

## ORDINANCE NO. 2015- 13

AN ORDINANCE REGULATING SOLID WASTE MANAGEMENT INCLUDING, WITHOUT LIMITATION, GRANTING AN EXCLUSIVE SOLID WASTE FRANCHISE TO REPUBLIC SERVICES OF CORVALLIS; ESTABLISHING SERVICE STANDARDS AND ESTABLISHING PUBLIC RESPONSIBILITY; REPEALING ORDINANCE 2013-06; PRESCRIBING PENALTIES; AND STATING AN EFFECTIVE DATE.

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

### Section 1 - Introduction

**1.1 Short Title.** This ordinance shall be known as the “Solid Waste Management Ordinance.”

**1.2 Purpose and Policy.** In order to protect the health, safety and welfare of the people of the City of Corvallis, it is the public policy of the City of Corvallis to regulate and to provide a Solid Waste management program.

#### **1.3 Solid Waste Management Goals.**

**1.3.1** Ensure the safe and sanitary accumulation, storage, Collection, transportation and disposal or Resource Recovery of Solid Wastes. Ensure proper handling of Household Hazardous Waste, ensure that the community has an ongoing Resource Recovery and disposal service, and ensure that wasteshed Recycling goals are met.

**1.3.2** Engage in research, studies, surveys and demonstration projects to develop a safe, sanitary, sustainable, efficient and economical Solid Waste management system.

**1.3.3** Research, develop, and promote technologically and economically feasible Resource Recovery including, Source Separation, Recycling and reuse, and separation by and through the Franchisee. Research, develop, and promote Solid Waste reduction strategies.

**1.3.4** Ensure efficient, economical and comprehensive Solid Waste Service. Maximize Collection to reduce the adverse environmental impacts of individual Collection and disposal efforts. Minimize duplication of Service or routes to conserve energy and material resources, to reduce air pollution and truck traffic, and to increase efficiency, thereby minimizing consumer cost, street wear, and public inconvenience.

**1.3.5** Protect and enhance the public health and the environment.

**1.3.6** Protect against improper and dangerous handling of Hazardous and Infectious Wastes.

**1.3.7** Encourage the use of the expertise and capabilities of private industry.

**1.3.8** Provide for equitable charges to the users of Solid Waste Services that are reasonable and adequate to provide necessary Service to the public, justify investment in Solid Waste management systems, and provide for equipment and systems modernization to meet environmental and community service requirements.

**1.3.9** Provide Service without discrimination on the basis of race, religion, religious observance, citizenship status, gender identity or expression, color, sex, marital status, familial status, citizenship status, national origin, age, mental or physical disability, sexual orientation, or source or level of income and not give any Person any preference or advantage not available to all Persons similarly situated.

**1.3.10** Work in cooperation with the City of Corvallis, Benton County, local citizen groups, and local industries to reduce the quantity of Solid Waste produced, optimize efficiencies, and conserve resources.

**1.3.11** Provide efficient leaf Collection to protect the community's health, safety, and appearance, and to improve water quality.

**1.3.12** Demonstrate a responsive, customer-service oriented business philosophy.

**1.3.13** Increase recovery of organic and inorganic Solid Waste from all Solid Waste streams that the Franchisee Collects within the Franchise Territory.

**1.4 Definitions.** For the purpose of the ordinance, the following terms shall have the following meaning:

**“Automated Frontload Service”** means Servicing Commercial customer frontload style Receptacles where the Collection vehicle operator does not need to leave the Collection vehicle for any reason to Service the Receptacle.

**“City”** means the City of Corvallis, Oregon all of its officers, employees, and representatives.

**“Collection”** (or variations thereof) means a Service providing for collection of Solid Waste, Recyclable Materials, and Organic Debris.

**“Commercial”** means commercial and industrial businesses including but not limited to retail sales, services, wholesale operations, manufacturing, and industrial operations but excluding businesses conducted upon Residential premises which are permitted under applicable zoning regulations and are not the primary use of the property.

**“Commingled Recyclables”** means newspapers, corrugated cardboard, brown paper bags, tin/aluminum cans, aseptic containers, aerosol cans, plastics defined as tubs/bottles, and mixed paper consisting of household mail, paperboard, and magazines, or any other combination of Recyclable Materials approved by the City in accordance with state regulations.

**“Compact and Compaction”** means the process of, or to engage in the manual or mechanical compression of material.

**“Council”** means the governing body of the City.

**“Curbside”** means a location within three (3) feet of a City street, public access road, State or federal road. This does not allow Solid Waste or Recycling Receptacles to be placed on the inside of a fence or enclosure for Collection even if the Receptacle is within three (3) feet of said road or roads. For residences on “flag lots”, private roads, or driveways, “Curbside” shall be the point where the private road or driveway intersects a City street, public access road, State or federal road.

**“Disposal”** means the ultimate disposition of Solid Waste Collected by the Franchisee at a Disposal Site.

**“Disposal Site”** means land and facilities used for the Disposal, handling, or transfer of, or energy recovery, material recovery and Recycling from Solid Wastes, including but not limited to landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for Solid Waste delivered by the public or by a Collection Service, composting plants and land and facilities previously used for Solid Waste Disposal at a land Disposal Site.

**“Franchisee”** means Republic Services of Corvallis, an Oregon corporation, granted a franchise pursuant to Section 2 of this ordinance or a subsequent ordinance. It also includes any sub-contractor to Republic Services of Corvallis operating within the Franchise Territory.

**“Franchise Territory”** means the area within the legal boundaries of the City of Corvallis, including any areas annexed during the term of this franchise, and all property owned by the City, outside City limits and within the urban growth boundary.

**“Generator”** means any Person whose act or process produces Solid Waste, Recyclable Materials, or Organic Debris or whose act first causes Solid Waste Recyclable Materials or Organic Debris to become subject to regulation. As used in this franchise, “Generator” does not include any Person who manages an intermediate function resulting in the alteration or Compaction of the Solid Waste or Recyclable Material after it has been produced by the Generator and placed for Collection.

**“Green Feedstocks”** include but are not limited to: yard debris, animal manures, wood waste (as defined in OAR 340-093-0030(94)), vegetative food waste, produce waste, vegetative restaurant waste, vegetative food processor by-products and crop residue. Green feedstocks may also include other materials approved by DEQ. Green Feedstock is a subset of Solid Waste.

**“Gross Revenue”** shall mean revenues derived from all sources of operations within the Franchise Territory allowed by law to be included within the term of Gross Revenue. No expenses, encumbrances, or expenditures shall be deducted from the Gross Revenue in determining the total Gross Revenue subject to the franchise fee, except net uncollectibles.

**“Hazardous Waste”** means any hazardous wastes as defined by ORS 466.005.

**“Holidays”** means legal holidays observed by the City of Corvallis.

**“Household Hazardous Waste”** means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment, is commonly used around households and is generated by the household.

**“Industrial”** means a Commercial customer whose waste is hauled directly to a disposal site in a customer dedicated container and the customer pays the actual cost of disposal. This definition applies only to Section 4.

**“Infectious Waste”** means as defined in ORS 459.386.

**“Manual Frontload Service”** means Servicing Commercial customer frontload style Receptacles where the Collection vehicle operator needs to exit the Collection Vehicle for any reason to service the container.

**“Organic Debris”** includes but is not limited to Green Feedstocks, Yard Debris, pre and post consumer food Waste (meat, poultry, fish, shellfish, bones, eggs, dairy products, bread, dough, pasta), food soiled paper (kitchen paper towels, uncoated paper takeout containers, pizza delivery boxes, paper napkins, waxed cardboard, and uncoated paper cups), Organic Debris is a subset of Solid Waste.

**“Persons”** means any individual, partnership, business, association, corporation, trust, firm, estate, joint venture, cooperative or other private entity or any public agency.

**“Pilot Program”** means a program which allows the Franchisee to offer Services on a trial basis for a limited duration of six months or less and to determine rates for such Services outside the approved rate structure. City approval is required prior to implementation of a pilot program.

**“Public Rights-of-Way”** includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, multi-use paths, park strips, public easements on private property and all other public ways or areas, including surface of and the space above and below these areas, and includes any city-owned park, place, facility or grounds within the Franchise Territory that is open to the public.

**“Putrescible Material”** means organic materials that can decompose, which may create foul-smelling, offensive odors or products.

**“Receptacle”** means cans (owned by a customer), carts, bins, containers, drop boxes, or dumpsters used for the containment, Collection, and Disposal of Solid Waste.

**“Recycling”** means any process by which Solid Waste materials are transformed into new products where the Solid Waste materials may lose their identity.

**“Recyclable Material”** means any material or group of materials that can be Collected and sold for Recycling at a net cost equal to or less than the cost of Collection and Disposal of the same material. Recyclable Materials are a subset of Solid Waste.

**“Residential”** means property containing four dwelling units or less used for residential purposes irrespective of whether such dwelling units are rental units or are owner occupied.

**“Resource Recovery”** means the process of obtaining useful material or energy resources from Solid Waste, including reuse, Recycling, and other

material recovery or energy recovery of or from Solid Wastes.

**“Service”** means the Collection, transportation, or Disposal of or Resource Recovery from Solid Waste by Franchisee.

**“Solid Waste”** means as defined in ORS 459.005.24 including but not limited to all useless or discarded Putrescible, non-putrescible and Recyclable Materials.

**“Source Separation”** means the separation of Solid Waste materials by the Generator in preparation for recovery by Recycling or reuse.

**“Train System”** means a group of small receptacles (typically 1-2 cubic yard capacity) placed in various locations around a customer’s property, by the customer and once full, either linked together or placed upon a trailer for transport and disposal to a larger Receptacle or compactor on the premises.

**“Yard Debris”** means grass clippings, leaves, hedge trimmings, and similar vegetative Solid Waste generated from Residential premises or landscaping activities but does not include stumps or similar bulky wood materials. Yard Debris is a subset of Solid Waste.

## **Section 2 - Grant of Authority and General Provisions**

**2.1 Franchise.** Subject to the conditions and reservations contained in this ordinance, the Council hereby grants to Republic Services of Corvallis, the right, privilege, and exclusive franchise to Collect and transport Solid Waste, including Recyclable Materials, and Organic Debris, generated within the Franchise Territory in accordance with this ordinance and Corvallis Municipal Code.

**2.2 Term.** This franchise ordinance and the rights and privileges granted herein shall take effect June 1, 2013 and remain in effect through December 31, 2023 for a term of ten (10) years. If the City determines Service standards are not adequately being met, the City may re-open this franchise for renegotiation five (5) years from the effective date of this agreement or any date thereafter.

**2.3 Written Acceptance.** On or before the thirtieth (30th) day after this ordinance becomes effective, Franchisee shall file with the City a written acceptance of this ordinance, in a form approved by the City, executed by the Franchisee. Any failure on the part of Franchisee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

**2.4 Ownership of Waste.** Once Solid Waste, Recyclable Materials, or Organic Debris are placed in Receptacles and properly placed for Collection, ownership and the right to possession of such material shall transfer directly from the Generator to Franchisee by operation of this agreement. Subject to the provisions of this agreement, the Franchisee shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Recyclable Materials, and Organic Debris which it Collects. Solid Waste, Recyclable Materials, Organic Debris, or any part thereof, which is Disposed of at a Disposal Site or facility shall become the property of the owner or operator of the Disposal Site(s) or facility once deposited there by the Franchisee.

**2.5 Hazardous Waste.** Except as otherwise provided in this ordinance, the Franchisee is not required to store, Collect, transport, Dispose of or Resource Recover Hazardous Waste.

**2.6 Separation of Waste.** The City reserves the right to require the separation of component parts or materials in or from Solid Waste, and to require the deposit thereof in Receptacles or places and to prescribe the method of Disposal or Resource Recovery.

**2.7 Franchise Exemptions.** The franchise for the Collection and transportation of Solid Waste, Recyclable Materials, and Organic Debris granted to Franchisee shall be exclusive except as to the categories of Solid Waste, Recyclable Materials, and Organic Debris listed in this section. Nothing in this ordinance requires a franchise or permit for the following:

**2.7.1** The Collection, transportation, and Recycling of Recycled Materials or the operation of a Collection center for Recycled Materials by charitable or non-profit organizations, provided they are not organized and operated for any Solid Waste management purpose.

**2.7.2** The Collection, transportation or redemption of returnable beverage containers under ORS Chapter 459A or subsequent related legislation.

**2.7.3** A Generator who transports and Disposes of Solid Waste created as an incidental part of regularly carrying on a business, such as auto wrecking; janitorial services; septic tank pumping, sludge (sludge ash, grit, and screenings) collection or disposal service; or gardening or landscape maintenance. "Janitorial service" does not include primarily Collecting Solid Waste generated by a property owner or occupant.

**2.7.4** The transportation of Solid Waste, Recyclable Materials, or Organic Debris removed from any premises by the Generator, and transported personally by the owner or occupant of such premises (or by his or her full time employees) to any processing facility or Disposal Site with the exception that the

owner, or agent of the owner, of a non-owner occupied dwelling unit may not remove and transport materials generated by a tenant.

**2.7.5** Solid Waste, Recyclable Materials, or Organic Debris that is hauled by a contractor as an incidental activity associated with work performed by the contractor for another Person or work performed by the City. This includes, but is not limited to, a construction and demolition debris hauled by a company that is hired to remodel a home, or Yard Debris hauled by a landscaper that services a Commercial business. Such Solid Waste shall be generated by the contractor in connection with the contractor's work at said work site and hauled by the contractor and operated by the contractor's employees.

**2.7.6** Government employees providing Solid Waste and Recycling Collection Services to government operations and facilities.

**2.7.7** The acquisition of Source Separated materials from the Generator through a private arrangement with a Person.

**2.7.8** Unless exempted by subsections above, or granted an exclusive franchise or license pursuant to this ordinance, no person shall solicit customers for Service, or advertise the providing of Service, or provide Service in the Franchise Territory.

**2.8 Maps.** Annually, or upon request, the Franchisee shall provide a map to the City showing Residential Collection schedules by day of the week. Franchisee shall provide such maps in an electronic format acceptable to the City and the Franchisee. In the event Franchisee re-routing significantly changes the days of Residential Collection, the Franchisee shall inform the City and provide an updated map.

**2.9 City Authority.** The City reserves the right to determine the Services authorized by this franchise agreement. The Council may amend this agreement at any time to include, authorize, or require new or revised services, based on information it receives from community groups, residents, or City staff.

### **Section 3 - Community Standards for Collection and Disposal of Solid Waste and Recyclable Materials**

**3.1 Collection Standards.** Collection of Solid Waste and Recyclable Material shall be performed in such a way as to comply with all Federal, State and local environmental regulations. In addition the Franchisee shall:

**3.1.1** Provide Solid Waste and Recycling Collection Services to any Person living within or conducting business within the Franchise Territory.

**3.1.2** Collect Putrescible Material at least once each week.

**3.1.3** Provide Collection of Infectious Waste as defined in ORS 459.387, either directly or through a qualified, licensed subcontractor. Collection shall be provided in a manner consistent with the requirements of all applicable laws and regulations.

**3.1.4** Perform Collections a minimum of twice weekly in the business districts of the Franchise Territory. Downtown business district Collection hours are subject to Corvallis Municipal Code 4.01. Collection hours shall be scheduled to minimize noise and disruption to residents in or near the downtown business district.

**3.1.5** Perform Curbside Collections of Putrescible Solid Waste and Recyclable Materials at least once weekly in Residential districts or as often as required by ORS 459 and ORS 459.A. Collection hours shall be between the hours of 7:00 am and 6:00 pm. All Collections shall be made as safely, efficiently, and quietly as possible. The Franchisee, under special circumstances, may request in writing that collection hours be temporarily extended. No changes shall be implemented without prior written approval from the City.

**3.1.6** Provide Collection of Residential Solid Waste, Recyclable Materials, and Organic Debris Receptacles on the same day of the week. Franchisee shall not be required to go into garages or other buildings to make pick-ups at residences, nor shall the Franchisee be required to go into closed areas, through enclosed gates, or up or down stairs to make pick-ups.

**3.1.7** Provide will-call Service for Residential and Commercial customers with Collection to be completed on the next scheduled route day for that neighborhood or service district.

**3.1.8** Use due care to prevent Solid Waste from being spilled or scattered during Collection. If any Solid Waste or Recyclable Material is spilled during Collection, Franchisee shall promptly clean up all spilled materials. All Receptacle lids must be replaced after contents are emptied and the Receptacle shall be returned to its original position, if that original position does not jeopardize the safety of motorists, pedestrians or bicyclists.

**3.1.9** Use reasonable care in handling all Collection Receptacles and enclosures. Damage caused by the negligence of the Franchisee's employees to private property, including landscaping, is the responsibility of the Franchisee and shall be promptly remedied with the owner.

**3.1.10** Ensure that all Solid Waste Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State,

County and City noise emission standards. Unnecessarily noisy trucks or equipment are prohibited. The City may conduct random checks of noise emission levels to ensure such compliance.

**3.1.11** Determine, with approval of the City, the maximum allowable capacity of Collection Receptacles. If the Franchisee refuses to Service an overweight Receptacle, a notice describing the problem must be provided. The notice shall include the name of Franchisee and alternative solutions to resolve the problem and a local phone number for additional information. In the resolution of this situation, the Franchisee must provide Service equivalent to the customer's subscribed Service level at no additional charge.

**3.1.12** Offer unlimited vacation credits to customers who temporarily discontinue Service in a calendar year for any period of three (3) consecutive weeks or more. The customer must request the discontinuance no later than noon on the business day, excluding weekends, prior to the date of discontinuance.

**3.1.13** Notify in the event of changes to the Collection schedule, all affected customers at least seven (7) calendar days prior to any change. The Franchisee shall not permit any customer to go more than eight (8) calendar days without Service in connection with a Collection schedule change.

**3.1.14** Have the option to refuse Collection Service upon non-payment of a billing or portion of a billing after account becomes forty-five (45) days past due, or upon refusal to pay required advance payments, delinquent charges, or charges associated with starting a new Service. Franchisee may withhold Collection Services, providing at least a ten (10) day notice is given to the customer.

**3.1.15** Continue Collection Services except in cases of street or road blockage, excessive weather conditions, acts of God, or customer violations of public responsibilities beyond the Franchisee's control. Adverse labor relations issues such as strikes or walkouts, shall be considered to be within the control of the Franchisee and shall not prevent Collection and Disposal Services as required by this ordinance.

**3.1.16** Franchisee shall Resource Recover Collected Recyclable Materials and Dispose of remaining useless Solid Waste at a Disposal Site permitted by the Oregon Department of Environmental Quality (DEQ) or equivalent state agency and approved by the City. The City retains the option to direct the Franchisee to a different licensed and permitted Disposal Site other than the Disposal Site currently in use at that time. A review of a new Disposal Site shall be conducted by the City with cooperation from the Franchisee to determine if the Disposal Site meets the operational requirements of the

Franchisee, including but not limited to daily capacity, truck access, and site longevity. City shall provide written notice to Franchisee not less than ninety (90) days before effective date of the change. The Franchisee has thirty (30) days to respond in writing. If the Franchisee can demonstrate a City-directed change in Disposal Site increases the Franchisee's expenses, a special rate review may be requested.

**3.1.17** The Franchisee and City shall explore a rate structure based on Disposal weights (Pay As You Throw) rather than volume for Commercial customers within the first three (3) years of this agreement, including a review of the availability of the technology required to accurately charge customers.

**3.2 Recycling Standards.** Recycling Services shall include the following:

**3.2.1** For Residential customers with regular weekly Service, provide Curbside Residential Recyclable Material Collection Receptacles including one (1) Recycle cart, one (1) Recycle bin and one (1) Organic Debris cart or composter at no additional charge.

**3.2.2** For Residential customers and non-customers, Commingled Recyclables shall be Collected Curbside once each week on a designated Collection day. Motor oil shall be Collected weekly from Curbside when placed in a Franchisee-approved container. Glass shall be Collected once per month on the first normal Collection day in the first full week of each month.

**3.2.3** There shall be the opportunity for apartments, multi-family households and units, and Commercial customers to have Commingled Recyclables Collected at least once each week on a designated Collection day. Glass shall be Collected on the first normal Collection day in the first full week of each month. Materials shall be Collected Curbside or in a designated Collection center in cooperation with the building owner or manager. These customers shall also have the opportunity to Recycle wood and Organic Debris.

**3.2.4** Organic Debris Receptacles for Residential customers shall be Collected every week on the same day as Solid Waste Collection. Organic Debris must be Disposed at a compost or vermiculture facility registered with the Oregon Department of Environmental Quality or equivalent state agency.

**3.2.5** Recycling-only customers shall be offered Recycling Receptacles and be provided weekly Recycling Service at a rate approved by the City.

**3.2.6** Commercial Recycling Service includes Receptacles provided at no additional charge with the exception of drop boxes.

**3.2.7** For large quantities of cardboard, the frequency of Service shall be

determined by an agreement between the Generator and the Franchisee. Agreements shall give due consideration to the volume of the material, storage capacity of Generator, and Generator's location.

**3.2.8** Franchisee must provide notice to customers if Recyclable Material is not Collected due to improper preparation. Notice must include adequate explanation of refusal for Collection and local phone number for additional information. Franchisee shall leave notice securely attached to the customer's Receptacle or the customer's front door. The Franchisee shall Collect any properly prepared material that is accessible. The purpose of the notice is to educate residents and increase program participation, and shall be written in such a manner as to accomplish this purpose.

**3.2.9** Operate and maintain at least one (1) Collection center (Recycling depot) within the Franchise Territory that permits Persons to deliver recyclables to the site. The Collection center shall be open from 7:00 am to 7:00 pm, seven (7) days per week to the public. When open, an employee knowledgeable in Recycling will be available to respond to questions or comments. Site shall accommodate at a minimum all Recyclable Materials Collected at Curbside plus compact florescent bulbs, household batteries, electronics, plastic film, and scrap metal. Restrictions on the size of these materials can be imposed by the Franchisee with approval of the City. Other materials shall be Recycled when it is technologically or economically feasible to do so.

**3.2.10** Facilitate a reuse program referring useable items to local thrift shops, resale shops, non-profit groups or others who may have a legitimate use for the item. Maintain a list of businesses and groups that submit requests for needed items, and provide this information to others as requested.

**3.2.11** Provide links from the Franchisee's website to other websites for businesses and individuals to post re-usable items. Franchisee shall promote the use of the website and provide informational and educational content on their website on the value of reusing materials.

**3.2.12** Be responsible for ensuring a local compost demonstration site operates within the Franchise Territory, which offers information and advice for composters. Franchisee shall conduct at least two (2) composting workshops annually.

**3.3 Public Education.** Franchisee shall provide the following public education and promotion of activities for Solid Waste reduction, Recycling, reuse, and Source Separation, and cooperate with other Persons, companies, or local governments providing similar services. Franchisee shall:

**3.3.1** Provide a Recycling information center within the Franchise

Territory, with local telephone access and information concerning Collection schedules, Recycling locations, Recyclable Material preparation, conservation measures, reuse programs, Solid Waste reduction strategies and on-site demonstration projects. Recycling information booths at appropriate community events within the Franchise Territory shall also be provided by Franchisee to promote and increase Recycling and waste reduction awareness and participation.

**3.3.2** Provide Recycling notification and educational packets for all new Residential and Commercial customers specifying the Collection schedule, materials Collected, proper material preparation, reuse programs, Solid Waste reduction strategies and Recycling benefits.

**3.3.3** Provide quarterly informational newsletters to residences and businesses in the Franchise Territory that includes at least annually: the types of Recycled Materials Collected, the schedule for Collection, information about Solid Waste reduction, reuse opportunities, and proper handling and Disposal of Household Hazardous Waste and electronic Solid Waste. Special Franchisee events, holiday tree removal, and the leaf Collection program shall also be promoted. Franchisee shall submit all promotional materials to the City for review prior to publication or distribution to customers. If in the determination of the City, newsletters fail to provide annually the information outlined in this section, the City can require the Franchisee obtain City approval prior to publication for all subsequent newsletters. Informational newsletters shall be distributed to all mailing addresses within the Franchise Territory.

**3.3.4** Maintain an internet website that includes a listing of all franchised Solid Waste and Recycling Services, applicable rates charged for such Services, and detailed information about what materials are Collected with each Service, such as materials included in Commingled Collection, updated regularly. The site shall also include Collection schedules for Organic Debris and glass, and Collection schedule changes during weeks affected by a Holiday.

**3.3.5** Conduct at least twice annually, workshops on Solid Waste reduction strategies and reuse opportunities. Perform Solid Waste audits for Commercial customers when requested.

**3.3.6** Coordinate with 509J school district and local private schools to assist in promoting awareness of Recycling and Solid Waste reduction strategies to children, and to cooperate in their Recycling efforts and programs.

**3.3.7** Promote Solid Waste reduction and Recycling education through local widespread media, such as radio or newspapers, no less than twenty (20) times each year. Promotional information shall focus on Recycling, reuse and Solid Waste reduction strategies.

**3.3.8** Provide the City with sufficient copies of all promotional fliers and other related information as requested.

**3.3.9** Conduct a survey every three (3) years to evaluate customer participation in Recycling programs and customer opinion of Solid Waste and Recycling Services offered by the Franchisee. Results shall be used to evaluate existing Solid Waste Services and determine the need for additional and or enhanced Services. The City may also conduct an annual survey to evaluate customer participation and customer opinion. Significant statistical changes in either survey shall afford the City the option to renegotiate Section 3 of this agreement.

**3.3.10** Have at least one employee dedicated to supporting the required educational and promotional activities within the Franchise Territory.

#### **3.4 Resource Recovery Services.**

**3.4.1** Aggressively seek markets for reusable, Recyclable, and recoverable materials.

**3.4.2** Research and develop improved Resource Recovery systems through Franchisee's specialist or other sources.

**3.4.3** Develop strategies to promote the reduction of Solid Waste generated by Residential and Commercial customers. Continue or implement programs that encourage Generators to prevent or reduce materials which would otherwise constitute Solid Waste.

**3.4.4** Review high-volume Resource Recovery facilities and implement a local or regional program when the City and Franchisee mutually agree on the technological and economic feasibility.

**3.5 County Wasteshed.** Coordinate Recycling efforts with other Solid Waste Collection efforts in the Benton County Wasteshed to further enhance Recycling and recovery efforts, and to meet wasteshed recovery goals as mandated by the State.

#### **3.6 Additional Recycling Requirements.**

**3.6.1** The City reserves the right to require specific materials to be separated, Collected and Recycled.

**3.6.2** Franchisee shall provide other Recycling Services as required by Oregon Revised Statute 459 or 459.A, ordinance, or municipal code, as amended, or by direction of the Council.

**3.6.3** Franchisee shall endeavor to Recycle additional materials and to provide for an on-site Collection center for Household Hazardous Waste when economically feasible.

**3.7 Community Service Standards.**

**3.7.1** Franchisee shall provide a one (1) day Household Hazardous Waste Collection event, quarterly, for Franchise Territory residents only, at no additional charge. Residents of the Franchise Territory shall be notified at least thirty (30) days in advance of each Collection event.

**3.7.2** Franchisee shall also provide an annual small quantity Generator Hazardous Waste Collection event for Commercial customers within the Franchise Territory. Commercial customers shall be notified at least fifteen (15) days in advance of the Collection event.

**3.7.3** Franchisee shall provide an annual Residential Recycling event at one (1) location in the Franchise Territory, for the Collection of Recyclable Materials, Yard Debris and scrap metal, at no additional charge.

**3.7.4** Franchisee shall provide Collection and Recycling of holiday trees placed at Curbside for a period of three (3) weeks, after December 25<sup>th</sup> of each year, at no additional charge.

**3.7.5** Franchisee shall provide an effective annual fall leaf Collection and Disposal Service within the Franchise Territory at no additional charge. Franchisee shall coordinate leaf Collection schedules as directed by the City. Program specifics, including the Collection schedule start date, shall be determined in writing at least two (2) months before the program begins. Leaf Collection shall last a minimum of eight (8) weeks but no more than ten (10) weeks. Franchisee shall provide daily Collection of leaves on streets with bicycle lanes in a manner that minimizes disruption of bicycle lane use and maximizes safety.

**3.7.6** Franchisee shall provide twice weekly Solid Waste Collection and Disposal Service of public litter Receptacles placed along normal Collection routes, primarily in the central business district of the Franchise Territory. The locations, quantities and sizes for Service of public receptacles shall be mutually agreed upon between the City and Franchisee, in accordance with a written list that shall be kept updated and on file with the City. The cost to the Franchisee for providing this Service shall be included in the financial reports filed with the City.

**3.8 Additional Services.** Where a new Service or a substantial expansion of an

existing Service is proposed by the City, another Person or the Franchisee the following shall apply.

**3.8.1** If Service is proposed by the City, the Franchisee shall receive prior written notice of the proposed Service and justification by the City. If Service is proposed by the Franchisee, the City must be notified in writing prior to any consideration by the City. If service is proposed by another Person, both the City and the Franchisee must be notified in writing prior to any consideration by the City. The proposal shall include detailed information on how all affected customers within the Franchise Territory will receive the Service.

**3.8.2** The City shall afford the public an opportunity to comment on the proposed Service and justification.

**3.8.3** In determining whether the Service is needed, the City shall consider the public need for the Service, the effect on rates for Service, whether the Franchisee is already providing the Service or is willing to provide it, and the impact on other Services being provided or planned, the impact on any city, county or regional Solid Waste management plan, and compliance with any applicable statutes, ordinances or regulations.

**3.8.4** If the City determines the Service is needed, the Franchisee shall have the option to provide the Service on a temporary basis through a Pilot Program to determine if the Service is functional on a permanent basis or the Franchisee may agree to provide the Service on a permanent basis within a specified time mutually acceptable to the City and the Franchisee.

**3.8.5** If the Franchisee rejects the Service, the City may issue a license or franchise to another Person to provide only that Service. The provider of the limited Service shall comply with all applicable provisions of this ordinance.

### **3.9 Special Service.**

**3.9.1** With approval of the City, the Franchisee may negotiate a separate Collection and Disposal agreement with Oregon State University provided the institution continues to fund and operate its own comprehensive Recycling program. Revenues generated by such an agreement shall be included within the definition of Gross Revenue. Any other request for special Service shall require prior City approval including the proposed rates.

**3.9.2** Where a customer requires an unusual Service requiring added or specialized equipment solely to provide that Service, the Franchisee may require a contract with the customer to finance and assure amortization of such equipment. The purpose of this subsection is to assure that such excess equipment or specialized equipment not become a charge against other

ratepayers, if the customer later withdraws from Service.

**3.10 Sub-Contract.** Franchisee may sub-contract with other Persons to provide specialized or temporary Service covered by this franchise, but shall remain totally responsible for compliance with this agreement. Franchisee shall provide written notice to the City of intent to sub-contract Services prior to entering into agreements. If sub-contracting involves a material portion of the franchised Service, the Franchisee shall seek the approval of the City.

**3.11 Equipment and Facility Standards.**

**3.11.1** All equipment shall be kept well painted, and properly maintained in good condition. Vehicles and Receptacles used to transport Solid Waste shall be kept reasonably clean to ensure no contamination to the environment or the stormwater system.

**3.11.2** All vehicles and other equipment shall be stored in a safe and secure facility in accordance with applicable zoning and environmental regulations.

**3.11.3** Trucks shall be equipped with a leak-proof metal body of the compactor type including front, rear, or automatic loading capabilities.

**3.11.4** Pick-up trucks, open bed trucks or specially designed, motorized Collection vehicles used for the transporting of Solid Waste must have bodies that are leak-proof to the greatest extent possible and have adequate cover over the loads to prevent scattering of debris.

**3.11.5** All fuel, oil, or vehicle fluid leaks or spills which result from the Franchisee's vehicles must be cleaned up immediately. All vehicles must carry an acceptable absorbent material for use in the event of leaks or spills. Damage caused by fuel, oil, or other vehicle fluid leaks or spills from Franchisee's vehicles or equipment shall be remedied at Franchisee's expense.

**3.11.6** Collection equipment shall use biodegradable hydraulic oils, as it remains available, to provide an environmentally friendly operation.

**3.11.7** All vehicles used by the Franchisee in providing Solid Waste and Recycling Collection Services shall be registered with the Oregon Department of Motor Vehicles and shall meet or exceed all legal operating standards. In addition, the name of the Franchisee, local telephone number and vehicle identification number shall be prominently displayed on all vehicles.

**3.11.8** No Collection vehicles shall exceed safe loading requirements or maximum load limits as determined by the Oregon Department of Transportation.

Franchisee shall endeavor to purchase and operate equipment that minimizes damage to Public Rights-of-Way.

**3.11.9** When new purchases are scheduled, the Franchisee shall purchase, if available, alternative fuel/hybrid Collection equipment that meets Collection Service requirements.

**3.11.10** Franchisee shall provide and maintain equipment that meets all applicable laws, ordinances, municipal codes, and regulations or as directed by the City.

**3.11.11** Franchisee shall provide and replace as necessary, Solid Waste Collection Receptacles and composters at no charge to the public. Residential Curbside Receptacle sizes offered by the Franchisee for garbage Collection shall include twenty (20), thirty-two (32), sixty-four (64), and ninety (90) gallon capacities, or be as close to above stated sizes as possible. Organic Debris Receptacles shall be ninety (90) gallon capacity. Standard Commingled Recyclables Receptacles shall be sixty-four (64) gallon capacity. Solid Waste Receptacles shall be leak-proof, rigid, fire-resistant, and of rodent-proof construction and not subject to cracking or splitting. All new Residential Receptacles shall be constructed from the highest percentage of Recycled material available at the time of purchase. The City has the right to approve all Receptacles provided by the Franchisee for use in the Franchise Territory and may require additional or alternative Receptacle sizes. Colors of Receptacles shall remain consistent with colors currently in use.

**3.11.12** Franchisee shall clean Receptacles once annually if requested by customer for no additional charge. If Franchisee determines such Receptacles are becoming a health hazard, requiring more frequent cleaning, such Service shall be an additional maintenance charge to the customer.

**3.11.13** In cooperation with the Corvallis Police Department, the Franchisee shall remove graffiti from all Receptacles or facilities within forty-eight (48) hours of notice.

**3.11.14** All surface areas around Franchisee's site facilities including vehicle and equipment storage areas, service shops, wash stations, transfer sites, Collection centers, and administrative offices must be kept clean to eliminate direct site run-off into the stormwater and open drainage system and to present an inviting environment for customers.

**3.12 Safety Standards.** The Franchisee shall operate within guidelines of the Oregon Refuse and Recycling Association, Oregon Department of Transportation, Oregon Public Utility Commission, Oregon Occupational Health and Safety Administration, Department of Environmental Quality, Corvallis Municipal Code and all

other rules and regulations as they apply.

**3.12.1** The Franchisee shall provide suitable operational and safety training for all of its employees who maintain, use, or operate vehicles, equipment, or facilities for Collection of Solid Waste or who are otherwise directly involved in such Collection. Employees involved in Collection Services shall be trained to identify, and not to Collect, Hazardous Waste or Infectious Waste. Employees who do handle such Solid Waste shall be properly trained.

**3.13 Right-of-Way Standards.** The Franchisee shall ensure proper and safe use of Public Right-of-Ways in accordance with Municipal Code, and provide compensation to the City in consideration of the grant of authority to operate a Solid Waste Collection and Disposal system in the Franchise Territory as directed in this agreement.

**3.14 Customer Service Standards.** Franchisee shall:

**3.14.1** Provide sufficient Collection vehicles, Receptacles, facilities, personnel and finances to provide all types of necessary Services as determined by the City.

**3.14.2** Sufficiently staff, operate and maintain a business office and operations facility within the Franchise Territory.

**3.14.3** Provide minimum office hours of 8:00 am through 5:00 pm, Monday through Friday, not including Holidays.

**3.14.4** Maintain a minimum of three (3) payment drop-off boxes within the Franchise Territory.

**3.14.5** Provide for customers to pay their bills at the Franchisee's local office using check, money order, debit or credit cards. For customers that wish to pay in cash, the Franchisee must facilitate and pay for money order transaction fees. The Franchisee must provide multiple locations in the Franchise Territory for customers to generate money orders at no additional cost.

**3.14.6** Ensure a responsive, customer service oriented business. Provide customers with a local telephone number, listed in a local directory, to a business office located within the Franchise Territory. Adequately staff operations to provide prompt response to customer service requests or inquiries and respond promptly and effectively to any complaint regarding Service. Calls received by 1:00 pm by office staff shall be returned the same day as received, and by noon of the following day if the call is received after 1:00 pm.

**3.14.7** Train Collection crews prior to them beginning Solid Waste and

Recycling Collection, and office staff prior to having public contact. The scope of the training shall include, but is not limited to, acceptable safety practices, acceptable standards of Service to the public, courteous customer service, and accuracy and completeness of information. All information conveyed to a customer or inquiring person shall be consistent with established service standards.

**3.14.8** Require all employees of the Franchisee and all employees of companies under contract with Franchisee to present a neat appearance and conduct themselves in a courteous manner. The Franchisee shall require its drivers and all other employees who come into contact with the public, to wear suitable and acceptable attire which identifies the Franchisee.

**3.14.9** Designate at least one (1) qualified employee as supervisor of field operations. The supervisor shall devote an adequate portion of his/her workday in the field checking on Collection operations, including responding to issues.

**3.15 Quarterly Reporting Standards.** Franchisee shall provide quarterly reports to the City within 30 days of the end of the preceding quarter.

**3.15.1** Reports shall include a written log of all oral and written complaints or Service issues registered with the Franchisee from customers within the Franchise Territory. Franchisee shall record the name and address of complainant, date and time of issue, nature of issue, and nature and date of resolution. The City may require more immediate reports documenting complaints and resolutions.

**3.15.2** Provide a summary of educational and promotional activities as required in sub-section 3.3.

**3.15.3** Provide detailed quarterly tonnage information on Solid Waste, Recyclable Materials, and Yard Debris Collected within the Benton County watershed.

**3.16 Annual Reporting Standards.** Franchisee shall keep current, accurate records of account. The City may inspect the records of account any time during business hours and may audit the records from time to time. If an audit of the records is required, the cost of such satisfactory independent audit shall be the responsibility of Franchisee. The Franchisee shall submit to the City a report annually, no later than March 1<sup>st</sup> of each year, documenting the activities and achievements of all programs undertaken pursuant to this franchise for the previous year. The City shall evaluate the effectiveness of the programs in terms of the amount, level, and quality of the Services provided by the Franchisee. The report shall include the following specified information:

**3.16.1** Total franchise payments remitted and basis for calculations;

**3.16.2** Year-end financial statements of the Franchisee for Service within the Franchise Territory, including:

Calculated as a percentage of Republic Services of Corvallis Gross Revenue:

- Summary of financial highlights
- Statement of income and retained earnings
- Schedule of expenses

For the whole Republic Services of Corvallis division:

- Balance sheet
- Statement of Cash Flows (direct method)

**3.16.3** Solid Waste Collected monthly within the Benton County washed by Franchisee in tons, listed separately for Residential and Commercial Customers.

**3.16.4** Recyclable Materials Collected monthly within the Benton County washed by Franchisee in tons (listed separately for Residential Curbside, Recycling depot, and Commercial Customers) and the Disposal Sites used.

**3.16.5** Yard Debris Collected monthly within the Benton County washed by Franchisee in tons and the Disposal Site used.

**3.16.6** Annual Recycling data as submitted to the Benton County Environmental Health Division.

**3.16.7** A fixed asset list or an inventory by size and type of all Receptacles and Collection equipment.

**3.16.8** Customer information that identifies each customer account type (e.g. 1 cubic yard Container with 1 pick-up per week) and the number of customers receiving such Service.

**3.16.9** In appropriate years, a summary of the customer survey as required in sub-section 3.3.9.

**3.16.10** Discussion of industry trends and the direction of franchisee over the next five years.

**3.16.11** Summary of research related to section 3.4.2.

**3.16.12** Summary of the community outreach through the media (where, what, when).

**3.16.13** Summary of activities related to sections 3.11.6 and 3.11.9.

**3.16.14** Other information pertaining to performance standards specified in the franchise agreement.

## **Section 4 - Rates**

**4.1 Rate Structure.** The City reserves the right to approve the rate structure of the Franchisee, and to require specific Services

**4.1.1** The Franchisee shall provide to the City a certified copy of the published rate schedule which shall contain the rates and charges made for all its operations. The rate schedule shall be kept current.

**4.1.1.1** Rates established by Council are fixed rates and the Franchisee shall not charge more or less than the fixed rate unless changed pursuant to Section 4. The Franchisee shall not charge rates not in the rate schedule.

**4.1.1.2** Rates for a given Service must be established under the provisions of these guidelines before such Service can be provided to customers unless Services are being offered under a Pilot Program. If the City determines the Franchisee is providing Services for a fee without following these guidelines, the City may require the Franchisee to continue providing such Services at no charge to the customer until such time as the rates are approved as described under Section 4. If rates are not approved, Service shall be discontinued and Franchisee shall take full responsibility in explaining to customers as to why the Service is no longer being provided.

**4.1.2** Annually, on January 1 of each year, the franchisee may adjust rates for services utilizing the weighted Refuse Rate Index below up to four percent (4%). Adjustments exceeding four percent (4%) require City Council approval. For adjustments requiring City Council approval, the Franchisee must submit the materials required in Section 4.1.3.2 for City and City Council review.

### **Refuse Index Percentage Weights by Customer Category**

	Industrial	Commercial	Residential
Collection - CPI	100%	78%	82%
Disposal - Garbage	0%	18%	11%
Disposal - Organics	0%	4%	7%
	100%	100%	100%

**Rate Refuse Index Rate Modifiers**

- percent (%) change from the previous and current year's Half1 Portland-Salem All Urban Consumers Price Index (CPI) not seasonally adjusted.
- percent (%) change in garbage disposal fees (per ton) from previous June 30 to the current June 30.
- percent (%) change in organics disposal fees (per ton) from previous June 30 to the current June 30.

**Residential Example:**

	Index or Cost June 30, 2011 (Half 1)	Index or Cost June 30, 2012 (Half1)	% Change	Weight	Adjustment
Collection	223.105	228.746	2.53%	82%	2.05%
Disposal - Garbage	\$ 26.85	\$ 27.15	1.12%	11%	0.12%
Disposal - Organics	\$ 30.00	\$ 30.75	2.50%	7%	0.18%
<b>Total adjustment</b>					<b>2.35%</b>

**4.1.2.1** Customers shall be notified of the new rates at least thirty (30) days prior to new rates taking effect.

**4.1.2.2** The City shall be provided an adjusted rate sheet, an electronic spreadsheet illustrating how the new rates were calculated, and a copy of the CPI sixty (60) days prior to the rates taking effect.

**4.1.2.3** Rates shall be rounded to the nearest cent (\$.01).

**4.1.3** In addition to Section 4.1.2., rates shall be subject to review and change only one (1) time in a calendar year, beginning January 1 and ending December 31; provided:

**4.1.3.1** The City may, with appropriate documentation submitted by Franchisee, grant an interim or emergency rate for new, special or different Service affecting less than 1% of a customer group, including Pilot Programs, for up to six (6) months before Council review.

**4.1.3.2** An application for a rate adjustment may be made when the cost of Collection is increased by governmental regulations, when there is a new service offered, or when there is a substantial new expense. Franchisee shall notify the City immediately when any of the above new expenses becomes known to the Franchisee. Failure to

immediately notify the City may result in the denial of a related future rate adjustment application. The Franchisee shall submit to the City, at least ninety (90) days prior to any contemplated change, a complete packet of information justifying the requested change. Information required in the packet shall include a breakdown of Residential, Commercial, Industrial and other rates by component (disposal, operating, and other), financial information and statistics relating to each component, a written justification for the rate adjustment, and other information as requested by the City. Proposal information shall be examined by Council in an appropriate public proceeding affording due process. Based on the information the Franchisee submits, the Council may grant some, all, or none of the requested rate change. In the event of denial, the current rate schedule remains in effect and the Franchisee may file with the Council further information to justify the rate schedule changes.

**4.1.4** The approved rate schedule, as of the effective date of this ordinance, shall be deemed to be in effect.

## **Section 5 - Financial**

**5.1 Compensation.** In consideration of the rights and privileges granted by this ordinance, the Franchisee shall pay to the City of Corvallis, five (5) percent per annum of its Gross Revenues derived from all Services within the Franchise Territory including the sale of Recyclable Material. Franchisee shall also pay five (5) percent per annum of the Gross Revenues derived from franchised Services, as defined in this ordinance, earned by Persons under contract to, or under the employment of the Franchisee.

**5.1.1** The compensation required in this section shall be due on or before the last business day of each and every month for the month preceding. Franchisee shall furnish with each payment, a notarized statement, executed by an officer of Franchisee, showing the amount of Gross Revenue of the Franchisee within the Franchise Territory for the period covered by the payment computed on the basis as determined by sub-section 5.1, Compensation. If Franchisee fails to pay the entire amount of compensation due to the City through error or otherwise within the time allotted for, the unpaid balance shall be subject to a late penalty of an additional ten (10) percent, plus interest of two (2) percent per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.

**5.1.2** In the event the Franchisee is prohibited by State or federal law from paying a fee based on Gross Revenues or the City is prohibited by State or federal law from collecting such a fee, or if any legislation reduces the actual or projected amount of compensation collected in any given year, the City has the right to renegotiate the compensation section of this franchise agreement.

**5.1.3** Franchisee shall not separately identify its franchise fee on billing statements to customers.

**5.1.4** Nothing contained in this franchise shall give the Franchisee any credit against any ad valorem property tax levied against real or personal property within the Franchise Territory, or against any local improvement assessment or any business tax imposed on Franchisee, or against any charges imposed upon Franchisee including permit and inspections fees or reimbursement or indemnity paid to the City.

**5.2 Insurance.** Franchisee shall pay, save harmless, protect, defend and indemnify the City from any loss or claim against the City on account of, or in connection with, any activity of Franchisee in the operation or maintenance of its facilities and Services except those that arise out of the sole negligence of the City. Franchisee shall, for the purposes of carrying out the provisions of this agreement, have in full force and effect, and file evidence with the City the following requirements:

**5.2.1** Workers' Compensation insurance as required by Oregon Law, including Employers Liability Coverage.

**5.2.2** Commercial General Liability insurance as broad as Insurance Services Office (ISO) form CG 00 01, providing Bodily Injury, Property Damage and Personal Injury on an occurrence basis with the following as minimum acceptable limits:

Bodily Injury and Property Damage - Each Occurrence	\$1,000,000
Personal Injury - Each Occurrence	\$1,000,000
Products & Completed Operations - Aggregate	\$2,000,000
General Aggregate	\$2,000,000

**5.2.3** Business Automobile Liability as broad as Insurance Services Office (ISO) form CA 00 01, providing bodily injury and property damage coverage for all owned, non-owned and hired vehicles, with the following as minimum acceptable limits:

Bodily Injury and Property Damage - Each Occurrence	\$1,000,000
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**5.2.4** Franchisee shall furnish the City with Certificates of Insurance and with original endorsements for each insurance policy (if needed). All certificates and endorsements are to be received and approved by the City before the effective date of this ordinance. The Commercial General Liability Certificate shall name the City of Corvallis, its officers, officials, employees and agents as Additional Insured as respect to operations performed under this franchise agreement. Franchisee shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self insurance. All such deductibles, retentions, or self-insurance must be declared to and approved by the City.

**5.2.5** Any Certificate shall state, "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named to the left." Any "will endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives." shall be omitted.

**5.3 Hold Harmless.** The Franchisee agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents from any and all claims, demands, action, or suits arising out of or in connection with the Council's grant of this franchise. Franchisee shall be responsible to defend any suit or action brought by any person challenging the lawfulness of this franchise or seeking damages as a result of or arising in connection with its grant; and shall likewise be responsible for full satisfaction of any judgment or settlement entered against the City in any such action. The City shall tender the defense to the Franchisee and Franchisee shall accept the tender whereupon the City shall assign to Franchisee complete responsibility of litigation including choice of attorneys, strategy and any settlement.

**5.3.1** The Franchisee's costs incurred in satisfying its obligations as defined in 5.3 above, shall not decrease the total amount of revenue paid to the City and shall not increase the total amounts paid by the ratepayers for which the Franchisee serves under the authority of the franchise agreement. All such expenses shall be the sole responsibility and burden of the Franchisee.

**5.4 Damages.** Damages and penalties include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of Franchisee's exercise of this franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise.

## **Section 6 - Administration and Enforcement**

### **6.1 Customer Dispute Resolution Process.**

**6.1.1** Any citizen of Corvallis who is aggrieved or adversely affected by any application of the franchise or policy of the Franchisee shall first attempt to settle the dispute by notifying the Franchisee of the nature of the dispute and affording the Franchisee the opportunity to resolve the dispute.

**6.1.2** If the dispute is unresolved, the citizen may contact the City. The City may require a written description of the dispute from either party, and shall attempt to mediate and resolve the grievance with the citizen and the Franchisee.

**6.1.3** If the dispute is still unresolved, the citizen or the Franchisee may

appeal to the Council who shall hear the dispute. The decision of the Council shall be final and binding.

**6.2 Penalties and Procedures.** Subject to the requirement of prior notice as set forth in Section 6.3 below, for violations of this ordinance occurring without just cause, the City may assess penalties against Franchisee as follows:

**6.2.1** For failure to adhere to material provisions of this franchise, as defined in Section 6.4.1, the penalty shall be Five Hundred Dollars (\$500.00) per day per occurrence for each provision not fulfilled.

**6.2.2** For failure to comply with Oregon Occupational Safety and Health Administration and Oregon Department of Transportation safety requirements or Oregon Department of Environmental Quality rules and regulations, the penalty shall be Five Hundred Dollars (\$500.00) per day, per occurrence.

**6.2.3** For failure to comply with any provision of this franchise, for which a penalty is not otherwise specifically provided, the penalty shall be Two Hundred Fifty Dollars (\$250.00) per day, per occurrence.

**6.2.4** For failure to comply with reasonable requests of the City related to Service, the penalty shall be One Hundred Fifty Dollars (\$150.00) per day per request.

**6.3 Procedure for Imposition of Penalties.**

**6.3.1** Whenever the City finds that the Franchisee has violated one (1) or more terms, conditions or provisions of this franchise, a written notice, or a verbal notice followed by a written notice, shall be given to Franchisee informing it of such violation or liability. If the violation concerns requirements mandated by the Oregon Occupational Health and Safety Administration or the Oregon Department of Environmental Quality, a verbal notice followed by a written notice may be given. For these safety or public health violations, Franchisee shall have twenty-four (24) hours from notification to correct the violation. For all other violations and liabilities, the written notice shall describe in reasonable detail the specific violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have ten (10) days subsequent to receipt of the notice in which to correct the violation. Franchisee may, within five (5) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Franchisee to the City shall specify with particularity the matters disputed by Franchisee.

**6.3.2** The Council shall hear Franchisee's dispute at its next regularly or specially scheduled meeting. The Council shall supplement the decision with written findings of fact.

**6.3.3** If, after hearing the dispute, the claim is upheld by the Council, Franchisee shall have ten (10) days from such a determination to remedy the violation or failure. Penalties shall accrue from time of initial notification until such time as the violation or failure is resolved to the satisfaction of the City.

**6.3.4** Franchisee shall be liable for full payment of all penalties imposed under this section.

**6.4 City's Right to Revoke.** In addition to all other rights which the City has pursuant to law or equity, the Council reserves the right to revoke, terminate, or cancel this franchise, and all rights and privileges pertaining thereto, in the event that:

**6.4.1** Franchisee violates any of the following provisions of this franchise which are deemed to be material to the performance of the franchise:

- Standards for Collection and Disposal of Solid Waste and Recyclable Materials ( Section 3 )
- Rates (Section 4)
- Compensation ( Section 5 )
- Insurance ( Section 5 )
- Assignment or Sale of Franchise ( Section 8 )

**6.4.2** Franchisee practices any fraud upon the City or a customer.

**6.4.3** Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

**6.4.4** Franchisee misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the franchise.

**6.4.5** It is determined to be in the best interest of the public to do so, after conducting a public hearing and documenting in findings of fact.

## **6.5 Enforcement.**

**6.5.1** The City shall have the right to observe and inspect all aspects of Collection operations, facilities, Services, and records which are subject to the provisions of this franchise, to ensure compliance.

**6.5.2** If the Franchisee at any time fails to promptly and fully comply with any obligation of this agreement after receiving a written notice and a reasonable opportunity to comply, the City may elect to perform the obligation at the expense of the Franchisee.

**6.5.3** If Franchisee defaults in any of the terms required to be performed by it under the terms of this franchise, and the default continues for ten (10) days after written notification by the City, this franchise may, at the option of the Council, become null and void.

**6.5.4** The City reserves the right to make such further regulations as may be deemed necessary to protect the interests, safety, welfare and property of the public and carry out purposes stated in Section 3 of this ordinance. The City or the Franchisee may propose amendments to this franchise. Proposals shall be in writing and shall be afforded an adequate review process. Amendments to the franchise must be approved by the Council.

**6.5.5** The City bases its rights reserved hereunder upon the inherent and statutory right of the City to perform in the best interests of the people of the City and to prevent any possible flagrant misuse of the rights granted hereunder. Conflicts or disputes arising under this franchise shall be subject to judicial review.

**6.5.6** All remedies and penalties under this ordinance, including termination, are cumulative, and the recovery or enforcement of one is not a waiver or a bar to the recovery or enforcement or any other recovery, remedy or penalty. In addition, the remedies and penalties set out in this ordinance are not exclusive, and the City reserves the right to enforce the penal provisions of any other ordinance, statute or regulation, and to avail itself of any all remedies available at law or in equity. Failure to avail itself of any remedy shall not be construed as a waiver of that remedy. Specific waiver of any right by the City for a particular breach shall not constitute a general waiver of the City's right to seek remedies for any other breach, including a repetition of the waived breach.

**6.6 Non-enforcement by the City.** Franchisee shall not be relieved of its obligation to comply with any of the provisions of this franchise by reason of any failure of the City to enforce prompt compliance.

**6.7 Written Notice.** All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when a registered or certified mail receipt is returned indicating delivery as follows:

If to the City:                   City of Corvallis  
  P.O. Box 1083  
  Corvallis, Oregon 97339-1083  
  Attn: Franchise Utility Specialist

If to Franchisee:               Republic Services of Corvallis  
  P.O. Box 1  
  Corvallis, Oregon 97339

Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

## **Section 7 - Public Responsibilities**

**7.1 Hazardous Waste.** No person shall place Hazardous Wastes for Collection or Disposal by Franchisee at the Curbside.

**7.2 Approved Receptacles.** No customer shall use any Solid Waste Collection Receptacle unless it is supplied by or approved by the Franchisee.

**7.3 Safe Loading Requirements.** No stationary compactor or Receptacle for Residential or Commercial use shall exceed the safe loading requirements designated by the Franchisee and agreed to by the City.

**7.4 Access to Receptacle.** No Receptacle shall be located behind any locked or latched gate or inside of any building or structure unless authorized by the Franchisee. No Person shall block the access to a Receptacle.

**7.5 Safe Access.** Each customer shall provide safe, above ground access to the Solid Waste or Solid Waste Receptacle without hazard or risk to Franchisee.

**7.6 Curbside Receptacle Placement.** Placement of Receptacles must be within three (3) feet of the curb but shall not restrict access to bicycle lanes or sidewalks and shall not be blocked by vehicles or other items. Items not for Collection must be at least three (3) feet from Receptacles. Placement of Receptacles is limited to a time period of twenty-four (24) hours prior to pick-up and twenty-four (24) hours after pick-up. Receptacles within alleys shall be placed to accommodate Collection vehicles.

**7.7 Removal of Solid Waste Prohibited.** No Person, other than the Generator of the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchisee shall interfere with any Franchisee Serviced Solid Waste Receptacle, or remove any such Receptacle or its contents from the location where the same has been placed by the Generator.

**7.8 Collection of Solid Waste Prohibited.** No Person shall remove the lid from any Serviced Solid Waste Receptacle, nor enter into such Solid Waste Receptacle, nor shall any Person Collect, Compact, molest, or scatter Solid Waste placed out for Collection, except the Generator of the materials contained therein, or an officer, employee or permittee of the City, or an employee of the Franchisee.

**7.9 Stationary Compactor.** No person shall install a stationary compacting device for handling of Solid Wastes unless it complies with all applicable federal, state, and local laws and regulations. Franchisee shall not Service any such device unless

these requirements are adhered to at all times.

**7.10 Train System.** No person shall install or operate a Train System for the purpose of Solid Waste Collection.

## **Section 8 - Miscellaneous**

**8.1 Assignment or Sale of Franchise.** This franchise shall not be sold, assigned or transferred, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any Person without the prior written consent of the City, which consent shall not be unreasonably withheld. The City's consent shall be based upon the financial responsibility of the party whom the franchise is proposing for sale, assignment or transfer. The proposed assignee must show, in addition to financial capability, technical ability, legal qualifications, demonstrated ability, and experience, to comply with the terms of the franchise as determined by the City, and must agree to comply with all provisions of the franchise, including all Services regularly performed by the company but not necessarily designated herein. The City shall be deemed to have approved the proposed transfer or assignment in the event that its consent is not communicated in writing to the Franchisee within one-hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment.

**8.2 Severability and Constitutionality.** If any portion or phrase of this ordinance is for any reason held invalid or declared unconstitutional by any court, such portion shall be deemed a separate and independent provision; and such holding shall not affect the constitutionality of the remaining portion hereof. The Council hereby declares that it would have passed this ordinance and each portion and phrase hereof, irrespective of the fact that any one (1) or more portions or phrases be declared illegal, invalid or unconstitutional

**8.3 Continuity of Service Mandatory.** Upon expiration or the termination of this franchise, the City may require Franchisee to continue to operate the system for an extended period of time, not to exceed twelve (12) months. Franchisee shall, as trustee for its successor in interest, continue to operate under the terms and conditions of this franchise. In the event Franchisee does not so operate, the City may take such steps as deemed necessary to assure continued Service to subscribers. Costs associated with such actions shall be the sole responsibility of Franchisee.

**8.4 Rules of Construction.** This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

**8.4.1** The singular may include the plural number, and the plural may include the singular number.

8.4.2 "May" is permissive and "shall" is mandatory.

**8.5 Calculation of Time.** Time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time unless stipulated otherwise in this agreement. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

**8.6 Repeal; Effective Date.** This ordinance shall repeal Ordinance 2013-06. If this ordinance is void for any reason, Ordinance 2013-06 shall remain repealed in its entirety. This ordinance shall be in full force and effect as of the date indicated below, but this ordinance shall be void unless the Franchisee files with the City Recorder, within 30 days, the Franchisee's unconditional written acceptance of the terms, conditions, and obligations to be complied with or performed by it under this ordinance. This ordinance shall become effective on September 1, 2015.

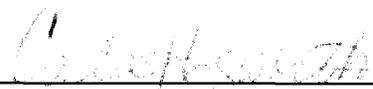
PASSED by the Council this 20th day of July, 2015.

APPROVED by the Mayor this 20th day of July, 2015.

Effective this 1st day of September, 2015.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder