

**ORDINANCE NO. 1609
WEST LINN, OREGON**

AN ORDINANCE GRANTING TO KELLER DROP BOX, INC. dba ALLIED WASTE OF CLACKAMAS AND WASHINGTON COUNTIES/REPUBLIC SERVICES OF CLACKAMAS AND WASHINGTON COUNTIES, AN EXCLUSIVE FRANCHISE FOR DROP BOX AND SOLID WASTE MANAGEMENT SERVICES WITHIN THE CITY LIMITS OF WEST LINN, AND SUPERSEDING ORDINANCE 1447

WHEREAS, the existing solid waste collection franchise, granted by Ordinance No. 1447 will expire on June 30, 2012; and

WHEREAS, the public health, safety and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transportation, and disposal of solid waste deposited in drop boxes in the City of West Linn;

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: The City Council awards the exclusive franchise for the City of West Linn for the collection, transportation and disposal of solid waste deposited in drop boxes, to Keller Drop Box, Inc. for the term starting July 1, 2012 on the terms and conditions set forth in the franchise agreement, attached hereto as Exhibit A.

Section 2: The terms and conditions of the attached exclusive franchise agreement, Exhibit A, are hereby approved, accepted, and adopted as part of this Ordinance.

Section 3: The City Manager is authorized and directed by the City Council to sign a franchise agreement substantially in the form of Exhibit A on behalf of the City.

Section 4: The City Council determines that the fee imposed by this franchise is not a tax subject to the property tax limitations of Article XI, Section 11 (b) of the Oregon Constitution.

Section 5: The agreement embodied in Ordinance No. 1447 is set to expire on June 30, 2012. This Ordinance and the Agreement embodied within it supersede Ordinance 1447.

Section 6: The codified version of Ordinance No. 1447 shall be deleted from the West Linn Municipal Code effective July 1, 2012, and this Ordinance shall be codified in its place.

Section 7: In the event that Keller Drop Box does not sign the Franchise Agreement and provide an original executed agreement within 10 days of the effective date of this Ordinance, this Ordinance shall become void.

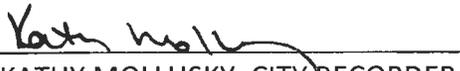
Section 8: This Ordinance is effective 30 days after enactment.

PASSED AND APPROVED THIS 14TH DAY OF MAY, 2012.



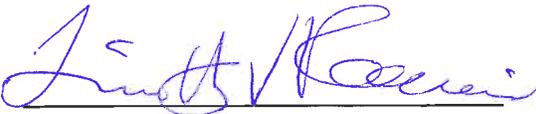
JOHN KOVASH, MAYOR

ATTEST:



KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:



CITY ATTORNEY

FINAL
AGREEMENT
BETWEEN
CITY OF WEST LINN
AND
KELLER DROP BOX, INC.
d/b/a Allied Waste Services of Clackamas and Washington
Counties//Republic Services of Clackamas and Washington
Counties
FOR
DROP BOX SOLID WASTE MANAGEMENT SERVICES

may 14, 2012

This Franchise Agreement (“Agreement”) is entered into this ___ day of _____, 2012, by and between the City of West Linn (“City”) and Keller Drop Box, Inc., d/b/a Allied Waste Services of Clackamas and Washington Counties//Republic Services of Clackamas and Washington Counties (“Company”), for providing Drop Box Solid Waste Management Services for Solid Waste, Recyclable Materials, and Yard Debris that have been placed for collection in Drop Box receptacles.

Recitals

WHEREAS, Company is currently providing Drop Box Solid Waste Management Services to residents and to businesses in City pursuant to a franchise agreement dated March 23, 2000, which had an expiration of June 30, 2010; and,

WHEREAS, pursuant to City Ordinance No. 1609, City and Company agreed to extend the current agreement until June 30, 2020; and,

WHEREAS, the parties wish to enter into an agreement in order to allow City to better meet the needs of City rate payers; and,

WHEREAS, the Legislative Assembly of the State of Oregon, by enactment of Oregon Revised Statutes (ORS) Chapter 459A, has declared that it is a matter of statewide concern for local agencies to make adequate provisions for Solid Waste Management, including the opportunity to Recycle, within their jurisdictions; and,

WHEREAS, the City Council of City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for providing Drop Box Solid Waste Management Services for Solid Waste, Recyclable Materials, and Yard Debris that have been placed for collection in Drop Box receptacles; and,

WHEREAS, City and Company are mindful of the provisions of the laws governing the safe collection, transfer, and disposal of Solid Waste in ORS 459 and ORS 459A, Metro Code, Oregon Administrative Rules, the Resource Conservation and Recovery Act (“RCRA”) and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”); and,

WHEREAS, City and Company desire to define their respective roles, and by entering into this Agreement, it is understood that City is not thereby becoming a “generator” or an “arranger” as those terms are used in CERCLA §107(a)(3), and it is Company, not City, that is “arranging for” the collection, removal, transportation, and disposal of Solid Waste which may contain hazardous substances; and,

WHEREAS, the City Council of City declares its intention of maintaining reasonable rates and quality service related to providing Drop Box Solid Waste Management Services for Solid Waste, Recyclable Materials and Yard Debris that have been placed for collection in Drop Box receptacles; and,

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

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

ARTICLE 1
DEFINITIONS

1.1 Agreement

“Agreement” means this Franchise Agreement between City and Company for providing Drop Box Solid Waste Management Service, including all exhibits and attachments, and any amendments to the Franchise Agreement.

1.2 Billings

“Billings” means any and all statements of charges for services rendered, howsoever made, described or designated by City or Company, or made by others for City or Company, to owners or occupants of property, including residential property and commercial property, served by Company for the collection of Solid Waste, Recyclable Materials, and Yard Debris.

1.3 City

“City” means City of West Linn, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.4 Collection

“Collection” means a service that provides for collection of Solid Waste, Recyclable Materials or Yard Debris, or all of these substances, but does not include that part of a dismantler business operated under a certificate issued under ORS 822.110.

1.5 Commercial Property

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

1.6. Compact and Compaction

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

1.7 Company

“Company” means Keller Drop Box, Inc., a corporation organized and operating under the laws of the State of Oregon and its officers, directors, employees and agents; company does business as Allied Waste Services of Clackamas and Washington Counties and Republic Services of Clackamas and Washington Counties as assumed business names of Keller Drop Box, Inc.

1.8 Company Compensation

“Company Compensation” means the revenue received by the Company from billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.9 Compensation

“Compensation” means consideration of any kind paid for Drop Box Solid Waste Management Services, including, but not limited to, the direct or indirect payment of money, including the proceeds from resource recovery, or the provision of goods, services or other benefits to tenants, lessees, occupants or other persons as part of rent.

1.10 Compost

“Compost” means the controlled biological decomposition of organic material or the product resulting from such process.

1.11 Construction and Demolition Contractor

“Construction and Demolition Contractor” means any person who uses their own equipment and employees for removal of used or discarded construction materials from a

premises during construction, demolition or renovation of a structure, where a City permit has been issued for such activity.

1.12 Construction and Demolition Debris

“Construction and Demolition Debris” means construction materials resulting from construction, remodeling, repair or demolition operations, as part of a total service offered by a State-licensed construction and demolition contractor or City, including rocks, soil, tree remains, and other Yard Debris which normally results from land clearing or land development operations for a construction project.

1.13 Disposal

“Disposal” means the ultimate disposition of Solid Waste collected by Company at a disposal site in full regulatory compliance.

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

1.15 Drop Box Receptacle

“Drop Box Receptacle” means a single receptacle designed for the storage and collection of large volumes of Solid Waste, ~~or~~ Recyclable Materials or Yard Debris, that usually is ten (10) cubic yards or larger in size, and which is taken from the storage or collection site on a drop box truck for disposal or processing of the contents of the said single receptacle, and returned to either its original location or another location. This term also includes a compactor, which is self-contained, power-driven, mechanical equipment designed for the containment and compaction of Solid Waste, Recyclable Materials, or Yard Debris.

1.16 Drop Box Solid Waste Management Services

“Drop Box Solid Waste Management Services” means the service provided to customers for the collection, transportation, storage, treatment, utilization, processing, disposal, recycling, and resource recovery of Solid Waste, Recyclable Materials and Yard Debris, using a Drop Box receptacle.

1.17 Environmental and Safety Laws

“Environmental and Safety Laws” means all federal and state statutes and regulations, and county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the Oregon Solid Waste Management Act; ORS Chapter 459; the Oregon Reuse and Recycling Act, ORS 459A; the Oregon Employment Safety and Health Act, ORS Chapter 654; and the Oregon Workers’ Compensation Act, ORS 656, as currently in force or as hereafter amended; and all rules and regulations promulgated thereunder.

1.18 Existing Franchise Agreement

“Existing Franchise Agreement” means that City Franchise Agreement dated March 23, 2000, and that was extended effective July 1, 2010.

1.19 Facility

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

1.20 Fiscal Year

“Fiscal Year” means the period commencing January 1 of one year and concluding December 31 of the same year for Company.

1.21 Franchise

“Franchise” includes a franchise, certificate, contract or license issued by the City authorizing Company to provide Drop Box Solid Waste Management Services, in accordance with this Agreement.

1.22 Franchise Fee

“Franchise Fee” means the fee paid by Company to City for the right to hold the Franchise for Drop Box Solid Waste Management Services granted by this Agreement.

1.23 Garbage

“Garbage” means all classes of putrescible and easily decomposable animal and vegetable matter, including, but not limited to, matter produced from the handling and preparation of food, but excluding compost.

1.24 Generator

“Generator” means the person who produces Solid Waste, Recyclable Materials, and Yard Debris and places it in a receptacle for collection and disposal or processing. As used in this Agreement, “generator” does not include any person who manages an intermediate function resulting in the alteration or compaction of the Solid Waste,

Recyclable Materials, or Yard Debris after it has been produced by the generator and placed for collection and disposal or processing.

1.25 Gross Revenues

“Gross Revenues” means any and all revenue or compensation in any form of Company or subsidiaries, or parent companies of Company, for providing Drop Box Solid Waste Management Services pursuant to this Agreement, and in accordance with generally accepted accounting principles, including, but not limited to, monthly customer fees for collection of Solid Waste, Recyclable Materials, and Yard Debris, without subtracting Franchise Fees or any other costs of doing business.

1.26 Hazardous Substance

“Hazardous Substance” has the meaning given that term in Oregon Administrative Rules 340-093-0030 (40), as follows: Any substance defined as a hazardous substance pursuant to Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated as hazardous by the Environmental Quality Commission under ORS 465.400.

1.27 Hazardous Waste

“Hazardous Waste” does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this definition on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the State of Oregon Environmental Quality Commission (“Commission”) under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or

predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the Commission, after notice and public hearing. For purposes of classification, the Commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this definition.

1.28 Household Hazardous Waste (HHW)

“Household hazardous waste” means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. “Household hazardous waste” may include but is not limited to some cleaners, solvents, pesticides and automotive and paint products.

1.29 Missed Pick-up

“Missed Pick-up” means failure of Company to pick up Solid Waste, Recyclables, or Yard Debris that have been set out by the customer at the time, at the weight, in the volume, in the proper receptacle, with proper preparation of the lawful contents in

accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the customer and Company.

1.30 Mixed Recycling

“Mixed Recycling” means the process where two or more types of recyclable materials are collected together (i.e., not separated), in a combination allowed by the City.

1.31 Multi-Family Dwelling Unit

“Multi-Family Dwelling Unit” means any premises serviced in a manner similar to commercial property, but used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent.

1.32 Owner

“Owner” means the person holding the legal title to the real property constituting the premises to which Drop Box Solid Waste Management Service is to be provided under this Agreement.

1.33 Placed for Collection

“Placed for Collection” means to put Solid Waste, Recyclable Material, or Yard Debris in a drop box receptacle for collection and disposal or processing by franchisee as provided in this Agreement.

1.34 Person

“Person” means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, cooperative, limited liability company, trust, estate or any other legal entity.

1.35 Premises

“Premises” means any land or building in the City where Solid Waste, Recyclable Materials or Yard Debris is generated or accumulated.

1.36 Rates

“Rates” means the unit to be charged customers by Company for providing Drop Box Solid Waste Management Services. Rates may be adjusted from time to time in accordance with this Agreement.

1.37 Recyclable Materials

“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.

1.38 Recycling

“Recycling” means any process by which Solid Waste materials are transformed into new products in a manner that the original products may lose their identity.

1.39 Recycled

“Recycled” means the act of having processed Recyclable Materials into a form suitable for reuse and having marketed those processed materials for a use consistent with the requirements of the ORS 459A for Recycled materials. The act of marketing does not require that revenue be generated from the processed materials.

1.40 Residential Property

“Residential Property” means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied.

1.41 Resource Recovery

“Resource Recovery” means any process of obtaining from Solid Waste, by pre-segregation or otherwise, materials that have useful physical or chemical properties that can be reused or recycled for some purpose, including but not limited to energy production, materials recovery and recycling.

1.42 Reuse

“Reuse” means the return of waste into the economic stream, to the same or to a similar use or application, without change in the waste’s identity.

1.43 Rubbish

“Rubbish” means all cardboard, plastic, metal, waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other similar materials that ordinarily accumulate on a Premises, and for which no further productive use is intended or can be made by the person in control of the premises, but excluding Garbage, ashes, dead animals, or Hazardous Waste.

1.44 Service

“Service” means the collection, storage, transportation, transfer or disposal of Solid Waste by Company, including such activities that result in recycling or resource recovery.

1.45 Solid Waste

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

- (a) Hazardous Waste.

- (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing harvesting of crops and the raising of animals.

1.46 Source Separation

“Source Separation” means the separation or setting aside of waste by the Generator or producer of the waste, for recycling or reuse.

1.47 Yard Debris

“Yard debris” includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

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

2.2 Company Authorization

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

2.3 Agreement Duly Executed

The person signing this Agreement on behalf of Company has been authorized by Company to do so, and this Agreement has been executed and delivered by Company in accordance with said authorization, and is enforceable against Company in accordance with its terms.

2.4 No Conflict with Applicable Law or Other Documents

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

- a) Conflicts with, violates or will result in a violation of any existing applicable law;
or
- b) Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Company is a party, or by which Company or any of Company's properties are assets are bound; or
- c) Will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company that will interfere materially with Company's performance hereunder.

2.5 No Litigation

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

2.6 Financial Ability, Disclosures, No Material Change

Company has sufficient financial resources to perform all aspects of its obligations hereunder. Company has provided City with financial statements for period ending December 31, 2011, which, in accordance with generally accepted accounting principles, accurately present the financial resources of Company. There has been no material

adverse change in Company's financial circumstances since the date of the most recent financial statements.

2.7 Expertise

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

2.8 Company's Investigation

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

ARTICLE 3

DURATION AND SCOPE OF FRANCHISE

3.1. Effective Date of Agreement

The effective date of this Agreement shall be July 1, 2012 (the "Effective Date"). Company shall continue to provide service under the Existing Franchise Agreement up to the date that all new services are commenced under this Agreement.

3.2 Duration of Agreement and Drop Box Solid Waste Management Franchise

Unless grounds exist for suspension, modification or revocation of the franchise, the franchise under this Agreement shall be considered as a continuing eight (8) year term. Beginning on July first (1st) of each year, this Agreement and the franchise under this Agreement will be considered renewed for an additional eight (8) year term, unless at least thirty (30) days prior to July 1 of any year the City notifies the Company in writing of intent to terminate the Agreement and the franchise under this Agreement. Upon the filing of such written notice, the Company will have an agreement and franchise which will terminate on July 1, eight (8) years from the date of the last renewal prior to the notice of termination. The City may initiate proceedings for suspension, modification, or

revocation of this Agreement and the franchise under this Agreement at any time based on the terms and conditions of the Agreement.

3.3 Conditions to Effectiveness of Agreement

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

- a) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true and correct on and as of the Effective Date of this Agreement.
- b) Absence of Litigation. There is no litigation pending or threatened in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. Company has furnished evidence of the insurance and bonds required by Article 10.
- d) Effectiveness of City Council Action. The City Council ordinance approving this Agreement shall have become effective prior to the Effective Date.

3.4 Franchise

3.4.1 Grant and Acceptance of Franchise

Subject to Section 3.4.2, City hereby grants to Company the exclusive Franchise, right and privilege to provide Drop Box Solid Waste Management Services for Solid Waste, Recyclable Materials and Yard Debris that are placed for collection in Drop Box receptacles in accordance with this Agreement and such rules and regulations set forth by

ordinances of City that are not inconsistent with this Agreement. Except as otherwise provided in Section 3.4.2 of this Agreement, it shall be unlawful for any person to offer or to advertise to provide, or to provide, Drop Box Solid Waste Management Services to another for compensation; provided, however, such service for any City operation or facility may be provided by the City through the use of City personnel or resources, or pursuant to a public contract.

3.4.2 Scope of Franchise

The Franchise for Drop Box Solid Waste Management Services granted to Company shall be exclusive except as to the following categories of Solid Waste listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and collected and transported by others, provided that nothing in this Agreement is intended to or shall be construed to excuse any person from obtaining any authorization from City that is otherwise required by law:

- a) Solid Waste, Recyclable Materials, or Yard Debris generated and removed from a residential property by the generator, and that is transported personally by the generator to any processing or disposal facility. This subsection includes, in the case of residential property not occupied by the owner, any Solid Waste, Recyclable Materials, or Yard Debris generated or produced by the occupant and not by the owner.
- b) Construction and demolition debris removed from any premises by employees of the construction or demolition contractor or City, using equipment owned by the contractor or City; and,
- c) Recyclable materials removed from any premises by charitable or nonprofit organizations that were not organized, and are not operated, for any Drop Box Solid Waste Management purpose.

3.4.3 Limitations

All terms of this Agreement shall be interpreted as consistently as possible with local, state, and federal law now in existence or that may become effective during the term of the Franchise. The scope of this exclusive franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive franchises, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of City to lawfully provide for the scope of franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that City shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

3.4.4 Acceptance of Franchise

Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement and in any applicable City ordinances.

3.4.5 Ownership of Solid Waste

Once Solid Waste, Recyclable Materials, or Yard Debris is placed in Drop Box receptacles at the designated collection location, ownership and the right to possession shall automatically transfer directly from Generator to Company by operation of this Agreement. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or reuse the Solid Waste, Recyclable Materials, and Yard Debris which it collects. Solid Waste, Recyclable Materials and Yard Debris, or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, processing facility or material recovery facility) shall become the property of the owner or operator of the disposal site(s) once deposited there by Company. City may obtain ownership or possession of Solid Waste, Recyclable Material and Yard Debris placed for collection

upon written notice of its intent to do so; however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Company. Title to and liability for any Hazardous Substances or any other wastes not acceptable for disposal and/or processing shall at no time pass to Company or City.

ARTICLE 4

FRANCHISE FEE AND OTHER SURCHARGES

4.1 Franchise Fee

4.1.1 Franchise Fee Amount

In consideration of the exclusive Franchise provided in Section 3 of this Agreement, Company shall pay to City three percent (3%) (or another amount as provided in Section 4.1.3) of the gross revenues collected by Company from Services provided in City net of disposal charges and franchise fees paid by Company to the City.

4.1.2 Time and Method of Payment

On or before the last day of the month following the end of each calendar quarter, Company shall calculate the franchise fees due to City for services rendered during the preceding calendar quarter. City shall review the Company's schedule and calculations and may request, and Company shall provide, supporting documents related to the schedule provided. Should City identify adjustments to the schedules or calculations, City shall notify Company within thirty 30 days after receipt of franchise fee payment and seek an explanation for any apparent differences. If the franchise fee is not paid on or before the last day of the month following the end of each calendar quarter, Company shall pay to City a late payment fee in an amount equal to one percent (1%) of the amount owing for that quarter for each thirty (30) day period the franchise fee remains unpaid.

4.1.3 Adjustment to Franchise Fee

City may adjust the amount of the Franchise Fee to be charged during the remaining term of the Agreement. Such adjustment shall be reflected in the rates that Company is allowed to charge and collect from customers in accordance with, Article 7, such that Company may receive the calculated company compensation including the amount of franchise fees payable to City.

ARTICLE 5 DIRECT SERVICES

5.1 Solid Waste Collection

5.1.1 General

The Drop Box Solid Waste Management Services to be provided by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not. The Drop Box Solid Waste Management Services to be provided by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous and high-quality Solid Waste Management Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Company of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement or not.

5.1.2 Drop Box Solid Waste Management Service

Company shall offer Drop Box Solid Waste Management Service to single and multi-family dwelling units, and to commercial and industrial property for the collection of Solid Waste, Recyclable Materials, and Yard Debris. Company shall deliver and collect

Drop Box receptacles at the direction of the customer. Special consideration shall be given when determining the collection location for Drop Box service customers to ensure that the flow of traffic is not impeded. The designated collection location, if disputed by the customer or Company, shall be determined by City. Additionally, if in City's opinion the location of an existing collection location is inappropriate for aesthetic or safety reasons, City may require the Company to relocate the Drop Box.

5.1.3 City Facilities' Collection

Between 1 January and 31 December of every year, Company shall collect up to five (5) thirty-yard Drop Box receptacles from City facilities or events at no charge to City. However, Company may bill City and City shall pay Company for the disposal charge for said Drop Box receptacles. City shall notify Company thirty (30) days in advance of each event for which Company is to provide service. If, in any given year, the City calls for fewer than 5 drop boxes under this section, the unrequested drop boxes shall carry over for one year.

5.2 Recyclable Materials Collection

5.2.1 Opportunity to Recycle

Company shall provide to its customers the "opportunity to recycle" in compliance with ORS Chapter 459A and the rules and regulations adopted thereunder by the Department of Environmental Quality of the Environmental Quality Commission, as well as any additional rules as may be adopted by the City from time to time. Specifically, Company shall notify each customer at the time of order if there is an opportunity to separate Recyclable Materials and Solid Waste into separate Drop Box receptacles for collection. Company shall collect Recyclable Materials so separated by the Generator, and shall provide Generator with Drop Box receptacles for this purpose.

5.2.2 Recycling Commitment

Company shall deliver all open, dry Drop Box receptacles collected from City customers to a processing site for processing and diversion in accordance with Section 5.5.2.

5.3 Operations

5.3.1 Schedules

To preserve peace and quiet, no Solid Waste shall be collected from an industrial premises or a commercial premises located within one hundred (100) feet of a residential premises between 8:00 P.M. and 6:00 A.M. on any day. Solid Waste shall be collected Monday through Saturday. For regularly scheduled Drop Box collection services that fall on Christmas Day or New Year's Day, Company shall establish an alternate collection day and notify City and customers at least one week in advance of the alternate collection day. When notified of a missed pick-up, Company shall collect the Solid Waste within one (1) business day.

5.3.2 Vehicles

A. General. Company shall provide collection vehicles sufficient in number to efficiently perform the work required by this Agreement in strict accordance with its terms. Company shall have available on collection days sufficient back-up vehicles to respond to complaints and emergencies.

B. Specifications. All vehicles used by Company in providing Drop Box Solid Waste Management Services shall be registered with the Oregon Department of Motor Vehicles.

C. Vehicle Identification. Company's name, local telephone number, and a unique vehicle identification number designed by Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Company shall not place City's name and/or any City logos on Company vehicles.

D. Cleaning and Maintenance

- 1) Company shall maintain all of its properties, vehicles, facilities, and

equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.

- 2) Vehicles used in the collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. Company shall repaint or refurbish to the satisfaction of City all vehicles used in the collection of Solid Waste within thirty (30) days' notice from City, if City determines that their appearance warrants painting. Company shall also make vehicles available to the Clackamas County Health Department and Oregon Department of Transportation for inspection, at any frequency they request.
- 3) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating-properly shall be removed from service until repaired and operating properly. Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Company shall obtain warranty performance. Company shall maintain accurate records of repair, which shall include the date and operating hours, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 4) Company shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company shall keep accurate records of all vehicle maintenance, recorded according to date and operating hours and shall make such records available to City upon request.
- 5) Company shall furnish City a written inventory of all collection

equipment, including collection vehicles, used in providing service under this Agreement within 30 days of the Effective Date of this Agreement.

E. Operation. Vehicles shall be operated in compliance with the Oregon Vehicle Code, and all applicable safety and local ordinances. Company shall attempt to identify and not collect Drop Boxes that would cause the combined weight of the vehicle and Drop Box to exceed the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with US EPA noise emission regulations. Noise levels of equipment used for collection shall comply with City ordinance.

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

5.3.3 Receptacles

The Company shall provide all customers with Drop Box receptacles for collection of Solid Waste, Recycling, and Yard Debris. The kind, size and number of Drop Box receptacles furnished to particular customers shall be as determined mutually by the customer and Company. Drop Box receptacles shall be constructed of heavy metal, and shall be watertight to the greatest extent possible. All receptacles shall meet applicable laws or regulations for Solid Waste receptacle safety, shall have reflective marking, and shall be maintained in good repair with neatly and uniformly painted surfaces, and shall prominently display the name and telephone number of Company.

Drop Box receptacles shall be free of graffiti and in good repair. Company shall clean or replace all Drop Box receptacles as needed, or at City's request, to prevent a nuisance caused by odors or vector harborage. Graffiti shall be removed from any Drop Box within one business day of request by City or customers.

5.3.4 Litter Abatement

Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled, and/or scattered during the collection or transportation process. If any Solid Waste or fluids leak or are spilled during collection or transportation, Company shall promptly clean up all such materials. Each collection vehicle shall carry a broom and shovel at all times for this purpose.

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

5.3.5 Personnel

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

Company also agrees to establish and vigorously enforce an educational program that will train Company's employees in the identification of hazardous waste. Company's employees shall not knowingly place such hazardous waste in the collection vehicles, nor knowingly dispose of hazardous wastes at the disposal site.

Company shall train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Company of a complaint related to discourteous or improper behavior, Company will consider reassigning the employee to

duties not entailing contact with the public while Company is pursuing its investigation and corrective action process.

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

5.3.6 Identification Required

Company shall provide its employees and subcontractors with identification for all individuals who may make face-to-face contact with residents or businesses in City. City may require Company to notify customers yearly of the form of said identification. Company shall provide a list of current employees and subcontractors to City upon request.

5.3.7 Fees and Gratuities

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

5.3.8 Non-Discrimination

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

5.3.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

Company shall direct its drivers to note the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Company shall deliver the address or description to City within five (5) working days of such observation.

5.4 Contingency Plan

By signing this Agreement, Company certifies that it has made arrangements through its affiliates to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, natural disaster or other emergency (not including a labor dispute), including the events described in Section 12.4.

5.5 Transportation of Solid Waste, Recyclable Materials and Yard Debris

5.5.1 Transportation of Solid Waste

The Company shall transport all Solid Waste collected under Section 5.1 to a disposal site approved by the Department of Environmental Quality. The Company shall maintain accurate records of the quantities of Solid Waste transported to the disposal sites, and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of a disposal site with regard to operations therein, including, for example, complying with directions from the operator to unload collection vehicles in designated areas, accommodating maintenance operations and construction of new facilities, cooperating with its hazardous waste exclusion program, and other requests reasonably related to the disposal site's operations.

5.5.2 Transportation of Recyclable Materials and Yard Debris

The Company shall transport all Recyclable Materials collected under Section 5.2 to processing sites meeting all applicable local, state, and federal licensing and permitting regulations. The Company shall maintain accurate records of the quantities of Recyclable Materials and Yard Debris transported to any processing site and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of a processing site with regard to operations therein, including, for example, complying with directions from the operator to unload collection vehicles in designated areas, accommodating maintenance operations

and construction of new facilities, and other requests reasonably related to the processing site's operations.

5.6 Disposal of Solid Waste

Company shall dispose of all Solid Waste collected under Section 5.1 at a disposal site approved by the Department of Environmental Quality. If the disposal site becomes unable to accept and dispose of or process the City's Solid Waste for reasons outside the Company's control, the Company shall, with the prior approval of City, to the extent it is legally able to do so, transport and dispose of City's Solid Waste at another disposal site that results in the lowest possible transportation and disposal cost.

5.7 Service Exceptions; Hazardous Waste Notifications

5.7.1 Hazardous Waste Inspection and Reporting

Company reserves the right and has the duty under law to inspect Solid Waste put out for collection and to reject Solid Waste observed to be contaminated with Hazardous Waste. Company has no obligation to collect Hazardous Waste. If Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Waste unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Manager or the City Manager's designee.

5.7.2 Customer Notification

When Solid Waste, Recyclable Materials, or Yard Debris is not collected from any customer, Company shall notify the customer by phone of the reasons why the collection was not made.

ARTICLE 6
OTHER SERVICES

6.1 Services and Customer Billing

6.1.1 Service Description

For every new customer, Company shall provide Company's rates for services.

6.1.2 Billing

Company shall bill and collect from customers receiving Drop Box Solid Waste Management Services at rates fixed by City from time-to-time. Company shall send bills to customers no less frequently than quarterly for each account. Company may terminate collection service to Drop Box Solid Waste Management Service accounts that become more than sixty (60) days past due, following thirty (30) days written notice. Company shall promptly restore service when the delinquent charges, including any reasonable reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent.

6.1.3 Customer Billing List

Upon request by the City, Company shall provide City a copy of the billing list, for regularly scheduled customers, subject to the confidentiality provisions of Section 9.5.

6.1.4 Review of Billings

At least annually, Company shall conduct an internal review of its billings to customers under Section 6.1.2. The purpose of the review is to determine whether the amount Company is billing each customer is correct in terms of the level of service (i.e., frequency of collection and size of receptacle) being provided to such customer by Company. Company shall maintain copies of said billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by City upon request. Company may, at its option, maintain those records in computer

form or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

6.2 Customer Service

6.2.1 Local Office

Company shall maintain office hours, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays officially recognized by the City. A responsible and qualified representative of Company shall be available during office hours for communication with the public at the local office. Normal office hour telephone numbers shall either be a local or toll free call. Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Company shall also maintain a local or toll free telephone number for use during other than normal business hours. Company shall have a representative, answering service or voice-mail service available at said after-hours telephone number.

6.2.2 Complaint-Documentation

All service complaints shall be directed to Company. For those complaint types listed in Section 12.3.2A and 12.3.2B, Company shall log complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint.

All written customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Company shall log action taken by Company to respond to and remedy the complaint.

Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available for City inspection during business hours and at no cost to City. City shall, at any time during regular Company business hours, have reasonable access to Company's customer service department for

purposes that may include monitoring the quality of customer service or researching customer complaints.

6.2.3 Resolution of Customer Complaints

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

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

6.2.4 Liaisons

Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City Manager and/or the City's designated representative(s) to resolve customer complaints. City shall designate in writing a "City Liaison" who shall be responsible for working with Company and/or Company's designated representative to resolve customer complaints.

6.3 Waste Generation/Characterization Studies

Company acknowledges that the Department of Environmental Quality may perform Solid Waste generation and disposal composition studies periodically to comply with ORS 459A.035. Company agrees to participate and cooperate with the Department of Environmental Quality, City and their agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, disposed, diverted or otherwise handled or processed.

ARTICLE 7
COMPANY'S COMPENSATION AND RATES

7.1 General

The Company's compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, disposal, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by City from time-to-time in accordance with this Agreement. The Company does not look to City for the payment of any sums under this Agreement.

7.2 Initial Rates

The rates in Exhibit 1 are those established by a Resolution of the West Linn City Council and in effect on the date of this Agreement. Unless and until the rates established by that Resolution are adjusted by City, the Company will provide the service required by this Agreement, charging no more and no less than the rates set by the resolution unless authorized to do so by City.

City and Company agree that rates set by the City shall compensate Company for its costs and profit and City's franchise fees and other City fees, if any.

Except as set forth in this Agreement, the rates shall be fixed and shall not be increased to reflect decreases in revenues below, or increases in expenses above, those anticipated by City and Company, nor decreased to reflect increases in revenues above, or decreases to expenses below, those anticipated by City and Company.

7.3 Subsequent Rates

7.3.1 City Council's Authority

From time to time and based on changes to the rates, as described below, and other considerations, the City Council shall revise the rates by resolution or ordinance, as determined in the good faith exercise of its legislative discretion.

The determination of the Company's compensation and rates as outlined in this Article 7 requires the use of judgment regarding the projection of revenues and costs. The parties acknowledge that City may employ City staff or consultants to review the reasonableness of the rate adjustments calculated in accordance with this Article 7. The parties also acknowledge that the City Council has the authority to revise the rates and may accept or reject the staff or consultant's recommendations or any part thereof. However, in the good faith exercise of its legislative discretion, the City Council may not act in an arbitrary and capricious manner.

7.3.2 Rate Adjustment Criteria

Company may apply to City for an adjustment to its rates and the City shall consider the following factors for making a rate adjustment:

- 1) Current and projected revenues;
- 2) Current and projected operating costs;
- 3) Acquisition and replacement of equipment;
- 4) Professional and consultant services;
- 5) Reasonable operating margin;
- 6) Construction and maintenance costs;
- 7) Research, training, and development;
- 8) Recycling, reuse, and resource recovery services, if such services are required by the City or any other governmental agency with jurisdiction over the activity or service;
- 9) Prevailing rates for Drop Box Solid Waste Management Service in Clackamas County and other jurisdictions within Clackamas County for similar services; and

10) Any other factor deemed relevant by the City Council.

7.3.3 Company's Application

On or before April 15 each year Company may submit an application in accordance with Section-7.3.2.

Company's application shall show the reasonable and necessary costs of providing service within the City for the preceding fiscal year, and shall project the reasonable and necessary costs of providing service within the City for the next fiscal year and the anticipated revenue from current rates. The application shall be supported by the Company's financial statements for the preceding fiscal year. Company shall assemble, provide, and submit such work papers, calculations, studies and other relevant information that is necessary to support the assumptions made by Company in preparing the application.

City shall use its best efforts to make the adjustment effective by July 1 of the same calendar year. However, City shall not make any retroactive adjustments to compensate for any delay in calculating the Company's compensation that results in whole or in part from the failure of the Company to submit its request by April 15, and/or respond promptly and completely to requests of City for information related to any of the calculations required by this Section or from appeals of the Application to City which extends the process.

7.3.4 Review Company's Application

City, or its representative, will review Company's application for compliance with this Agreement, accuracy, and reasonableness. The City, through its staff or consultants, may conduct an investigation of Company's application and request additional support as may reasonably be necessary and relevant to City's evaluation. The City, through its staff or consultants, may also meet with Company and/or its designated representatives to discuss, negotiate, and attempt to resolve issues that arise in the course of the City's review.

7.4 Variances from Projections

The Company assumes all risk of variations from the projections such that the Company shall retain any revenue from actual revenue being greater, or expenses being less, than projected but shall not be compensated for actual revenue being less, or expenses being greater, than projected. In addition, calculations of the rates shall not be adjusted for past variances of actual revenues from those projected.

7.5 Interim Rate Adjustment

In the event City directs the Company to change its operations or in the event of an extraordinary or unanticipated event including a change in law, a change in disposal site, or an adjustment to the disposal rate by the Metro Code, and such adjustment is greater than two (2) percent of the Company's annual cost of operations (including disposal) then the Company or City may submit a request for an interim rate adjustment. In such case, the Company shall provide City with its calculations of the impact of the change in a format approved by City. Any proposed change in the approved rates shall be subject to City review and approval. Nothing in this section shall be construed to require City to accept Company's calculations as correct.

ARTICLE 8

REVIEW OF SERVICES AND PERFORMANCE

8.1 Performance Hearing

City may hold a public hearing on or about ninety (90) days after receipt of application for adjustment of rates from Company, at which time Company shall be present and shall participate in a review of the Drop Box Solid Waste Management Services and overall performance of Company. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Drop Box Solid Waste Management Services in order to achieve a continuing, advanced Solid Waste management system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from City of a Drop Box Solid Waste Management Services and Performance Review Hearing, Company shall, at a minimum, submit a report to City indicating the following:

- a) Changes recommended and/or new services to improve City's Drop Box Solid Waste Management Services and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by Company.

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

Topics for discussion and review at the Drop Box Solid Waste Management Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, regulatory constraints and Company performance. City and Company may each select additional topics for discussion at any Drop Box Solid Waste Management Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Drop Box Solid Waste Management Services and Performance Review Hearing, City may issue a report. As a result of the review, City may require Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation, as determined in the City Council's good faith legislative discretion, and City may direct or take corrective actions for any performance inadequacies.

ARTICLE 9
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

9.1 General

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

B. Upon reasonable notice, City may inspect Company's vehicles, property, equipment, facilities, and records, to evaluate compliance with this Agreement.

9.2 Records

9.2.1 General

Company shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement, with the exception of accounts payable

records, which will be maintained for three (3) years after payment. Company agrees that the records addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours.

9.2.2 Financial Records

Financial records shall be maintained in a manner such that cost and revenue information can be allocated to the City.

9.2.3 Solid Waste Records

Records shall be maintained by Company for City relating to:

- a) Customer services and billing;
- b) Facilities, equipment and personnel used;
- c) Facilities and equipment operations, maintenance, acquisitions and repair;
- d) Disposal of Solid Waste; and,
- e) Complaints.

9.2.4 Disposal Records

Company shall maintain records of disposal of all Solid Waste collected in City for the duration of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Drop Box Solid Waste Management Services to City, Company shall provide all records of disposal or processing of all Solid Waste collected in City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

9.3 Reports

9.3.1 Report Formats and Schedule

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

- a) Determine and set rates and evaluate the financial efficacy of operations;
- b) Evaluate past and expected progress towards achieving diversion goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate customer service and complaints.

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

Annual reports shall be submitted before April 15 following the reporting year.

All reports shall be submitted to:

City Manager (or designated representative)

City of West Linn

22500 Salamo Road

West Linn, OR 97068

9.3.2 Annual Report

The Annual Report shall contain the following information:

A. Regular Services

- 1) Solid Waste Collected by Company, in tons.
- 2) Complaint summary, for the quarter and cumulative for report year, summarized by nature of complaints.
- 3) Narrative summary of problems encountered and actions taken with recommendations for City, as appropriate.
- 4) Other information or reports that City may reasonably request or require.

B. Financial Statements

Company shall provide financial statements for Company's operations for City, including the specific revenues and expenses in connection with the operations provided for in this Agreement. The financial statements and footnotes shall be prepared in accordance with generally accepted accounting principles.

9.4 Adverse Information

9.4.1. Reporting Adverse Information

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

9.4.2. Failure to Report

The refusal or failure of Company to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Company in such report shall be deemed a material breach of this Agreement as described in Section 12.1 and shall subject Company to all remedies which are available to City under this Agreement or otherwise.

9.5 Confidentiality of Records

Financial data, operational data, and customer lists on City Drop Box Solid Waste Management operations provided by Company to City for purposes of City conducting a

rate review in accordance with Article 7 of this Agreement, that Company considers confidential, shall be clearly marked as such. To the extent allowed by Oregon public records law, City shall consider those items marked “confidential” as production, sale and purchase records.

ARTICLE 10 INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

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

employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon written demand of City, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Commerce Clause of the United States Constitution (including its implied negative, the dormant Commerce Clause) or federal or state laws to provide Drop Box Solid Waste Management Services in City. This provision shall survive the expiration of the period during which Drop Box Solid Waste Management Services are to be provided under this Agreement. City and Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event City and Company jointly agree to appeal, or to oppose any appeal, City and Company agree to share equally the costs of appeals. Should either City or Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

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

10.2 Hazardous Substances Indemnification

As specifically qualified below in this Section 10.2, Company shall indemnify, defend with counsel reasonably acceptable to City, protect and hold harmless the Indemnitees from and against all Damages of any kind whatsoever paid, incurred or suffered by, or asserted against, Indemnities arising from or attributable to the negligent acts or omissions of Company, its officers, directors, employees, companies or agents in

connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, and/ or household hazardous waste at any places where Company collects and transports, processes, stores, or disposes of City Solid Waste, and/or construction and street debris, or other waste. The foregoing indemnity shall not apply to the processing, storage, or disposal of City Solid Waste, and or construction and street debris, or other waste, unless the Company is engaging in those activities. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), to defend, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The foregoing applies only to facilities owned or operated by Company pursuant to this Agreement.

10.3 Insurance

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

10.3.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Comprehensive General Liability or Commercial General Liability insurance;
- 2) Automobile Liability insurance;
- 3) Workers' Compensation insurance as required by the State of Oregon; and
- 4) Employers Liability insurance.

10.3.2 Minimum Limits of Insurance

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

- 1) Comprehensive General Liability: Two Million Dollars (\$2,000,000) limit for each Person, with Two million Dollars (\$2,000,000) aggregate limit, and Five Million Dollars (\$5,000,000) umbrella limit for bodily injury, Personal injury and property damage.
- 2) Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage, including the release of pollution into the environment.
- 3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the State of Oregon and Employers Liability limits of Five Hundred Thousand Dollars (\$500,000) per accident.

10.3.3 Deductibles and Self-Insured Retentions

If Company wants to increase its deductibles over the amount as of the Effective Date of this Agreement, the Company shall obtain the written consent of City. City's consent will not be unreasonably withheld.

10.3.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

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

respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elected and appointed boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.

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

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

- 2) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for City.
- 3) All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice by e-mail, return receipt requested, has been given to City. Additionally, Company agrees to provide notice via first-class mail, postage prepaid of such cancellation.

10.3.5 Acceptability of Insurers

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

10.3.6 Verification of Coverage

Simultaneously with the execution of this Agreement, Company shall furnish City with certificates of insurance and with original endorsements affecting coverage required

hereunder, in form and substance satisfactory to City. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Such certificates and endorsements shall show the type and amount of coverage, effective date and dates of expiration of policies, and shall have all required endorsements attached. Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the term.

If Company fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Company's expense, such insurance as required by this Agreement. In such case, City may charge Company for such insurance.

10.3.7 Contractors and Subcontractors

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

10.3.8 Required Endorsements

- 1) The Public Liability policy shall contain endorsements in substantially the following form:
 - a) "Thirty (30) days prior written notice by e-mail shall be given to City in the event of cancellation reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:
Public Works Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068
Email address: kworcester@westlinnoregon.gov

10.4 Faithful Performance Bond

Company shall deposit either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of one hundred sixty thousand dollars (\$160,000). The letter of credit or Performance Bond shall be in a form acceptable to City (see Exhibit 2). The Performance Bond shall serve as security for the faithful performance by Company of all the provisions and obligations of this Agreement. City may proceed against the performance bond upon Company's breach as defined in Article 12.1 and in accordance with the procedures outlined in Article 12.5.49.

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 required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours; and if, as a result thereof, Solid Waste 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 twenty-four (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 up to three (3) of Company's Drop Box collection vehicles used or useful in the collection and transportation of Solid Waste, and to use such vehicles to collect and transport any Solid Waste generated within City which Company would otherwise be obligated to collect and transport pursuant to this Agreement.

If Solid Waste 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 twenty-four (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 may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within twenty-four (24) hours of the oral notification. Company further agrees that in this way:

- A. It will take direction from City to effect the transfer of possession of vehicles to City for City's use.
- B. It will, if City so requests, keep in good repair and condition all such vehicles, provide all such vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said vehicles in operational condition.
- C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Company. Company further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Company whose services are necessary or useful for Solid Waste collection, transportation, processing and disposal operations and for the billing and collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession and to provide a full defense and indemnity to Company for any Damages caused by City's use of the vehicles.

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

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which

compensation must be paid; (2) except as set forth in this section, will not create any liability on the part of City to Company; and (3) does not exempt Company from any of the indemnity or insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify City against claims and damages arising from the negligence or willful misconduct of City, its elective and appointive boards, commissions, officers, employees and agents in the operation of collection vehicles during the time City has taken possession of such vehicles.

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 Drop Box Solid Waste Management Services as required under this Agreement for a period of two (2) 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 that 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 remedied within the time set in the written notice of the violation; or, if Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

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

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

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

12.1.1 Notification of Default

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

12.2 Right to Terminate Upon Default

In the event that Company should default, and subject to the right of the Company to cure, in the performance of any provisions of this contract, and the default is not cured within forty-eight (48) hours from notification of default from City for any default arising under Section 12.1.C, E, F, I, or J, or ten (10) days' notice if the public health or safety is threatened, or otherwise thirty (30) days after receipt of written notice of default from City, then City may, at its option, hold a hearing at its next practically available City Council meeting to determine whether this Agreement should be terminated. In the event City decides to terminate this Agreement, City shall serve thirty (30) days' written notice of its intention to terminate upon Company. In the event City exercises its right to terminate this contract, City may, at its option, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Company to perform its obligations under this Agreement.

City's right to terminate this Agreement shall be in addition to any and all other legal and equitable rights and remedies that City may have. By virtue of the nature of this Agreement, the urgency of timely continuous and high quality service, the time required

to effect alternative service, and the rights granted by City to Company, the remedy of damages for a breach hereof by Company may be inadequate and City may seek injunctive relief.

12.3 Liquidated Damages

12.3.1 General

City finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that shall be incurred by City as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (1) substantial damage results to members of the public who are denied services or denied quality or reliable service; (2) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (3) that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (4) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

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

The parties further acknowledge that consistent, reliable Drop Box Solid Waste Management Service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Company fails to achieve the

performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 12, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company
Initial Here MAA

City
Initial Here WJ

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

A. Collection Reliability

- a) For each failure to collect Solid Waste, which has been properly placed for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement which exceeds four (4) such failures annually: \$150
- b) For each failure to collect Solid Waste, which has been properly placed for collection, from the same customer on four (4) consecutive scheduled pickup days: \$150

B. Collection Quality

- a) For each occurrence of damage to private property which exceeds eight (8) such occurrences annually: \$250
- b) For each occurrence of excessive noise or discourteous behavior which exceeds four (4) such occurrences annually \$250
- c) For each failure to clean up Solid Waste spilled from receptacles which exceeds four (4) such failures annually: \$150
- d) For each occurrence of collecting Solid Waste during unauthorized hours which exceeds four (4) such occurrences annually: \$250

C. Customer Responsiveness

- a) For each failure to initially respond to a customer complaint within one (1) business day: \$100
- b) For each failure to process customer complaints to City as required by Article 6.2.2: \$500

12.3.3 Process

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

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

Prior to assessing liquidated damages, City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s) / non-performance. Company may review (and make copies at its own expense) all information in the possession of City relating to incident(s) / non-performance. Company may, within ten (10) days after receiving the notice, request a meeting with City. Company may present

evidence in writing and through testimony of its employees and others relevant to the incident(s) / non-performance. City will provide Company with a written explanation of its determination on each incident(s) / non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

12.3.4 Amount

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

12.3.5 Timing of Payment

Company shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or both.

12.4 Excuse from Performance

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

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement.

Notwithstanding the foregoing, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice.

12.5 Notice, Hearing and Appeal of City Breach

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

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

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

12.6 Assurance of Performance

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

ARTICLE 13

OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

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

13.2 Compliance with Law

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of Oregon, and local agencies. City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies,

now in force and as they may be enacted, issued or amended during the duration of this Agreement.

13.3 Governing Law

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

13.4 Jurisdiction and Venue

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of Oregon, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Clackamas County.

13.5 Assignment

13.5.1 Company's Assignment

Except as may be provided for in Article 11 (City's Right to Perform Service), Company shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person. Any such assignment made shall be void and the attempted assignment shall constitute a material breach of this Agreement. However, if Company notifies City of its desire to sell, exchange or transfer substantially all of Company's assets dedicated to service under this Agreement to a third party, City may, at City's sole discretion, attempt to negotiate a new agreement with said third party.

For purposes of this Section when used in reference to Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Company to a third party provided said sale, exchange or transfer may result in a change of control of Company,

excluding stock transfers among the existing shareholders; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Company; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Company to any Person other than an entity controlling, controlled by or under common control of Company.

Company acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Company to perform the services specified herein based on (1) Company's experience, skill and reputation for conducting its Drop Box Solid Waste Management Services in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best Drop Box Solid Waste Management practices, and (2) Company's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

13.5.2 City's Assignment

City may assign and delegate all rights and duties of City, and its Council, Boards and Officials, its rights under this Agreement to any joint powers authority or other public agency; provided, however, that this Agreement will continue to govern only the Drop Box Solid Waste Management Services for Solid Waste, Recyclable Materials, and Yard Debris generated within City.

13.6 Contracting or Subcontracting

Company shall not engage any contractors or subcontractors for collection or transport of Solid Waste, Recyclable Materials, or Yard Debris without the prior written consent of City. This Section shall not apply to any entity that is controlled by, under common control or controlling Company.

13.7 Binding on Assigns

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

13.8 Transition to Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with City and providing customer lists and billing information. Company will not be obliged to sell collection vehicles and receptacles to the next company. Depending on Company's circumstances at the point of transition, Company at its option may enter into negotiations with the next company to sell (in part or all) collection vehicles and receptacles.

13.9 Parties in Interest

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

13.10 Notice

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

If to City: City Manager
 City of West Linn
 22500 Salamo Road
 West Linn, OR 97068
 (503) 657-0331
 (503) 650-9041 (facsimile)

If to Company:
 Keller Drop Box, Inc. dba
 Allied Waste Services of Clackamas and Washington Counties//
 Republic Services of Clackamas and Washington Counties
 10295 SW Ridder Rd., Ste. 2
 Wilsonville, OR 97070
 (503) 682-3900
 (503) 682-9480 (facsimile)

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

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

13.11 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and its authorized delegates. Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Company shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Company. City may rely upon action taken by such designated

representative as actions of Company unless they are outside the scope of the authority delegated to him/her by Company as communicated to City.

13.12 City Free to Negotiate with Third Parties

City may investigate all options for Drop Box Solid Waste Management Services after the expiration of the Term and any renewal, subject to the provisions of section 3.1.2 of this Agreement. Without limiting the generality of the foregoing, City may solicit proposals from Company and from third parties for the provision of Drop Box Solid Waste Management Services, and may negotiate and execute agreements for such services that will take effect upon the expiration under section 3.1.2 or earlier termination under Section 12.1 of this Agreement.

13.13 Compliance with Municipal Code

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

13.14 Privacy

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

13.15 Attorney Fees and Cost Recovery

Company shall pay all reasonable attorney fees and other costs and expenses incurred by City in any enforcement action brought by City against Company under the terms of this Agreement. Payment shall be made within ten (10) days of written notification to Company of the amount incurred.

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 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 and City.

14.4 Interpretation

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

14.5 Agreement

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

14.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect

any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

14.7 Exhibits

Any Exhibit attached hereto and incorporated herein are made a part hereof by this reference. In the case of conflict between the Exhibits and this Agreement, the Agreement shall govern.

14.8 Waiver

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

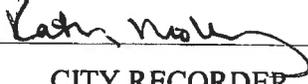
Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to perform, whether determined to be a breach, excused performance or unexcused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

[Signatures on following page]

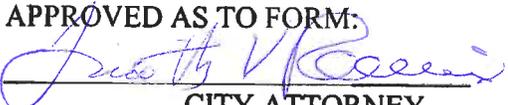
IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first above written.

CITY OF WEST LINN

("City")

ATTEST: 
CITY RECORDER

By: 
CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

KELLER DROP BOX, INC., dba
Allied Waste Services of Clackamas and
Washington Counties//Republic Services
of Clackamas and Washington Counties
("Company")

By: 

Name Mike Hupke

Title: Vice President