station and/or
19 Processing Sites with regard to operations therein, including, for example,
20 complying with directions from the operator to unload Collection vehicles in
21 designated areas, accommodating maintenance, operations, and construction of
22 new facilities, and so forth.

23 **5.7.4 Marketing**

24 The Company shall be responsible for marketing or arranging for marketing of
25 Recyclable Materials and Yard Debris it Collects in the City. With respect to Yard
26 Debris, Company shall make, or arrange for making of, end products (e.g.
27 compost) or develop end uses for materials that maximize the recovery rate as
28 calculated in accordance with Chapter 459A of ORS. Company shall not use Yard
29 Debris for the purposes of alternative daily cover (ADC) or for transformation fuel,
30 unless prior written approval is obtained from the City.

31 Upon request, Company shall provide proof to the City that all Recyclable
32 Materials and Yard Debris Collected are marketed for Recycling or reuse in such

1 a manner that maximize the City's recovery rate as calculated in accordance with
2 Chapter 459A of ORS. All residual material from the Processing activities that is
3 not marketed for use shall be accounted for as Disposal Tonnage at a permitted
4 Disposal Site. No Recyclable Materials or Yard Debris shall be transported to a
5 domestic or foreign location if Solid Waste Disposal of such material is its intended
6 use for landfill Disposal.

7 **5.7.5 Disposal of Recyclable Materials and Yard Debris Prohibited**

8 Recyclable Materials and Yard Debris may not be Disposed of in lieu of Recycling
9 the material, without the expressed written approval of the City. If Company
10 believes that it cannot divert the Recyclable Material or Yard Debris from Disposal,
11 then it shall prepare a written request for approval to Dispose of such material.
12 Such request shall contain the basis for its belief, describe the Company's efforts to
13 arrange for the diversion from Disposal of such material, the period required for
14 such Disposal, the incremental costs or cost savings resulting from such Disposal,
15 and any additional information supporting the Company's request. The City shall
16 consider the Company's request and inform Company in writing of its decision
17 within 30 calendar days. If the City approves such request, any difference in the
18 cost of such Disposal compared to diversion shall be adjustment in accordance
19 with Section 7.5.

20 **5.7.6 City Right to Select Processing Site**

21 The City reserves the right to direct Company to Processing Site(s) other than that
22 selected by Company. In such case, the Company shall be released from its
23 indemnification obligation in Section 10.1 and 10.2 as it relates to actions or
24 negligence of the owner and operator of the City-selected Processing Site(s), and
25 the City shall adjust Company's Compensation in accordance with procedures for
26 a City-directed change in scope in accordance with Section 3.3. City shall provide
27 written notice to Company not less than 90 days before effective date of the
28 change.

29 **5.7.7 Record Keeping**

30 Company shall maintain accurate records of the quantities of Recyclable Materials
31 and Yard Debris transported to the Transfer Station and/or Approved Processing

1 Sites and will cooperate with City in any audits or investigations of such
2 quantities.

3 **5.8 Disposal of Solid Waste**

4 **5.8.1 Disposal**

5 Company shall select a Disposal Site and secure sufficient capacity to Dispose of
6 All Solid Waste Collected under this Agreement. Company shall provide the City,
7 upon request, with documentation demonstrating availability of such capacity.
8 The Disposal Site selected by Company shall be approved by the City at least 90
9 days prior to use of such site.

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

13 Company shall Transport to and Dispose of all Solid Waste Collected in the City
14 at the Approved Disposal Location. Company shall cooperate with the operator
15 of the Approved Disposal Location and comply with the operator's requirements
16 such as how and where to unload Collection vehicles, respecting operations and
17 construction of new facilities, cooperating with the operator's Hazardous Waste
18 Exclusion Program, and so forth. Company shall pay all costs associated with the
19 Transporting and Disposing of Solid Waste. Disposal costs shall include all
20 regulatory fees and other surcharges.

21 If the Disposal Site becomes unable to accept and dispose of City's Solid Waste for
22 reasons outside the Company's control, the Company shall, with the prior
23 approval of City, to the extent it is legally able to do so, transport and Dispose of
24 City's Solid Waste at another Disposal Site that results in the lowest possible
25 transportation and Disposal cost. Additional transportation and Disposal cost
26 incurred in delivering the Solid Waste to another Disposal Site will be the
27 responsibility of Company to recover from the Owner of the Disposal Site.

28 Company may Dispose of residue from Recyclable Materials or Yard Debris at any
29 Disposal Site selected by the Company.

1 **5.8.2 Transfer**

2 Company may use an Approved Transfer Station to handle Solid Waste Collected
3 in the City in accordance with Section 5.7.2

4 **5.8.3 City Right to Select Disposal Site**

5 The Company shall select the Approved Disposal Site subject to the City's
6 approval. The City reserves the right to direct Company to a Disposal Site other
7 than that selected by Company if the Approved Disposal Location specified on the
8 Effective Date is not owned or operated by the Company or by a company
9 affiliated with the Company. In such case, Company shall be released from its
10 indemnification obligation in Section 10.1 and 10.2 as it relates to actions or
11 negligence of the owner and operator of the City-selected Disposal Site, and the
12 City shall adjust Company's Compensation in accordance with procedures for a
13 City-directed change in scope in accordance with Section 3.3. City shall provide
14 written notice to Company not less than 90 days before effective date of the
15 change.

16 **5.8.4 Company Right to Propose Alternative Sites**

17 The Company has the right to propose an alternative Disposal Site, Recyclable
18 Material Processing Site, Yard Debris Processing Site or Transfer Station. In such
19 case the Company shall make a formal written request to the City and shall
20 provide the City with all operational and cost data to support any adjustment to
21 the Rates. The City reserves the right, at its sole discretion, to accept or reject the
22 Company's proposed site. If the City rejects the Company's proposed site there
23 shall be no change to the Approved Disposal Site, Approved Recyclable Material
24 Processing Site, Approved Yard Debris Processing Site or Approved Transfer
25 Station. If the City accepts the Company's proposal, the Company's proposed
26 Disposal Site, Recyclable Material Processing Site, Yard Debris Processing Site or
27 Transfer Station shall become the new Approved Disposal Site, new Approved
28 Recyclable Material Processing Site, new Approved Yard Debris Processing Site or
29 new Approved Transfer Station. In such case, any and all requirements,
30 indemnifications etc. associated with the then current Approved Disposal Site,
31 Approved Recyclable Material Processing Site, Approved Yard Debris Processing
32 Site or Approved Transfer Station shall apply to and/or be required of the new
33 Approved Disposal Site, Approved Recyclable Material Processing Site, Approved

1 Yard Debris Processing Site or new Approved Transfer Station.

2 **5.8.5 Record Keeping**

3 Company shall maintain accurate records of the quantities of Solid Waste
4 transported to the Transfer Station and/or Disposal Site and will cooperate with
5 City in any audits or investigations of such quantities.

6 **5.9 Service Exceptions; Hazardous Waste Notifications**

7 **5.9.1 Hazardous Waste Inspection and Reporting**

8 Company reserves the right and has the duty under law to inspect Solid Waste,
9 Recyclable Materials, and Yard Debris placed in Receptacles for Collection and to
10 reject Solid Waste, Recyclable Materials, and Yard Debris observed to be
11 contaminated with Hazardous Waste and the right not to Collect Hazardous
12 Waste put out with Solid Waste, Recyclable Materials, or Yard Debris. Company
13 shall notify all agencies with jurisdiction, if appropriate, including the State of
14 Oregon Department of Environmental Quality and Local Emergency Response
15 Providers and the National Response Center of reportable quantities of Hazardous
16 Waste found or observed in Solid Waste, Recyclable Materials, and Yard Debris
17 anywhere within City. In addition to other required notifications, if Company
18 observes any substances which it or its employees reasonably believe or suspect
19 to contain Hazardous Wastes unlawfully Disposed of or released on any City
20 property, including storm drains, streets or other public rights of way, Company
21 will immediately notify the City Manager or the City Manager’s designee.

22 **5.9.2 Generator Notification**

23 When Solid Waste, Recyclable Materials, or Yard Debris is not Collected from any
24 residential Generator, Company shall notify the Generator in writing, at the time
25 Collection is not made, through the use of a “tag” (at least two inches by six inches
26 in size) or otherwise, of the reasons why the Collection was not made. When Solid
27 Waste, Recyclable Materials, or Yard Debris is not Collected from any commercial
28 Generator, Company shall notify customer by phone of the reasons why the
29 Collection was not made.

1 **5.9.3 Hazardous Waste Diversion Records**

2 Company shall maintain records showing the types and quantities, if any, of
3 Hazardous Waste found in Solid Waste, Recyclable Materials, and Yard Debris
4 and which was inadvertently Collected from service recipients within City, but
5 diverted from Disposal.

6 **5.10 Collection from City Facilities**

7 Company shall Collect Solid Waste, Recyclable Materials, and Yard Debris from
8 City locations at the service levels and collection frequency identified in Exhibit 1.
9 Such Collection shall occur at least once per week or more frequently as requested
10 by the City. Company shall provide and maintain Collection Receptacles for the
11 City's use, with the exception of public litter and public recycling cans that shall
12 be provided and maintained by the City.

13 Company may integrate Collection of Solid Waste, Recyclable Materials, and Yard
14 Debris from City facilities with other Collection services, provided that Company
15 attributes estimated Tonnage Collected from City facilities separately from other
16 customers.

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

19 **5.12 Motor Oil Collection**

20 On a weekly basis, Company shall Collect from Single-Family Dwelling Units and
21 Multi-Family Dwelling Units used motor oil placed Curbside for Collection in
22 Customer-provided containers. Company shall not be required to Collect more
23 than two gallons of used motor oil per individual dwelling unit per week.
24 Company shall Recycle, or arrange for Recycling, all used motor oil Collected.

25 **5.13 Infectious Waste Collection**

26 Company shall Collect, transport, Process, and Dispose of Infectious Waste from
27 Residential and Commercial Premises. The Collection frequency and method of
28 Collection shall be mutually agreed upon by the Company and the Generator.

1 **ARTICLE 6**
2 **OTHER SERVICES**

3 **6.1 Services and Customer Billing**

4 **6.1.1 Service Description**

5 Company shall annually, and with every service start, prepare and distribute,
6 subject to the direction of City, a notice to each Owner or occupant of property
7 entitled to service under this Agreement a listing of Company's Collection Rates,
8 rates for other services, annual Holiday schedule, and a general summary of
9 services required to be provided hereunder and optional service which may be
10 furnished by Company. Such notice shall be in a form subject to City's approval
11 prior to its distribution and may be included with Billings made by Company.

12 **6.1.2 Billing**

13 Company shall bill and collect from Persons receiving Collection services at Rates
14 set by City. City shall approve the form and content of the Billing statements, with
15 such approval not be unreasonably withheld. Billing shall be performed either
16 monthly, every other month, or quarterly for each account, but in no event less
17 frequently than once per quarter. Company may terminate Collection service to
18 Solid Waste accounts that become more than 60 calendar days past due, following
19 30 calendar days written notice. Company shall promptly restore service when
20 the delinquent charges, including reinstatement charges, have been paid in full.
21 The Company may require a deposit from customers who are habitually
22 delinquent.

23 **6.1.3 Customer Billing List**

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

27 **6.1.4 Review of Billings**

28 At least annually, Company shall review its Billings records to determine that the
29 amount the Company bills each customer is correct in terms of the level of service
30 (i.e., frequency of Collection, size of Receptacle, and location of Receptacle) being
31 provided to such customer by Company. Company shall distribute new route

1 books to its drivers as needed to reflect changes in customer service levels that are
2 consistent with Billings. Route supervisors shall periodically check the routes to
3 ensure that drivers are providing service in accordance with their route books,
4 which are to be consistent with Billings.

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

11 **6.2 Customer Service**

12 **6.2.1 Company Office**

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

21 **6.2.2 Complaint Documentation and Response**

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

28 All written customer complaints and inquiries shall be date-stamped when
29 received and shall be initially responded to within one business day of receipt.
30 Company shall log action taken by Company to respond to and remedy the
31 complaint.

1 Daily logs of complaints concerning Collection of Solid Waste, Recyclable
2 Materials, and Yard Debris shall be retained for a minimum of 24 months and shall
3 be available for review by City during business hours and at no cost. City shall, at
4 any time during regular Company business hours, have access to Company's
5 customer service department for purposes that may include monitoring the
6 quality of customer service or researching customer complaints.

7 **6.2.3 Resolution of Customer Complaints**

8 A customer dissatisfied with Company's decision regarding a complaint may ask
9 City to review the complaint. Company shall provide the customer with the
10 telephone number of the City Liaison, as designated in accordance with Section
11 6.2.4. The City Liaison shall contact Company's Government Liaison (as
12 designated in accordance with Section 6.2.4) to request additional information and
13 ask Company to respond to the complaint. Company shall attempt to cure the
14 complaint and notify City Liaison by telephone or in writing of resolution.

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

19 **6.2.4 Liaisons**

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

27 **6.3 Public Education**

28 **6.3.1 Education Requirements**

29 Company public education program shall focus on providing information to
30 customers to comply with requirements of ORS 459A.010(2)(c), which generally
31 requires a public education program to inform solid waste Generators of the

1 manner and benefits of reducing, reusing, recycling and composting material and
2 to promote use of recycling services. At a minimum, the Company shall provide
3 the following public education:

4 **A. Service Initiation.** Education materials shall be distributed to all residents and
5 businesses prior to the commencement of services describing the Collection
6 services offered by the Company and Rates for such services, and soliciting
7 customer's preferences regarding Receptacle size and Collection frequency for
8 Solid Waste, Recyclable Materials, and Yard Debris. These educational
9 materials shall also educate customers about source reduction, reuse, and
10 Recycling opportunities.

11 **B. New customer education.** Education materials shall be provided to all new
12 Collection service customers that includes Recyclable Materials Collection
13 notification and education packets that include, at a minimum, the materials
14 Collected, the schedule for Collection, the way to prepare materials for
15 Collection and the reasons Persons should separate Recyclable Materials and
16 Yard Debris for separate Collection. The educational and promotional
17 materials provided to commercial Collection customers should be targeted to
18 meet the needs of various types of businesses and should include reasons to
19 Recycle, including economic benefits, common barriers to Recycling and
20 solutions, additional resources for commercial Generators of Solid Waste and
21 other information designed to assist and encourage Recycling efforts. The
22 educational and promotional materials provided to commercial Collection
23 customers shall encourage each commercial Collection customer to have a goal
24 to achieve 50 percent recovery from its Solid Waste stream.

25 **C. Quarterly newsletter or promotion.** Education materials in a variety of
26 formats and materials at least four times a calendar year to Collection service
27 customers that includes, at a minimum, promotion of Recyclable Materials and
28 Yard Debris programs, a description of the materials Collected by Company,
29 and the schedule for Collection.

30 **D. Annual promotion.** Education materials at least annually to all Collection
31 service customers, of the information under subsection B above.

32 **E. Other promotion.** Education materials or events targeting of community and
33 media events to promote Recycling.

1 **6.3.2 Format of Promotional Materials**

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

6 **6.3.3 City Review**

7 Company shall submit all promotional materials to the City for review and
8 approval prior to publication or distribution to customers. The City shall review
9 and approve the materials within five business days of receipt.

10 **6.3.4 Cooperation with County Efforts**

11 From time to time, Clackamas County prepares public education information that
12 includes data on the City’s programs and provides education and technical
13 assistance to residents and businesses in the City. The Company shall cooperate
14 with Clackamas County by: (i) providing, upon the County’s request, information
15 regarding the Collection, Processing, and Disposal services provided in the City,
16 and (ii) responding to County inquiries or requests related to specific customers.

17 **6.4 Waste Generation and Characterization Studies**

18 Company acknowledges that City must perform Solid Waste generation and
19 Disposal characterization studies periodically to comply with ORS 459A.035.
20 Company agrees to participate and cooperate with City and its agents and to
21 accomplish studies and data collection and prepare reports, as needed, to
22 determine weights and volumes of Solid Waste and characterize Solid Waste
23 generated, Disposed, diverted or otherwise handled or Processed.

1 **ARTICLE 7**
2 **COMPANY'S COMPENSATION AND RATES**

3 **7.1 Company's Compensation**

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

12 If Company's costs are more than actual gross Rate revenues retained by
13 Company, Company shall not be compensated for the difference in costs and
14 revenues. If Company's costs are less than the actual gross Rate revenues retained
15 by the Company, Company shall retain the difference. In addition, calculations of
16 Rates shall not be adjusted for variances of actual costs or revenues during prior
17 periods of time.

18 **7.2 Rates**

19 Under this Agreement, Company shall have the right and obligation to charge and
20 collect from customers, Rates that are approved by the City. The Rates, which are
21 contained in Exhibit 2, are set by City Council Resolution and are effective May 1,
22 2015 through December 31, 2016. The Company shall bill customers and collect
23 payments in accordance with the Rates set forth in Exhibit 2 and pursuant to
24 Section 6.1.

25 The Rates shall be fixed, as per Exhibit 2, for Rate Period One, commencing May
26 1, 2015 and ending December 31, 2016, and shall not be adjusted to reflect either
27 increases or decreases in costs from those anticipated by Company. The Rates
28 shall be adjusted annually, with City Council approval, commencing January 1,
29 2017 through the remaining Term of this Agreement including any extension
30 periods, as described in Section 7.3.

31 The City reserves the right to adjust Rate relationships in the future provided that
32 the Company is made whole in terms of Gross Revenues.

1 **7.3 Annual Adjustment of Rates**

2 **7.3.1 Annual Adjustment**

3 Subject to the terms herein, the Company shall be entitled to an annual adjustment
4 of all Rates. Each Rate includes an Operating Component and Tipping Fee
5 Component, which are annually adjusted. The City Council shall make a good
6 faith effort to approved adjusted Rates by November 1 of each year, and such Rates
7 shall be effective on each January 1. If Rate adjustments are not approved by
8 November 1, then prior Rates remain in effect until such adjustment is made.

9 Each Rate is annually adjusted as specified in Section 7.3.2 through 7.3.4.

10 **7.3.2 Adjustment of the Operating Component**

11 The Operating Component of the Rates specified in Exhibit 2 shall be adjusted
12 annually, using the method below, to reflect 80% of the change in the All Urban
13 Consumers Index Half1 (CPI-U) compiled and published by the U.S. Department
14 of Labor, Bureau of Labor Statistics or its successor agency, using the following
15 parameters, or by 5%, which ever is less.

16 CPI-U Parameters:

- 17 • Area - Portland - Salem, OR - WA
- 18 • Item - All Items
- 19 • Base Period - Current 1982-84=100
- 20 • Not seasonally adjusted
- 21 • Periodicity - Semi-annual

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

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

26 Step 2: Calculate the Adjusted Operating Component as follows:

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

30 The Operating Component shall be rounded to the nearest cent.

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

Adjusted Operating Component = $\$5.00 \times (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 Recyclables Materials Processing Tipping Fee Component of each rate over the Term of the Agreement. The tipping fee component adjustment shall equal:

$$\text{Adjusted Tipping Fee Component} = \text{Then-current Tipping Fee Component} \times \left(\frac{\text{Current Approved Tipping Fee}}{\text{Prior Approved Tipping Fee}} \right)$$

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

- 1 5. Prior Approved Tipping Fee for the Approved Yard Debris Processing
- 2 Location = \$4.75 per Ton
- 3 6. Adjusted Tipping Fee Component = $\$1.00 \times (\$30.00 / \$28.80) + \$0.50 \times$
- 4 $(\$5.00 / \$4.75) = \$1.04 + \$0.53 = \$1.57$

5 The Adjusted Tipping Fee Component shall be rounded to the nearest cent.

6 The Prior Approved Tipping Fee is the fee last used to set Rates. As of the Effective

7 Date of this Agreement, the Approved Transfer Station Tipping Fee is \$62.50 per

8 ton; and the Approved Processing Site Location Tipping Fee for Yard Debris is

9 \$5.50 per compacted yard. These fees shall be used as the prior Approved Tipping

10 Fee for the first adjustment of the Tipping Fee components.

11 **7.3.4 Calculation of Adjusted Rates**

12 Adjusted Rates shall be calculated as follows:

13

$$\begin{array}{l} \text{Adjusted} \\ \text{Rate} \end{array} = \begin{array}{l} \text{Adjusted Operating} \\ \text{Component} \end{array} + \text{Adjusted Tipping Fee}$$

14

15 For example, assuming:

16

- 17 1. The Rate being adjusted is a Residential Solid Waste Collection Rate
 - 18 2. Adjusted Operating Component = \$5.05 (as calculated in Section 7.3.2)
 - 19 3. Adjusted Tipping Fee Component = \$1.57 (as calculated in Section
 - 20 7.3.3)
- 21

22 Adjusted Collection Rate = $\$5.05 + \$1.57 = \$6.62$

23 **7.4 Annual Rate Application Process**

24 On or before September 1 of each Rate Period, Company shall submit an

25 application requesting the Rate adjustment for the following Rate Period. The

26 application shall present each Rate for the then-current Rate Period and calculation

27 of each adjusted Rate for the following Rate Period. The application shall include

28 all supporting documentation for calculation of the adjusted Rates including CPI-

29 U and Tipping Fee data.

30 The Company's Rate application shall be reviewed by the City. The City Council

31 shall adjust Rates to reflect the adjustments made in accordance with Section 7.3.

1 The City Council shall act in good faith to approve such Rate adjustments by
2 November 1 of each year so that approved Rates take effect at the commencement
3 of the Rate Period. Notwithstanding the provisions of Section 7.3, the adjusted
4 Rates will not take effect until the City Council has approved such Rates.

5 If the Company submits its Rate application on or before September 1, and the City
6 does not adjust Rates to be effective on or before January 1 of a Rate Period, the
7 City shall include a surcharge on the Rates that shall be effective for the remainder
8 of the Rate Period to recover revenues lost by the Company, if any. If the effective
9 date of the Rates is March 1 or later, the City shall adjust the Rates to recoup lost
10 revenues, if any, as well as interest due the Company on lost revenues, where
11 interest shall be calculated using the most-recently published average daily
12 interest rate for the Oregon Local Government Investment Pool (LGIP) published
13 by the Oregon State Treasurer's office. To determine the amount of lost revenues,
14 if any, the City and Company shall meet and confer to determine the effect the
15 delay in adopting Rates has on the Company's revenue. The assessment of the
16 revenue impact shall consider the Company's billing cycle (e.g., impact to
17 Customers billed in advance and to Customers billed in arrears), the ability of
18 Company to delay issuance of bills, the payment cycle of Customers, and other
19 variables.

20 If the Company does not submit the application by September 1, Rates may not be
21 adjusted by November 1. In such case, all Rates shall be adjusted to be effective
22 the first of the month of the next billing cycle following approval by the City
23 Council. If the Company does not submit the application by September 1, no
24 retroactive adjustment will be made to allow the Company to recover revenues
25 that it would have collected, had the Rate adjustment been implemented in
26 accordance with the prescribed schedule.

27 **7.5 Special Rate Review**

28 **7.5.1 Eligible Items**

29 The Company is entitled to apply to the City for consideration of a special Rate
30 review, or the City may initiate such a review, should one or more events listed in
31 this section occur. If the occurrence of such event or combination of events, has a
32 material effect on the Company's cost of service of \$20,000 or more annually, the
33 City shall be obligated to perform a special Rate review; however, if the occurrence

1 of such event(s) has less than a \$20,000 effect on the Company's annual cost of
2 service, the City shall not be obligated to conduct the review.
3

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

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

9 3. Change in Law after the Effective Date that: (1) was not reasonably known
10 to the Company before the Effective Date, and (2) the Company
11 substantiates such claim.

12 4. The number and type of customers differs significantly from the number
13 and type of customers presented in Attachment 1 of the *January 2003 City of*
14 *Sandy Request for Proposals for Solid Waste, Recyclable Materials, and Yard Debris*
15 *Collection Services*, and Company submits an application for a special rate
16 review for this reason no later than September 1, 2005.

17 5. The calculated change in Half1 CPI-U in accordance with Step 1 of Section
18 7.3.2 is equal to or greater than 0.05.

19 6. Fuel price increases that result in a direct increase of more than 2% in the
20 Company's cost of providing services required by this Agreement.

21 **7.5.2 Ineligible Items**

22 The Company will not be compensated over the Term for:
23

24 1. Increases in the cost of Solid Waste, Recyclable Materials, or Yard Debris
25 Collection, transportation, Processing, or Disposal costs in excess of the
26 increases provided through the annual adjustment mechanism described in
27 Section 7.3 unless cost increases are related to eligible items listed in Section
28 7.5.1.

29 2. Increases in the cost of Solid Waste, Recyclable Materials, or Yard Debris
30 Collection, transportation, Processing, or Disposal costs that may be impacted
31 by change in Approved Disposal Location, Approved Transfer Station, or
32 Approved Processing Site operating conditions, unless such change is initiated
33 by or at the direction of the City.

- 1 3. Decreases in Revenues from the sale of Recyclable Materials or Yard Debris.
- 2 4. Growth or decline in the number of customers or their subscription levels;
- 3 however, the Company shall be entitled to bill all customers at the Rates set
- 4 forth herein and retain all Rate revenues net fees due to City collected from its
- 5 customers for Collection services provided under this Agreement.
- 6 5. Changes in the number of accounts related to Receptacle sizes or frequency of
- 7 Collection; however, the Company shall be entitled to bill all customers at the
- 8 Rates set forth herein and retain all Rate revenues net fees due to City collected
- 9 from Company's customers for Collection services provided under this
- 10 Agreement.
- 11 6. Change in the tonnage or composition of Solid Waste, Recyclable Materials, or
- 12 Yard Debris.

13 **7.5.3 Review of Costs**

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

21 **7.5.4 Submittal of Request**

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

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

31 A request for special Rate review shall include a proposal on whether the Rate
32 adjustment resulting from the special Rate review will be an adjustment in

1 addition to or in lieu of the annual Rate adjustment to be performed in accordance
2 with Section 7.3.

3 **7.5.5 Burden of Justification**

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

11 **7.5.6 Grant of Request**

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

14 **7.5.7 Compensation**

15 The Party requesting the special Rate review shall bear all reasonable costs of both
16 Parties for participating in such review up to a maximum of \$25,000 per Party and
17 such costs shall not be reimbursed through Rates charged customers.

18 **7.6 Rates for Changes in Scope**

19 In the event either the City or Company requests a change in scope in accordance
20 with Section 3.3, the Company shall furnish the City with projected operational
21 and cost data for the change in scope to support any adjustment to Rates. For the
22 purposes of analyzing cost impacts of changes in scope, the Company's profit shall
23 be calculated using an operating ratio of 88% of actual reasonable and necessary
24 costs net of Disposal expenses and Franchise Fees. The City reserves the right to
25 require that the Company supply any additional cost data or other information it
26 may reasonably need to ascertain the appropriate Rate adjustment, if any, for the
27 change in scope. The City shall review this operational and cost data, and the City
28 Council shall establish Rates for the change in scope, if warranted.

29 The granting of any change in scope shall be contingent upon City approval and
30 establishment of new Rates. The City shall adjust Rates, in good faith, coincident

1 with any adjustment made pursuant to this Section so that the change in scope and
2 the corresponding Rates become effective on the same date.

3 **7.7 Notice of Rate Adjustments**

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

7 **7.8 Market Test of Rates**

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

22

1 **ARTICLE 8**
2 **REVIEW OF SERVICES AND PERFORMANCE**
3

4 **8.1 Performance Hearing**

5 Annually City may, but is not required to, hold a public hearing on or about 90
6 calendar days after receipt of the Company's annual report (required by Section
7 9.3.3) at which time Company shall be present and shall participate, to review the
8 Solid Waste, Recyclable Materials, and Yard Debris Collection services and overall
9 Company's performance. The purpose of the hearing is to provide for a discussion
10 and review of technological, economic, and regulatory changes in Collection to
11 achieve a continuing, advanced Solid Waste, Recyclable Materials, and Yard
12 Debris Collection system; and to ensure services are being provided with adequate
13 quality, effectiveness, and economy.

14 Forty-five calendar days after receiving notice from City of a Solid Waste,
15 Recyclable Materials, and Yard Debris Collection Services and Performance
16 Review Hearing, Company shall, at a minimum, submit a report to City indicating
17 the following:

- 18 a) Changes recommended and/or new services to improve Collection
19 Services and to contain costs and minimize impacts on Rates.
- 20 b) Any specific plans for provision of changed or new services by Company.

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

28 Topics for discussion and review at the Solid Waste, Recyclable Materials, and
29 Yard Debris Collection Services and Performance Review Hearing shall include,
30 but shall not be limited to, services provided, feasibility of providing new services,
31 application of new technologies, customer complaints, amendments to this

1 Agreement, developments in the law, regulatory constraints, and Company
2 performance. City and Company may each select additional topics for discussion
3 at any Solid Waste, Recyclable Material, and Yard Debris Collection Services and
4 Performance Review Hearing.

5 Not later than 60 calendar days after the conclusion of each Solid Waste,
6 Recyclable Material, and Yard Debris Collection Services and Performance Review
7 Hearing, City may issue a report. As a result of the review, City may require
8 Company to provide expanded or new services within a reasonable time and for
9 reasonable Rates and compensation, as determined in the City Council's good
10 faith legislative discretion, and City may direct or take corrective actions for any
11 performance inadequacies.

1 **ARTICLE 9**
2 **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**
3

4 **9.1 General**

5 Company shall maintain such accounting, statistical, and other records related to
6 its performance under this Agreement as shall be necessary to develop the
7 financial statements and other reports required by this Agreement. Also,
8 Company agrees to conduct data collection, information and record keeping, and
9 reporting activities needed to comply with applicable laws and regulation and to
10 meet the reporting and Solid Waste, Recyclable Materials, and Yard Debris
11 program management needs of City. To this extent, such requirements set out in
12 this and other Articles of this Agreement shall not be considered limiting or
13 necessarily complete. In particular, this Article is intended to only highlight the
14 general nature of records and reports and is not meant to define exactly what the
15 records and reports are to be and their content. Further, with the written direction
16 or approval of City, the records and reports to be maintained and provided by
17 Company in accordance with this and other Articles of the Agreement shall be
18 adjusted in number, format, or frequency. The foregoing is not intended to require
19 significant additional administrative labor or the modification of Company's
20 computer software.

21 **9.2 Records**

22 **9.2.1 General**

23 Company shall maintain records required to conduct its operations, to support
24 requests it may make to City, and to respond to requests from City in the conduct
25 of City business. Adequate record security shall be maintained to preserve records
26 from events that can be reasonably anticipated including, but not limited to, fire,
27 theft, and earthquake. Electronically maintained data/records shall be protected
28 and backed up. All records shall be maintained for five years after the expiration
29 of this Agreement, with the exception of accounts payable records, which will be
30 maintained for three years after payment.

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

4 **9.2.2 Financial Records**

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

8 **9.2.3 Solid Waste, Recyclable Materials, and Yard Debris Records**

9 Records shall be maintained by Company for City relating to:

- 10 a) Customer services and Billings;
- 11 b) Weight and volume of Solid Waste, Recyclable Materials and Yard Debris
12 Collected. Information is to be separated between Single-Family Dwelling
13 Unit, Commercial Premises, and Drop Box Collection service. If Solid
14 Waste, Recyclable Materials, and Yard Trimmings Collected in the City are
15 combined with materials collected from other jurisdictions, Contractor shall
16 allocate weight and volume of such material to the City's Collection
17 program based on volume or tonnage using a method approved by the
18 City.
- 19 c) Routes;
- 20 d) Facilities, equipment, and personnel used;
- 21 e) Facilities and equipment operations, maintenance and repair;
- 22 f) Disposal of Solid Waste;
- 23 g) Processing of Recyclable Materials;
- 24 h) Processing of Yard Debris;
- 25 i) Complaints; and,
- 26 j) Missed pick-ups.

1 **9.2.4 CERCLA Defense Records**

2 City views the ability to defend against CERCLA (Comprehensive Environmental
3 Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.) and
4 related litigation as a matter of great importance. For this reason, City regards the
5 ability to prove where Solid Waste Collected in City was taken for Disposal, as
6 well as where it was not taken, to be matters of concern. Company shall maintain
7 data retention and preservation systems which can establish where Solid Waste
8 Collected in City was landfilled (and therefore establish where it was not
9 landfilled) and provide a copy or summary of the reports required in Sections 5.8,
10 9.2.3, and 9.2.5 for five years after the Term during which Collection services are
11 to be provided pursuant to this Agreement, or to provide copies of such records
12 to City. Company agrees to notify City’s Risk Manager and City Attorney before
13 destroying such records. This provision shall survive the expiration of the period
14 during which Collection services are to be provided under this Agreement.

15 **9.2.5 Disposal Records**

16 Company shall maintain records of Disposal of all Solid Waste Collected in City
17 for the Term this Agreement or successor Agreements. In the event Company
18 discontinues providing Solid Waste services to City, Company shall provide all
19 records of Disposal or Processing of all Solid Waste Collected in City within 30
20 calendar days of discontinuing service. Records shall be in chronological and
21 organized form and readily and easily interpreted.

22 **9.3 Reports**

23 **9.3.1 Report Formats and Schedule**

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

- 28 a) Determine and set Rates and evaluate the financial efficacy of operations;
- 29 b) Evaluate past and expected progress towards achieving diversion goals and
30 objectives;
- 31 c) Determine needs for adjustment to programs; and,

1 d) Evaluate customer service and complaints.

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

9 Quarterly reports shall be submitted no later than 45 calendar days after the end
10 of the quarter. Quarters end on September 30, December 31, March 31, and June
11 30. Annual reports shall be submitted before September 30 following the end of
12 the Rate Period.

13 All reports shall be submitted to:

14 City Manager
15 City of Sandy
16 39250 Pioneer Blvd.
17 Sandy, OR 97055

18 **9.3.2 Quarterly Reports**

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

20 **A. Regular Services**

21 1) Solid Waste Collected monthly by Company in tons, listed separately
22 for Single-Family Dwelling Units and Commercial Premises and the
23 Disposal Site used.

24 2) Recyclable Materials Collected monthly by Company in tons, listed
25 separately for Single-Family Dwelling Units and Commercial Premises
26 and the Processing Facility used.

27 3) Yard Debris Collected monthly by Company in tons, listed separately
28 for Single-Family Dwelling Units and Commercial Premises and the
29 Processing Facility used.

- 1 4) Complaint summary, for month and cumulative for Rate Period,
2 summarized by nature of complaints.
- 3 5) Narrative summary of problems encountered (including scavenging)
4 and actions taken with recommendations for City, as appropriate.
- 5 6) A summary or copy of the Hazardous Waste records required in Section
6 5.9.
- 7 7) Other information or reports that City may reasonably request or
8 require.

9 **B. Summary Assessment.** Provide a summary assessment of the overall Solid
10 Waste, Recyclable Materials, and Yard Debris program from Company's
11 perspective relative to financial and physical status of program. The physical
12 status is to relate to how well the program is operating for efficiency, economy,
13 and effectiveness relative to meeting all the goals and objectives of this Agreement
14 and ORS 459A. Provide recommendations and plans to improve. Highlight
15 significant accomplishments and problems.

16 **9.3.3 Annual Report**

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

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

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

4 **9.4 Adverse Information**

5 **9.4.1 Reporting Adverse Information.** Company shall provide City two copies
6 (one to the City Manager, one to the City Attorney) of all reports, pleadings,
7 applications, notifications, Notices of Violation, or other formal actions relating
8 specifically to Company's performance of services pursuant to this Agreement,
9 submitted by Company to, or received by Company from, the United States
10 Environmental Protection Agency, the Oregon Department of Environmental
11 Quality, the Securities and Exchange Commission or any other federal, state, or
12 local agency, including any federal or state court actions brought by any of the
13 aforementioned agencies, with regard to Company's operations in the State of
14 Oregon. Copies shall be submitted to City simultaneously with Company's filing
15 or submission of such matters with said agencies. Company's routine
16 correspondence to said agencies need not be routinely submitted to City, but shall
17 be made available to City promptly upon City's written request.

18 **9.4.2 Failure to Report.** The refusal or failure of Company to submit any
19 required reports or to provide required information to City shall result in
20 liquidated damages as described in Section 12.3.2.D, or the inclusion of any
21 materially false or misleading statement or representation by Company in such
22 report shall be deemed an event of default of the Agreement as described in
23 Section 12.1 and shall subject Company to all remedies which are available to City
24 under the Agreement or otherwise.

1 **ARTICLE 10**
2 **INDEMNIFICATION, INSURANCE AND BOND**

3 **10.1 Indemnification**

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

30 Company, upon demand of City, made by and through the City Attorney, shall
31 protect City and appear in and defend City and its elected officials, officers,
32 employees and agents, in any claims or actions by third parties, whether judicial,
33 administrative or otherwise, including, but not limited to disputes and litigation
34 over the definitions of "Solid Waste" or the limits of City's authority with respect

1 to the grant of licenses, or agreements, exclusive or otherwise, asserting rights
2 under the Dormant Commerce Clause or federal or state laws to provide Solid
3 Waste, Recyclable Materials, or Yard Debris services in City. This provision shall
4 survive the expiration of the period during which Collection services are to be
5 provided under this Agreement. City and Company agree to confer following any
6 trial to decide jointly whether to appeal or to oppose any appeal. In the event City
7 and Company jointly agree to appeal, or to oppose any appeal, City and Company
8 agree to share equally the costs of appeals. Should either City or Company decide
9 to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose
10 an appeal, the Party which decides to appeal, or to oppose an appeal, shall bear all
11 fees and costs of the appeal or the opposition to the appeal.

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

15 **10.2 Hazardous Substances Indemnification**

16 Company shall indemnify, defend with counsel reasonably acceptable to City,
17 protect and hold harmless City, its elected and appointed boards, commissions,
18 officers, employees, and agents (collectively, Indemnitees) from and against all
19 claims, damages (including but not limited to special, consequential, natural
20 resources and punitive damages), injuries, costs, (including without limit any and
21 all response, remediation and removal costs), losses, demands, debts, liens,
22 liabilities, causes of action, suits, legal or administrative proceedings, interest,
23 fines, charges, penalties, attorney's fees for the adverse party and expenses
24 (including without limit attorneys' and expert witness fees and costs incurred in
25 connection with defending against any of the foregoing or in enforcing this
26 indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or
27 suffered by, or asserted against, Indemnitees arising from or attributable to the
28 acts or omissions of Company, its officers, directors, employees, companies or
29 agents, whether or not negligent or otherwise culpable, in connection with or
30 related to the performance of this Agreement, including without limit Damages
31 arising from or attributable to any repair, cleanup or detoxification, or preparation
32 and implementation of any removal, remedial, response, closure or other plan
33 (regardless of whether undertaken due to governmental action) concerning any
34 Hazardous Substance, Hazardous Waste, and/or Household Hazardous Waste

1 (Collectively, "Waste") at any places where Company Collects and transports,
2 Processes, stores, or Disposes of City Solid Waste, Recyclable Materials, Yard
3 Debris, and/or street debris, or other waste. The foregoing indemnity is intended
4 to operate as an agreement pursuant to §107(e) of the Comprehensive
5 Environmental Response, Compensation and Liability Act, CERCLA, 42 USC.
6 §9607(e), to defend, protect, hold harmless, and indemnify City from liability. This
7 provision is in addition to all other provisions in this Agreement and shall survive
8 the end of the Term of this Agreement.

9 **10.3 Insurance**

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

15 **10.3.1 Minimum Scope of Insurance**

16 Coverage shall be at least as broad as:

- 17 1) Comprehensive General Liability or Commercial General Liability
18 insurance.
- 19 2) Automobile Liability insurance.
- 20 3) Workers' Compensation insurance as required by the State of
21 Oregon and Employers Liability insurance.

22 **10.3.2 Minimum Limits of Insurance**

23 Company shall maintain in force for the Term of this Agreement limits no less
24 than:

- 25 1) Comprehensive General Liability: Five Million Dollars (\$5,000,000)
26 aggregate, One Million Dollars (\$1,000,000) combined single limit
27 per occurrence for bodily injury, personal injury and property
28 damage.

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

4 3) Workers' Compensation and Employers Liability: Workers'
5 compensation limits as required by the State of Oregon and
6 Employers Liability limits of One Million Dollars (\$1,000,000) per
7 accident.

8 4) Environmental Impairment Liability: Five Million Dollars
9 (\$5,000,000) combined single limit per occurrence for the release of
10 pollution into the environment.

11 **10.3.3 Deductibles and Self-Insured Retentions.** If Company wants to increase
12 the amounts of deductibles or self-insured retentions that were in effect on the
13 Effective Date of this Agreement, the Company shall obtain the written consent of
14 City. City's consent will not be unreasonably withheld.

15 **10.3.4 Other Insurance Provisions.** The policies are to contain, or be endorsed to
16 contain, the following provisions:

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

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

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

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

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

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

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

17 3) All Coverage - Each insurance policy required by this clause shall be
18 endorsed to state that coverage shall not be suspended, voided,
19 canceled by either party, reduced in coverage or in limits except after
20 30 calendar days' prior written notice by certified mail, return receipt
21 requested, has been given to City.

22 **10.3.5 Acceptability of Insurers.** The insurance policies required by this Article
23 shall be issued by an insurance company or companies authorized to do business
24 in the State of Oregon and with a rating in the most recent edition of Best's
25 Insurance Reports of A+ or better.

26 **10.3.6 Verification of Coverage.** Simultaneously with the execution of this
27 Agreement, Company shall furnish City with certificates of insurance and with
28 original endorsements affecting coverage required hereunder, in form and
29 substance satisfactory to City. The certificates and endorsements for each
30 insurance policy are to be signed by a Person authorized by that insurer to bind
31 coverage on its behalf. Such certificates and endorsements shall show the type and
32 amount of coverage, effective date and dates of expiration of policies, and shall

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

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

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

8 **10.3.7 Contractors and Subcontractors.** Company shall include all contractors
9 and Subcontractors providing Collection services under this Agreement as
10 insureds under its policies or shall furnish separate certificates and endorsements
11 for each contractor and Subcontractor. All coverage for contractors and
12 Subcontractors shall be subject to all of the requirements stated herein. All other
13 Subcontractors having face-to-face contact with the customers shall be required by
14 Company to carry general liability insurance.

15 **10.3.8 Required Endorsements**

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

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

22 City Manager
23 City of Sandy
24 39250 Pioneer Blvd.
25 Sandy, OR 97055
26

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

29 a) "Thirty calendar days prior written notice by certified mail,
30 return receipt requested, shall be given to City in the event of

1 cancellation, reduction in coverage, or non-renewal of this
2 policy. Such notice shall be sent to:

3 City Manager
4 City of Sandy
5 39250 Pioneer Blvd.
6 Sandy, OR 97055

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

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

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

23 **10.4 Faithful Performance Bond**

24 Company shall deposit either a letter of credit or a performance bond (collectively
25 referred to as "Performance Bond") in the amount of Two Hundred Thousand
26 dollars (\$200,000). The letter of credit or Performance Bond shall be in a form
27 acceptable to City (see Exhibit 3). The Performance Bond shall serve as security
28 for the faithful performance by Company of all the provisions and obligations of
29 this Agreement. City may proceed against the Performance Bond upon
30 Company's default as defined in Article 12.

31

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 or menaces 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 or menace 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.

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

5 **C.** City may immediately engage all or any personnel necessary or useful for
6 the Collection and transportation of Solid Waste, Recyclable Materials, and Yard
7 Debris, including, if City so desires, employees previously or then employed by
8 Company, Company further agrees, if City so requests, to furnish City the services
9 of any or all management or office personnel employed by Company whose
10 services are necessary or useful for Solid Waste, Recyclable Materials, and Yard
11 Debris Collection, transportation, Processing and Disposal operations and for the
12 Billing and Collection of fees for these services.

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

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

20 Except as otherwise expressly provided in the previous paragraph, City's exercise
21 of its rights under this Article: (1) does not constitute a taking of private property
22 for which compensation must be paid; (2) will not create any liability on the part
23 of City to Company; and (3) does not exempt Company from any of the indemnity
24 or insurance provisions of this Agreement, which are meant to extend to
25 circumstances arising under this Section, provided that Company is not required
26 to indemnify City against claims and damages arising from the negligence or
27 willful misconduct of City, its elective and appointive boards, commissions,
28 officers, employees and agents in the operation of Collection vehicles during the
29 time City has taken possession of such vehicles.

30 **11.2 Temporary Possession of Company's Property**

31 If City suffers an interruption or discontinuance of service (including interruptions
32 and discontinuance due to events described in Section 12.4), City may take

1 possession of and use all of Company's property described above until other
2 suitable arrangements can be made for the provision of Solid Waste, Recyclable
3 Materials, and Yard Debris services.

4 **11.3 Billing and Compensation to City during City's Possession**

5 During such time that City is providing Solid Waste, Recyclable Materials, and
6 Yard Debris services, as above provided, Company shall bill and Collect payment
7 from all users of the above-mentioned services as described in Section 6.1.
8 Company further agrees that, in such event, it shall reimburse City for any and all
9 costs and expenses incurred by City beyond that billed and received by Company
10 in taking over possession of the above-mentioned equipment and property for
11 Solid Waste, Recyclable Materials, and Yard Debris service in such manner and to
12 an extent as would otherwise be required of Company under the Terms of this
13 Agreement. Such reimbursement shall be made from time to time after
14 submission by City to Company of each statement listing such costs and expenses,
15 but in no event later than five business days from and after each such submission.

16 **11.4 City's Right to Relinquish Possession**

17 It is further mutually agreed that City may at any time at its discretion relinquish
18 possession of any or all of the above-mentioned property to Company and
19 thereupon demand that Company resume the Solid Waste, Recyclable Materials,
20 and Yard Debris services as provided in this Agreement, whereupon Company
21 shall be bound to resume the same.

22 **11.5 Duration of City's Possession**

23 City's right pursuant to this Article to retain temporary possession of Company's
24 facilities and equipment, and to render Collection services, shall terminate when
25 the event which caused the taking possession under Section 11.1 is cured and the
26 Performance Bond is fully restored. In any case, City has no obligation to maintain
27 possession of Company's property or equipment and/or continue its use for any
28 period of time and may at any time, in its sole discretion, relinquish possession to
29 Company.

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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 thereunder and which is not corrected or

1 remedied within the time set in the written notice of the violation or, if Company
2 cannot reasonably correct or remedy the breach within the time set forth in such
3 notice, if Company should fail to commence to correct or remedy such violation
4 within the time set forth in such notice and diligently effect such correction or
5 remedy thereafter.

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

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

15 **J. Failure to Provide Assurance of Performance.** If Company fails to provide
16 reasonable assurances of performance as required under Section 12.6.

17 Company shall be given 48 hours from notification by City to cure any default
18 arising under Sections 12.1.C, 12.1.E, 12.1.F, 12.1.I, and 12.1.J provided, however,
19 that City shall not be obligated to provide Company with a notice and cure
20 opportunity if the Company has committed the same or similar breach within a
21 24-month period.

22 **12.2 Right to Terminate upon Default**

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

1 at its option, either directly undertake performance of the services or arrange with
2 other Persons to perform the services with or without a written agreement. This
3 right of termination is in addition to any other rights of City upon a failure of
4 Company to perform its obligations under this Agreement.

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

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

13 **12.3 Liquidated Damages**

14 **12.3.1 General**

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

1 **12.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet**
2 **Standards**

3 The Parties further acknowledge that consistent, reliable Solid Waste, Recyclable
4 Materials, and Yard Debris Collection service is of utmost importance to City and
5 that City has considered and relied on Company's representations as to its quality
6 of service commitment in awarding the Franchise to it. The Parties further
7 recognize that some quantified standards of performance are necessary and
8 appropriate to ensure consistent and reliable service and performance. The Parties
9 further recognize that if Company fails to achieve the performance standards, or
10 fails to submit required documents in a timely manner, City and its residents will
11 suffer damages and that it is and will be impractical and extremely difficult to
12 ascertain and determine the exact amount of damages which City will suffer.
13 Therefore, without prejudice to City's right to treat such non-performance as an
14 event of default under this Article, the Parties agree that the following liquidated
15 damage amounts represent a reasonable estimate of the amount of such damages
16 considering all of the circumstances existing on the Effective Date of this
17 Agreement, including the relationship of the sums to the range of harm to City
18 that reasonably could be anticipated and the anticipation that proof of actual
19 damages would be costly or impractical. In placing their initials at the places
20 provided, each Party specifically confirms the accuracy of the statements made
21 above and the fact that each Party has had ample opportunity to consult with legal
22 counsel and obtain an explanation of the liquidated damage provisions at the time
23 that the Agreement was made.

24 Company City
25 Initial Here_____ Initial Here_____

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

- 28 **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

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

1 **12.3.3 Process**

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

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

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

17 **12.3.4 Amount**

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

20 **12.3.5 Timing of Payment**

21 Company shall pay any liquidated damages assessed by City within 10 days after they
22 are assessed unless Company requests a meeting with City in accordance with
23 Section 12.3.3. If they are not paid within the 10-day period, City may proceed

1 against the Performance Bond required by the Agreement or order the termination
2 of the Franchise granted by this Agreement, or both.

3 **12.4 Excuse from Performance**

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

14 The Party claiming excuse from performance shall, within two calendar days after
15 such Party has notice of such cause, give the other Party notice of the facts con-
16 stituting such cause and asserting its claim to excuse under this Section.

17 The interruption or discontinuance of Company's services caused by one or more
18 of the events excused shall not constitute a default by Company under this
19 Agreement. Notwithstanding the foregoing, however, if Company is excused
20 from performing its obligations hereunder for any of the causes listed in this
21 Section for a period of seven calendar days or more, City shall nevertheless have
22 the right, in its sole discretion, to terminate this Agreement by giving 10 days'
23 notice, in which case the provisions relative to taking possession of Company's
24 land, equipment and other property and engaging Company's Personnel in Article
25 11 and this Article will apply.

26 **12.5 Notice, Hearing and Appeal of City Breach**

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

1 its presentation. Company shall be notified of City's ruling in writing within 14
2 calendar days of the administrative hearing.

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

14 Notwithstanding any other provision to the contrary in this Agreement,
15 Company's sole remedy for any dispute or claim it may have relating to
16 compensation or Rates is to file a petition for writ of review pursuant to. Company
17 shall have no cause of action for damages against City in relation to any such
18 dispute or claim.

19 **12.6 Assurance of Performance**

20 Each Party may, at its option and in addition to all other remedies it may have,
21 demand from the other Party reasonable assurances of timely and proper
22 performance of this Agreement, citing specific reasons for the Party's concern over
23 the other Party's ability to perform, in such form and substance as the Party may
24 require. If the other Party fails or refuses to provide satisfactory assurances of
25 timely and proper performance in the form and by the date required by the Party,
26 such failure or refusal shall be an event of default.

1 **ARTICLE 13**
2 **OTHER AGREEMENTS OF THE PARTIES**
3

4 **13.1 Relationship of Parties**

5 The Parties intend that Company shall perform the services required by this
6 Agreement as an independent Company engaged by City and not as an officer or
7 employee of City nor as a partner of or joint venture with City. No employee or
8 agent or Company shall be or shall be deemed to be an employee or agent of City.
9 Except as expressly provided herein, Company shall have the exclusive control
10 over the manner and means of conducting the Solid Waste, Recyclable Materials,
11 and Yard Debris Collection services performed under this Agreement, and all
12 Persons performing such services. Company shall be solely responsible for the
13 acts and omissions of its officers, employees, contractors, Subcontractors and
14 agents. Neither Company nor its officers, employees, contractors, Subcontractors
15 and agents shall obtain any rights to retirement benefits, workers' compensation
16 benefits, or any other benefits which accrue to City employees by virtue of their
17 employment with City.

18 **13.2 Compliance with Law**

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

25 **13.3 Governing Law**

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

28 **13.4 Jurisdiction**

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

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

3 **13.5 Assignment**

4 **13.5.1 Company's Assignment**

5
6 A. **Permitted Assignments.** Company shall have the right to assign the
7 entirety of this Agreement to any other company which is owned and
8 controlled by Company provided that: (i) such company is qualified to do
9 business and has a place of business in Oregon, has a net worth at least
10 equal to that of Company at the time of the assignment, and assumes in
11 writing all of Company's obligations under this Agreement prior to or
12 concurrently with such assignment; and, (ii) the performance bond
13 described in Section 10.4 remains in full force and effect. Company shall
14 not otherwise assign its rights nor delegate or otherwise transfer its
15 obligations under this Agreement to any other Person without the prior
16 written consent of the City. Any such assignment made without the
17 consent of the City shall be void and the attempted assignment shall
18 constitute a breach of this Agreement.

19 B. **Assignment Defined.** For the purpose of this Section, "assign" or
20 "assignment" shall include, but not be limited to: (i) a sale, exchange or
21 other transfer to either a related or a third party of substantially all of
22 Company's (or its Parent Company's) assets dedicated to service under this
23 Agreement; (ii) the issuance of new stock to or the sale, exchange, or other
24 transfer of 10% or more of the then outstanding common stock of Company
25 (or its Parent Company) to a Person other than the shareholder or an
26 affiliate of shareholder owning said stock at the Effective Date. "Parent
27 Company" refers to a company owning more than 50% of the shares of
28 another company (subsidiary) or a company that has management control
29 over such subsidiary.

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

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

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

- 9 3. Company shall furnish the City with satisfactory proof that: (i) the
10 proposed assignee has directly related Solid Waste management
11 Collection experience; (ii) in the last five (5) years, the proposed
12 assignee has not suffered any material citations or other material
13 censure from any federal, state, or local agency having jurisdiction
14 over its collection, processing, transfer station or landfill operations
15 due to any significant failure to comply with federal, state or local
16 waste management laws and that the assignee has provided the City
17 with a complete list of any citations and censures (whether material
18 or not); (iii) the proposed assignee has at all times conducted its
19 Collection, Processing, transfer station, and landfill operations in an
20 environmentally safe and conscientious fashion; (iv) the proposed
21 assignee conducts its Solid Waste collection, processing, transfer
22 station, and landfill management practices in material compliance
23 with all federal, state, and local laws regulating the Collection,
24 Processing, transfer and Disposal of Solid Waste; (v) that the
25 Guaranty Agreement provided by the proposed assignee is
26 satisfactory to the City and is binding and enforceable upon the
27 guarantor; and, (vi) any other information reasonably required by
28 the City to ensure the proposed assignee can fulfill the Terms of this
29 Agreement in a timely, safe, and effective manner.

30 **13.5.2 City's Assignment**

31 City may assign and delegate all rights and duties of City, and its Council, Boards,
32 and Officials, its rights under this Agreement to any joint powers authority or
33 other public agency; provided, however, that this Agreement will continue to

1 govern only the Collection and Transportation of Solid Waste, Recyclable
2 Materials, and Yard Debris generated within City.

3 **13.6 Contracting or Subcontracting**

4 Company shall not engage any contractors or Subcontractors for Collection,
5 transporting, Processing, or Disposing of Solid Waste, Recyclable Materials, and
6 Yard Debris without the prior written consent of City. Company is expressly
7 permitted to subcontract for the collection and handling of infectious medical waste that
8 is generated in the City.

9 **13.7 Binding on Assigns**

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

12 **13.8 Transition to Next Company**

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

17 **13.9 Parties in Interest**

18 Nothing in this Agreement, whether express or implied, is intended to confer any
19 rights on any Persons other than the Parties to it and their representatives,
20 successors and permitted assigns.

21 **13.10 Condemnation**

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

26 **13.11 Notice**

27 All notices, demands, requests, proposals, approvals, consents and other
28 communications which this Agreement requires, authorizes or contemplates shall
29 be in writing and shall either be personally delivered to a representative of the

1 Parties at the address below or be deposited in the United States mail, first class
2 postage prepaid, addressed as follows:

3 If to City:

4 City Manager
5 City of Sandy
6 39250 Pioneer Blvd.
7 Sandy, OR 97005

8 If to Company:

9 Hoodview Disposal & Recycling, Inc.
10 Post Office Box 1110
11 Canby, OR 97013

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

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

16 **13.12 Representatives of the Parties**

17 References in this Agreement to the "City" shall mean the City Council and all
18 actions to be taken by City shall be taken by the City Council except as provided
19 below. The City Council may delegate, in writing, authority to the City Manager,
20 and/or to other City employees and may permit such employees, in turn, to
21 delegate in writing some or all of such authority to subordinate employees.
22 Company may rely upon actions taken by such delegates if they are within the
23 scope of the authority properly delegated to them.

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

1 **13.13 City Free to Negotiate with Third Parties**

2 During the Term of this Agreement, City may investigate all options for the
3 Collection, transportation, Processing, and Disposal of Solid Waste, Recyclable
4 Materials, and Yard Debris after the expiration of the Term. Without limiting the
5 generality of the foregoing, City may solicit proposals from Company and from
6 third parties for the provision of Collection services, and may negotiate and
7 execute agreements for such services that will take effect upon the expiration or
8 earlier termination under Article 12.

9 **13.14 Compliance with Municipal Code**

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

13 **13.15 Privacy**

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

22 **13.16 Attorney Fees and Cost Recovery**

23 The prevailing Party in any action brought to enforce the terms of this Agreement
24 or arising out of this Agreement may recover its reasonable costs and attorneys'
25 fees expended in connection with such an action 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.

1 **14.7 Exhibits**

2 Each of the Exhibits identified as Exhibits 1 through 4 is attached hereto and
3 incorporated herein and made a part hereof by this reference. In the case of conflict
4 between the Exhibits and the Agreement, the Agreement shall govern.

5 **14.8 Waiver**

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

13 Failure of either Party to exercise any of the remedies set forth herein within the
14 time periods provided for shall not constitute a waiver of any rights of that Party
15 with regard to that failure to perform or subsequent failures to perform, whether
16 determined to be a breach, excused performance or unexcused defaults by the
17 other Party.
18

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

3

4 COMPANY

CITY OF SANDY

5

A Municipal Corporation

6

By Fred Kabut

By Seth Atkinson

7

Name: Fred Kabut

Name: Seth Atkinson

8

Title: President

Title: City Manager

9

10

APPROVED AS TO FORM:

11

12

[Signature]

13

City Attorney

14

15

ATTEST:

16

[Signature]

17

City Clerk

18

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.

Service Location	Solid Waste		Recyclable Materials	
	No. of Receptacles and Sizes	Frequency of Collection	No. of Receptacles and Sizes	Frequency of Collection
City Hall	3-yd	Weekly	Bagged	Weekly
Public Works	3-yd	Weekly	Bagged	Weekly
Wastewater Treatment Plant	3-yd	Weekly	Bagged	Weekly
Police/Library	3-yd	Weekly	Bagged	Weekly
Community Center	2-yd	Weekly	Bagged	Weekly
Downtown Sidewalks (future – some time in next 4 years)	Up to 20 public litter cans	Twice Weekly		
Meinig Park	Three 90-gallon Carts	Weekly		

EXHIBIT 2
RATES FOR RATE PERIOD
MAY 1, 2015 THROUGH DECEMBER 31, 2015

Residential Rates

Regularly Scheduled Curbside Collection Services

Basic Service	(Scenario 1 - Basic Service shall include Solid Waste and Recyclable Materials services; Scenarios 2 and 3 - Basic Service shall include Solid Waste, Recyclable Materials, and Yard Debris services as per Section 3.1 of Section V of the RFP)										
	Size of Solid Waste Receptacle	Service Frequency	Operating and Solid Waste Components Rate Factor	Operating Fee Component				Tipping Fee Component			Estimated Number of Accounts
Operating Component				Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate	Estimated Number of Accounts	Estimated Annual Rate Revenues		
20-gal cart	1 pick-up/wk	0.84	\$9.18	\$4.32	\$2.52	\$2.37	\$18.39	133	\$29,347		
35-gal cart	1 pick-up/wk	1.00	\$10.93	\$5.14	\$3.00	\$2.82	\$21.89	1193	\$313,377		
60-gal cart	1 pick-up/wk	1.60	\$17.49	\$8.22	\$4.80	\$4.51	\$35.02	162	\$68,087		
90-gal cart	1 pick-up/wk	1.78	\$19.46	\$9.15	\$5.34	\$5.02	\$38.96	90	\$42,081		
32-gal can	1 pick-up/month	0.56	\$6.12	\$2.88	\$1.68	\$1.56	\$12.26	30	\$4,413		

Regularly Scheduled Curbside Collection Services (cont.)

Yard Debris	(Scenario 1 Only, Monthly rates to collect and process Yard Debris for Scenarios 2 and 3 should be included in the Basic Service above)										
	Size of Yard Debris Receptacle	Service Frequency	Operating and Solid Waste Components Rate Factor	Operating Fee Component				Tipping Fee Component			Estimated Number of Accounts
Operating Component				Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate	Estimated Number of Accounts	Estimated Annual Rate Revenues		
65-gal cart	1 pick-up/wk	N.A.	\$0.00	N.A.	N.A.	\$0.00	\$0.00	167	\$0		

Residential Rates

Recyclable Materials		(Customers that do not subscribe to weekly solid waste service can receive recyclable materials collection service at no charge.)										
Size of Recyclable Materials Receptacle	Service Frequency	Operating and Solid Waste Components		Tipping Fee Component						Estimated Number of Accounts	Estimated Annual Revenues	
		Rate Factor	Component	Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate	Total Rate	Total Rate			
95-gal cart for commingled materials and 14-gallon bin for glass	1 pick-up/wk	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$0.00	2	\$0

Extra Pick-Ups/On-Call Collection Services												
Type of Service	Size of Receptacle	Operating and Solid Waste Components		Tipping Fee Component						Estimated Number of Accounts	Estimated Annual Revenues	
		Rate Factor	Component	Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate	Total Rate	Total Rate			
Extra can or bag of Solid Waste collected on customer's regularly scheduled collection day	32-gal can or bag	Ops Component = basic service rate for weekly 35-gallon cart	\$4.50	\$1.19	N.A.	N.A.	N.A.	N.A.	N.A.	\$5.69	20	\$114
Extra can or bag of Solid Waste collected on a day other than the customer's regularly scheduled collection day	32-gal can or bag	N.A.	\$6.07	\$1.19	N.A.	N.A.	N.A.	N.A.	N.A.	\$7.26	N.A.	N.A.
Extra can or bag of Yard Debris collected on customer's regularly scheduled collection day	32-gal can, 32-gal bag, or 2 foot x 2 foot bundle	Op Component = rate for weekly yard debris	\$1.62	N.A.	N.A.	N.A.	N.A.	\$0.91	N.A.	\$2.53	N.A.	N.A.
Extra can or bag of Yard Debris collected on a day other than the customer's regularly scheduled collection day	32-gal can, 32-gal bag, or 2 foot x 2 foot bundle	N.A.	\$7.02	N.A.	N.A.	N.A.	N.A.	\$0.00	N.A.	\$7.02	N.A.	N.A.

Backyard/Sideyard Service												
Description	Distance from Curb to Receptacle	Operating and Solid Waste Components		Tipping Fee Component						Estimated Number of Accounts	Estimated Annual Revenues	
		Rate Factor	Component	Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate	Total Rate	Total Rate			
Extra monthly fee paid by able-bodied customers for backyard or sideyard Collection of all Customer Receptacles (including Solid Waste, Recyclable Materials, and Yard Debris Receptacles)	Walk-in or Drive-In Service:	N.A.		N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	50 feet or less											
Drive In Service:	51 - 100 feet		\$36.08	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$36.08	N.A.	N.A.
	101 - 200 feet		\$38.78	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$38.78	N.A.	N.A.
	201 - 400 feet		\$41.47	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$41.47	N.A.	N.A.
	401 - 600 feet		\$46.87	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$46.87	N.A.	N.A.
	601 feet or more		\$52.26	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$52.26	N.A.	N.A.
			\$57.66	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	\$57.66	N.A.	N.A.

Residential Rates

Miscellaneous Charges

Service Type	Description	Operating and Solid Waste Components Rate Factor	Tipping Fee Component					Estimated Number of Accounts	Estimated Annual Rate Revenues
			Operating Component	Solid Waste Disposal	Recyclable Materials Processing	Yard Debris Processing	Total Rate		
Call back charge	Extra fee paid if customer did not set Receptacles Curbside for Collection before Company's vehicle passes customer's house and customer requests Company to return to Premises to pick-up materials	N.A.	\$5.39	N.A.	N.A.	N.A.	N.A.	N.A.	
Restart service	Extra fee paid if customer stops and then restarts Collection services more than once during the Year or when service is reinstated after it has been stopped due to non-payment	N.A.	\$9.44	N.A.	N.A.	N.A.	N.A.	N.A.	
Cart delivery/pick-up	Extra fee paid if customer requests a change in Cart size more than once per year	N.A.	\$12.62	N.A.	N.A.	N.A.	N.A.	N.A.	
Cart replacement	Extra fee paid if customer requires Cart replacement (one replacement per year at no cost)	N.A.	\$43.14	N.A.	N.A.	N.A.	N.A.	N.A.	
Hourly fee for services	Truck and one person	N.A.	\$56.58	Actual costs billed to customer	N.A.	N.A.	N.A.	N.A.	
Hourly fee for services	Truck and two persons	N.A.	\$76.42	Actual costs billed to customer	N.A.	N.A.	N.A.	N.A.	

Miscellaneous Charges (cont.)

Tire collection	Fee per tire for 18" and under rim size, tire off the rim	N.A.	\$6.47	\$2.04	N.A.	N.A.	N.A.	N.A.
Tire collection	Fee per tire for 18" and under rim size, tire on the rim	N.A.	\$2.18	\$7.48	N.A.	N.A.	N.A.	N.A.
Furniture and recyclable appliances	Fee per item Collected		\$5.50 to \$30.00 based on weight and need for special handling. If item not easily accessible, hour rate applies. Freon removal charged for air conditions and refrigerators will be added onto rate.					

Commercial Rates

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Tipping Fee Component				Total Rate	Estimated Number of Accounts	Estimated Annual Revenues
			Rate Factor	Operating Component	Solid Waste Disposal	Recyclable Materials Processing			

Regularly Scheduled Cart Services*

Solid Waste	One 35-gallon cart	1	1.00	\$10.93	\$5.14	\$3.00	\$19.07	9	\$2,060
Solid Waste	Two 35-gallon carts	1	2.00	\$21.86	\$10.28	\$6.00	\$38.14	0	\$0
Solid Waste	One 60-gallon cart	1	1.62	\$17.66	\$8.30	\$4.85	\$30.81	14	\$5,176
Solid Waste	Two 60-gallon carts	1	3.10	\$33.90	\$15.94	\$9.30	\$59.15	1	\$710
Solid Waste	One 90-gallon cart	1	1.75	\$19.10	\$8.98	\$5.24	\$33.33	17	\$6,799
Solid Waste	Two 90-gallon carts	1	3.36	\$36.68	\$17.25	\$10.07	\$63.99	5	\$3,839
Solid Waste	Additional 90 gallon cart	1	1.67	\$18.22	\$8.57	\$5.00	\$31.78	6	\$2,288

Regularly Schedule Container Services*

Solid Waste	1 cubic yard container	1	1.00	\$59.45	\$26.64	\$15.00	\$101.09	19	\$23,049
Solid Waste	1 cubic yard container	2	1.90	\$112.95	\$50.62	\$28.50	\$192.08	0	\$0
Solid Waste	1 cubic yard container	3	2.85	\$169.43	\$75.94	\$42.75	\$288.11	0	\$0
Solid Waste	1 cubic yard container	4	3.80	\$225.91	\$101.25	\$57.00	\$384.15	0	\$0
Solid Waste	1 cubic yard container	5	4.75	\$282.38	\$126.56	\$71.25	\$480.19	0	\$0
Solid Waste	1 cubic yard container	6	5.70	\$338.86	\$151.87	\$85.50	\$576.23	0	\$0
Solid Waste	1.5 cubic yard container	1	1.39	\$82.37	\$36.92	\$20.78	\$140.07	24	\$40,341
Solid Waste	1.5 cubic yard container	2	2.58	\$153.47	\$68.78	\$38.72	\$260.97	2	\$6,263
Solid Waste	1.5 cubic yard container	3	3.81	\$226.58	\$101.55	\$57.17	\$385.30	0	\$0
Solid Waste	1.5 cubic yard container	4	5.04	\$299.67	\$134.30	\$75.61	\$509.58	0	\$0
Solid Waste	1.5 cubic yard container	5	6.26	\$372.02	\$166.73	\$93.87	\$632.62	1	\$7,591
Solid Waste	1.5 cubic yard container	6	7.90	\$469.52	\$210.43	\$118.47	\$798.42	0	\$0
Solid Waste	2 cubic yard container	1	1.68	\$99.72	\$44.69	\$25.16	\$169.58	23	\$46,804
Solid Waste	2 cubic yard container	2	3.22	\$191.25	\$85.72	\$48.26	\$325.22	7	\$27,319
Solid Waste	2 cubic yard container	3	4.76	\$282.71	\$126.71	\$71.33	\$480.75	4	\$23,076
Solid Waste	2 cubic yard container	4	6.30	\$374.24	\$167.73	\$94.43	\$636.40	0	\$0
Solid Waste	2 cubic yard container	5	7.83	\$465.74	\$208.74	\$117.51	\$791.99	0	\$0
Solid Waste	2 cubic yard container	6	9.56	\$568.42	\$254.76	\$143.42	\$966.60	0	\$0

Commercial Rates

Solid Waste	3 cubic yard container	1	2.30	\$136.98	\$61.39	\$34.56	\$232.93	12	\$33,542
Solid Waste	3 cubic yard container	2	4.39	\$260.82	\$116.89	\$65.81	\$443.52	5	\$26,611
Solid Waste	3 cubic yard container	3	6.61	\$393.15	\$176.20	\$99.20	\$668.56	2	\$16,045
Solid Waste	3 cubic yard container	4	8.85	\$525.98	\$235.74	\$132.71	\$894.43	0	\$0
Solid Waste	3 cubic yard container	5	11.08	\$658.75	\$295.24	\$166.21	\$1,120.20	1	\$13,442
Solid Waste	3 cubic yard container	6	13.13	\$780.77	\$349.93	\$197.00	\$1,327.71	0	\$0
Solid Waste	4 cubic yard container	1	2.97	\$176.69	\$79.19	\$44.58	\$300.46	17	\$61,293
Solid Waste	4 cubic yard container	2	5.15	\$306.04	\$137.16	\$77.22	\$520.41	5	\$31,225
Solid Waste	4 cubic yard container	3	7.68	\$456.42	\$204.56	\$115.16	\$776.14	4	\$37,254
Solid Waste	4 cubic yard container	4	10.21	\$606.70	\$271.91	\$153.08	\$1,031.69	0	\$0
Solid Waste	4 cubic yard container	5	12.74	\$757.11	\$339.32	\$191.03	\$1,287.47	1	\$15,450
Solid Waste	4 cubic yard container	6	16.94	\$1,007.12	\$451.37	\$254.11	\$1,712.61	0	\$0
Solid Waste	6 cubic yard container	1	4.22	\$250.63	\$112.33	\$63.24	\$426.20	3	\$15,343
Solid Waste	6 cubic yard container	2	8.17	\$485.64	\$217.66	\$122.54	\$825.84	1	\$9,910
Solid Waste	6 cubic yard container	3	12.12	\$720.62	\$322.97	\$181.82	\$1,225.41	1	\$14,705
Solid Waste	6 cubic yard container	4	16.07	\$955.59	\$428.28	\$241.11	\$1,624.99	0	\$0
Solid Waste	6 cubic yard container	5	20.03	\$1,190.57	\$533.59	\$300.40	\$2,024.56	0	\$0
Solid Waste	6 cubic yard container	6	24.03	\$1,428.61	\$640.28	\$360.46	\$2,429.36	0	\$0
Solid Waste	8 cubic yard container	1	5.62	\$334.18	\$149.77	\$84.32	\$568.27	0	\$0
Solid Waste	8 cubic yard container	2	10.89	\$647.52	\$290.21	\$163.38	\$1,101.11	0	\$0
Solid Waste	8 cubic yard container	3	16.16	\$960.82	\$430.62	\$242.43	\$1,633.88	0	\$0
Solid Waste	8 cubic yard container	4	21.43	\$1,274.13	\$571.04	\$321.48	\$2,166.65	0	\$0
Solid Waste	8 cubic yard container	5	26.70	\$1,587.43	\$711.46	\$400.54	\$2,699.42	0	\$0
Solid Waste	8 cubic yard container	6	32.04	\$1,904.82	\$853.71	\$480.62	\$3,239.14	0	\$0

*Note that the rates provided herein shall be for basic collection services; and therefore, shall include collection of solid waste at the service level noted and collection of recyclable materials in receptacles selected by customer.

Commercial Rates

Other Services

Other Services	1 to 8 cubic yard container	1 to 6 pickups per week	N.A.	Rates for compacted containers shall equal 3 times the container rate listed above.	N.A.	N.A.
Compacted Container Service	1 to 8 cubic yard container	1 to 6 pickups per week	N.A.		N.A.	N.A.
Extra can or bag of Solid Waste collected on customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$3.56	\$2.37	N.A.
Extra can or bag of Solid Waste collected on a day other than the customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$6.07	\$1.19	N.A.
Extra pick-up for on-call service or overage pick-up service for regular container customers	1 to 8 cubic yard container	Per cubic yard per occurrence	N.A.	\$16.71	\$6.15	N.A.
Push/pull	N.A.	Per Month	N.A.	\$10.79	N.A.	N.A.
Lock/unlock	N.A.	Per Month	N.A.	\$10.79	N.A.	N.A.
Steam cleaning	N.A.	Per occurrence	N.A.	\$53.93	N.A.	N.A.

Note: Miscellaneous charges listed on the residential rate sheet apply to commercial customers as appropriate

Drop Box Rates

Type of Service	Receptacle	Service Frequency	Operating Component	Tipping Fee Component	Total Rate	Estimated Number of Accounts	Estimated Annual Revenues
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Regularly Scheduled Collection Service (Monthly Rate not including rental & delivery fees which are charged separately)

All Material Types	10 cubic yard drop box	1 pickup/week	\$92.81	Company to bill customer	\$92.81	0	\$0
All Material Types	20 cubic yard drop box	1 pickup/week	\$92.81	actual tipping cost	\$92.81	4	\$4,455
All Material Types	30 cubic yard drop box	1 pickup/week	\$113.23		\$113.23	1	\$1,359
All Material Types	40 cubic yard drop box	1 pickup/week	\$113.23		\$113.23	2	\$2,718

On-Call Collection Service (Per Pick-Up Rate not including rental and delivery fees which are charged separately)

All Material Types	10 cubic yard drop box	On-call pickup	\$119.14	Company to bill customer	\$119.14	N.A.	N.A.
All Material Types	20 cubic yard drop box	On-call pickup	\$119.14	actual tipping cost	\$119.14	N.A.	N.A.
All Material Types	30 cubic yard drop box	On-call pickup	\$145.35		\$145.35	N.A.	N.A.
All Material Types	40 cubic yard drop box	On-call pickup	\$145.35		\$145.35	N.A.	N.A.

Rental Service

Rental	All drop box sizes	Per day**	\$7.28	N.A.	\$7.28	N.A.	N.A.
Rental	All drop box sizes	Per month**	\$72.82	N.A.	\$72.82	N.A.	N.A.

** Customer receives two days of drop box use at no cost; rental fee charged per day for each day in excess of the first two days of use.
Total charge shall be based on the per-day rate or per-month rate whichever is less.

Delivery Service

Delivery	All drop box sizes	Initial delivery to collection site		N.A.	\$23.03	N.A.	N.A.
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Commercial/Industrial/Institutional Rates...

Commercial/Industrial/Institutional Rates Continued...

Other Services									
Compacted Container Service	1 to 8 cubic yard container	1 to 6 pick-ups per week	N.A.	Rates for compacted containers shall equal 3 times the container rate listed above.				N.A.	N.A.
Extra can or bag of Solid Waste collected on customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$3.31	\$1.74	N.A.	\$5.05	N.A.	N.A.
Extra can or bag of Solid Waste collected on a day other than the customer's regularly scheduled collection day	32-gal can or bag	Per occurrence	N.A.	\$5.63	\$0.87	N.A.	\$6.50	N.A.	N.A.
Extra pick-up for on-call service or overage pick-up service for regular container customers	1 to 8 cubic yard container	Per cubic yard per occurrence	N.A.	\$15.50	\$4.50	N.A.	\$20.00	N.A.	N.A.
Push/pull	N.A.	Per Month	N.A.	\$10.00	N.A.	N.A.	\$10.00	N.A.	N.A.
Lock/unlock	N.A.	Per Month	N.A.	\$10.00	N.A.	N.A.	\$10.00	N.A.	N.A.
Steam cleaning	N.A.	Per occurrence	N.A.	\$50.00	N.A.	N.A.	\$50.00	N.A.	N.A.

Note: Miscellaneous charges listed on the residential rate sheet apply to commercial customers as appropriate

Infectious Medical Waste Rates

EXHIBIT 3
FAITHFUL PERFORMANCE BOND



Roselily D Belo
1501 Fourth Avenue, Suite 1000
SEATTLE, WA 98101

Phone: (206) 326-4267
Fax: (206) 326-4292
Email: RBELO@travelers.com
License No.

January 22, 2014

Dave Kilhefner
KBI INSURANCE INC (0JG051)
PO BOX 888
TUALATIN, OR 97062-0888

This is the Renewal for: **HOODVIEW DISPOSAL & RECYCLING, INC.**
PO BOX 550
BARLOW, OR 97013

Bond Number: 104490180
Company Name: Travelers Casualty and Surety Company of America
Branch Number: 042
Contiguous Bond No.:
Type of Bond: Garbage Collection Service Performance Bond
Project Name: CITY OF SANDY

Project City, State & Zip: SANDY, OR 97055
Project Description: Solid Waste, Recyclable Materials and Yard Debris Collection Services

Obligee Name: CITY OF SANDY
Obligee Address: CITY MANAGER, 39250 PIONEER BLVD.
Obligee City, State & Zip: SANDY, OR 97055 USA
Transaction Effective Date: May 01, 2014 ✓
Premium Effective Date: May 01, 2014
Bond Limit: \$200,000.00
Contract Price: \$200,000.00
Bond Premium: \$3,000.00

Premium Expiry Date: May 01, 2015 ✓

Special Commission: \$0.00
Countersignature Branch:
Countersignature Commission: \$0.00
Countersignature Rate: 0%
State Tax: \$0.00
State Surcharge: \$0.00
TOTAL PREMIUM: \$3,000.00

Comments:

Thank you for placing your business with us.

Producer Name: KILHEFNER, DAVID C



CONTINUATION CERTIFICATE
FIDELITY OR SURETY BONDS/POLICIES

License No. _____

In consideration of \$3,000 dollars renewal premium, the term of Bond/Policy No. 104490180 in the amount of \$200,000, issued on behalf of Hoodview Disposal & Recycling, Inc., whose address is PO Box 550, Barlow, OR 97013, in favor of City of Sandy, whose address is 39250 Pioneer Blvd., Sandy, Oregon 97055, in connection with Faithful Performance Bond is hereby extended to May 1, 2008, subject to all covenants and conditions of said bond/policy.

This certificate is designed to extend only the term of the bond/policy. It does not increase the amount which may be payable thereunder. The aggregate liability of the Company under the said bond/policy together with this certificate shall be exactly the same as, and no greater than it would have been, if the said bond/policy had originally been written to expire on the date to which it is now being extended.

Signed, sealed and dated April 30, 2007

Travelers Casualty and Surety Company of America

By: *David C. Kilhefner*
David C. Kilhefner Attorney-in-Fact

EXHIBIT 4
NOTARY CERTIFICATION

Exhibit 4

Notary Certification

STATE OF OREGON

COUNTY OF CLACKAMAS

On July 21, 2014, before me, Mary J. Stoller, the undersigned, a Notary Public in and for the State of Oregon, personally appeared **Fred Kahut** known to me to be the **President** 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 21st day of July, 2014.



Notary Public

My Commission Expires: 3/18/2017

