



CITY OF
**West
Linn**

FINAL
AGREEMENT
BETWEEN
CITY OF WEST LINN
AND
WEST LINN REFUSE & RECYCLING, INC.
FOR
SOLID WASTE, RECYCLING AND YARD DEBRIS
COLLECTION SERVICES

* * *

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EXHIBITS

1. INITIAL RATES
2. RATE ADJUSTMENT METHODOLOGY
3. FAITHFUL PERFORMANCE BOND
4. NOTARY CERTIFICATION
5. CORPORATE GUARANTY

RECITALS

This Franchise Agreement (Agreement) is entered into this 12th day of November 2008 by and between the City of West Linn (City) and West Linn Refuse & Recycling, Inc. (Company), for the collection, transportation, and disposal of Solid Waste and the collection, transportation and processing of Recyclables and Yard Debris.

Recitals

WHEREAS, City prepared a Draft Agreement for Solid Waste, Recycling, and Yard Debris Collection Services and,

WHEREAS, Company prepared and submitted a proposal to provide the services outlined in City's Draft Agreement; and,

WHEREAS, City has reviewed Company's proposal and has determined that Company's proposal, as revised during negotiations between City and Company, best meets the goals and objectives of City for solid waste, recycling and yard debris collection services; and,

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

WHEREAS, the City Council of City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transportation, and disposal of Solid Waste and the collection, transportation, and processing of Recyclables and Yard Debris; and,

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

WHEREAS, City and Company desire to leave no doubts as to their respective roles, and by entering into this Agreement, City is not thereby becoming a "generator" or

an "arranger" as those terms are used in CERCLA § 107(a)(3), and it is Company, not City, which is "arranging for" the collection, removal, transportation, and disposal of Solid Waste which may contain hazardous substances; and,

WHEREAS, the City Council of City declares its intention of maintaining reasonable rates and quality service related to the collection, transportation, and disposal of Solid Waste, the collection, transportation, and processing of Recyclables and Yard Debris, and other services; and,

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

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

ARTICLE 1
DEFINITIONS

1.1 Agreement

"Agreement" means this Franchise Agreement between City and Company for Collection, transportation, and disposal of Solid Waste and the Collection, transportation and processing of Recyclables and Yard Debris, including all exhibits and attachments, and any amendments thereto.

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 and Recyclables.

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 or recyclable material or both but does not include that part of a 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 Company

"Company" means West Linn Refuse & Recycling, Inc., a corporation organized and operating under the laws of the State of Oregon and its officers, directors, employees and agents.

1.7 Company's Compensation

"Company's 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.

1.8 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 duly-licensed 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.

1.9 Containers

"Containers" means any and all types of Solid Waste receptacles.

1.10 Curbside

"Curbside" means the placement of containers for pickup no more than three (3) feet from any traveled street or alleyway or as designated by City.

1.11 Disposal

"Disposal" means the ultimate disposition of Solid Waste collected by Company at a transfer station or landfill in full regulatory compliance.

1.12 Disposal Site

"Disposal site" means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and Recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal

sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050 or 468B.053; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable 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.

1.13 Drop Box Container

"Drop Box Container" means a single container designed for the storage and collection of large volumes of Solid Waste or Recyclable Materials, which 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 container.

1.14 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 §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 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.

1.15 Facility

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

1.16 Fiscal Year

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

1.17 Franchise

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

1.18 Franchise Fee

"Franchise Fee" means the fee paid by Company to City for the right to hold the Franchise for Solid Waste and Recycling services granted by this Agreement.

1.19 Gross Revenues

"Gross Revenues" means any and all revenue or compensation in any form of Company or subsidiaries, or parent companies of Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, monthly customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business.

1.20 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) the Oregon

Hazardous Waste and Hazardous Materials II Act, ORS 466.005; and (vi) the Clean Air Act, 42 USC §7401 et seq.; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.21 Hazardous Waste

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

1.22 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.

1.23 Legislation

"Legislation" means any code, ordinance, resolution or any other forms/enactment of the governing body of City, which now exists or which may hereafter be adopted, which constitutes law or regulation governing the operation of Company.

1.24 Missed Pick-up

"Missed Pick-up" means failure of Company to pick up Solid Waste or Recyclables that has been set out by the customer at the time, at the weight, in the volume, in the proper container, with the lawful contents in accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the customer and Company.

1.25 Multi-Family Dwelling Unit

"Multi-Family Dwelling Unit" means any Premises serviced in a manner similar to Commercial Property (bin or debris box), but used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent.

1.26 Non-Putrescible Solid Waste

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

1.27 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement.

1.28 Person

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

1.29 Premises

"Premises" means any land, or building, in City where Solid Waste is generated or accumulated.

1.30 Principal Recyclable Material

"Principal Recyclable Material" means those Recyclable Materials designated from time to time by the Department of Environmental Quality.

1.31 Putrescible Solid Waste

"Putrescible Solid Waste" means Solid Waste or waste material, including bones; meat and meat scraps; fat; grease; fish and fish scraps; food containers contaminated

with food wastes; particles or residues; vegetable and fruit food wastes; manure; dead fowl; dead animals or similar organic wastes which cause offensive odors or create a health hazard or which are capable of attracting or providing food for potential disease carriers, such as birds, rodents, flies, and other vectors.

1.32 Rate Year

"Rate Year" means the twelve-month period commencing July 1 of one year and concluding June 30 of the subsequent year, for which Company's Compensation is calculated.

1.33 Rates

"Rates" means the unit to be charged customers by Company for providing Solid Waste Collection and Disposal and Recycling Collection and processing services. Rates may be adjusted from time to time in accordance with this Agreement.

1.34 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.

1.35 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.

1.36 Residential Property

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

1.37 Rubbish

"Rubbish" means all waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Garbage, Hazardous Substance, Yard Waste or Recyclable Materials, and such materials

defined as "rubbish" by applicable local ordinances in existence as of the Effective Date of this Agreement.

1.38 Single Family Dwelling Unit

"Single Family Dwelling Unit" means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex, triplex, fourplex, or town house in all cases in which there is separate or individual Solid Waste Collection service using cans or carts.

1.39 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 as defined in ORS 466.005.
- (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 or harvesting of crops and the raising of animals.

1.40 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.

1.41 Waste Generator

"Waste Generator" means any Person whose act or process produced Solid Waste, or whose act first causes Solid Waste to become subject to regulation.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

Company is a duly 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. The Board of Directors of Company has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement.

2.3 Agreement Duly Executed

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

2.4 No Conflict with Applicable Law or Other Documents

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

- a) Conflicts with, violates or will result in a violation of any existing applicable law; or
- b) Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing

agreement or instrument to which Company is a party, or by which Company or any of Company's properties or assets is bound; or

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

2.5 No Litigation

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

2.6 Corporate Guaranty, Financial Ability, No Material Change

Company warrants that there has been no material adverse change in West Linn Refuse & Recycling, Inc.'s financial circumstances since the date of the most recent financial statements.

2.7 Expertise

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

2.8 Company's Investigation

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

ARTICLE 3
TERM AND SCOPE OF FRANCHISE

3.1 Term of Agreement

3.1.1 Effective Date

The effective date of this Agreement shall be November 12, 2008 ("effective date").

3.1.2 Term of Agreement

Unless grounds exist for suspension, modification or revocation of the Agreement, the Agreement shall be considered as a continuing eight (8) year term. Beginning on July first (1st) of each year, the Agreement will be considered renewed for an additional eight (8) year term, unless at least thirty (30) days prior to July first (1st) on any year the City notifies the Company of intent to terminate the Agreement. Upon the filing of such notice, the Company will have an Agreement which will terminate on July 1st which is eight 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 the Agreement at any time based on the terms and conditions of the Agreement.

3.1.3 Conditions to Effectiveness of Agreement

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

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

- c) Furnishing of Insurance 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.

3.2 Franchise

3.2.1 Grant and Acceptance of Franchise

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

3.2.2 Scope of Franchise

The Franchise for the Collection and transportation of Solid Waste, Recyclable Materials, and Yard Debris granted to Company shall be exclusive except as to the 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 which is otherwise required by law:

- a) Solid Waste that is placed in Drop Boxes that are removed from any Premises by City's franchised Drop Box service provider;
- b) Solid Waste which is removed from any Premises by the Waste Generator, and which is transported personally by the Owner or occupant of such Premises (or by his or her full-time employees) to any processing or Disposal Facility;
- c) Construction and Demolition Debris which is removed from any Premise by employees of the construction or demolition contractor or City, using equipment owned by the contractor or City;

- d) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- e) Recyclable materials which are removed from any Premises by charitable or non-profit organizations; and,
- f) Abandoned cars that are removed from any Premises by a licensed towing company authorized to do so by City.

Company acknowledges and agrees that City may permit other Persons besides Company to collect any or all types of the Solid Waste listed in this Section 3.2.2, without seeking or obtaining approval of Company under this Agreement.

3.2.3 Limitations

This grant to Company of an exclusive Franchise, right and privilege to Collect, transport, and Dispose of Solid Waste, Recyclable Materials, and Yard Debris shall be interpreted to be consistent with state and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive Franchise, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of City to lawfully provide for the scope of Franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that City shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

3.2.4 Acceptance of Franchise

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

3.2.5 City's Right to Direct Changes

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

3.2.6 Ownership of Solid Waste

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Waste Generator to Company by operation of this Agreement. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Recyclable Materials, and Yard Debris which it Collects. Solid Waste, Recyclable Materials, Yard Debris or any part thereof, which is disposed of at a Disposal Site or 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 Materials, or Yard Debris placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Company.

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 3.2.1 of this Agreement, Company shall pay to City five percent (5%) (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.

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 annually. 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's Compensation including the amount of Franchise Fees payable to City.

4.2 Other Fees

4.2.1 Other Fee Amounts

City has incurred, and will continue to incur, expenses for other Solid Waste programs and franchise administration. These expenses may be determined and a fee may be calculated to reimburse City. Company will collect these amounts from customers on the regular billings and remit the amount collected on a monthly basis, as provided below. Company may be required to separately identify some or all of the fees on bills as determined and directed by City.

4.2.2 Time and Method of Payment

On or before the last day of the month following the end of each calendar quarter, Company shall pay City the amount collected during the previous quarter. If the other fees are 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 other fees remain unpaid.

4.2.3 Adjustment to Other Fees

City may adjust the amount of the other fees annually. 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's Compensation including the amount of surcharges payable to City.

ARTICLE 5
DIRECT SERVICES

5.1 Solid Waste Collection

5.1.1 General

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

The work to be done by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous and high-quality Solid Waste, Recyclable Materials, and Yard Debris Collection 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 Residential Solid Waste - Single Family Dwelling Unit

Company shall Collect Solid Waste at the subscribed service level from the Containers provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Standard Collection service shall be semi-automated or automated Collection, unless another method is approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall Collect Solid Waste from the side or back yard of those Single Family Dwelling Units that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.1.3 Commercial, Industrial, and Multi-Family Dwelling Units

Company shall Collect Solid Waste at the subscribed service level from Company-provided Solid Waste Containers in compliance with any and all local ordinances in existence as of the Effective Date of this Agreement. Special consideration shall be given when determining the pick up area for Commercial, and/or Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. Additionally, if in City's opinion the location of an existing pick up area is inappropriate, City may require the customer to relocate the pick up area.

5.1.4 City Facilities' Collection

Company shall Collect and dispose of all Solid Waste generated at public facilities and events at no charge to City.

The Company will also provide an annual curbside Spring Clean-up program for all Customers in the City at no charge to the City or to the Company's customers. The Company will coordinate this program with the City to facilitate safe and efficient service delivery. The collection schedule and Spring Clean-up program may be modified from time to time as mutually agreed upon by Company and City. The City and the Company will coordinate the Spring Clean-up program with Metro to make the program eligible for grant funding, if available.

5.2 Recyclable Materials Collection

5.2.1 Residential Recyclables

Company shall Collect Recyclable Materials weekly from the Containers provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Residential Recyclable Materials Collection will be on the same day of the week as Solid Waste Collection service. For purposes of this section, Recyclable Materials shall be sorted by the Company into no more than four groups and shall include, at a minimum, metal and plastic containers, glass containers, newspaper and mixed paper, and cardboard. Notwithstanding the foregoing, Company shall Collect Recyclable Materials from the side or back yard of those Single Family Dwelling Units

that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.2.2 Commercial Recyclables

Company shall Collect Recyclable Materials at the subscribed service level from Company-provided Containers. For purposes of this section, Recyclable Materials shall include, at a minimum, metals, plastic, glass, newspaper, mixed paper and cardboard.

5.2.3 City Facilities' Recyclables

Company shall Collect and dispose of all Recyclable Materials generated at public facilities and events and in accordance with the schedule identified in Exhibit 1 at no charge to City. For purposes of this section, Recyclable Materials shall include, at a minimum, metals, plastic, glass, newspaper, mixed paper and cardboard. The collection schedule may be modified from time to time as mutually agreed upon by Company and City.

5.2.4 Diversion Goal

Company will meet the recycling goals of the Regional Solid Waste Management Plan as adopted by Metro, and promote ongoing efforts as other recycling "best practices" become available and also help identify methods of reuse when applicable. It is expected that achievements in existing programs will increase as a result of the plans and programs required by this Agreement and described in the Company's proposal. Company agrees to work diligently to promote and expand Recycling programs to meet these goals. Best efforts shall be made by Company to achieve the Recycling Diversion goal.

5.3 Yard Debris Collection

Company shall Collect Yard Debris from the carts provided by Company which have been delivered for Collection to the Curbside by the Waste Generator. Company shall provide weekly curbside Collection of Green Waste on the same day as Solid Waste Collection from the Service Area's Single Family Dwelling Units. Standard Collection service shall be semi-automated or automated Collection, unless another method is

approved by City. City approval will not be unreasonably withheld. Notwithstanding the foregoing, Company shall Collect Yard Debris from the side or back yard of those Single Family Dwelling Units that either qualify as elderly or handicapped as defined by City or that pay the approved rate for this higher level of service.

5.4 Operations

5.4.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected from Residential Premises and 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 Friday. Annually, on or before the service day preceding the affected Holiday, Company shall notify City and customers in writing of the alternate Collection day when the regularly scheduled Collection day falls on Christmas Day or New Year's Day.

Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all Solid Waste Collected under this Agreement with City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports or complaints. If the plan is determined to be inadequate by City, Company shall revise the plan, incorporating any changes into a revised plan, and review said revised plan with City within thirty (30) calendar days.

When notified of a missed pick-up, Company shall Collect the Solid Waste within one (1) business day. For residential service, a business day shall mean Monday through Friday, excluding Christmas and New Year's Day.

5.4.2 Vehicles

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

B. Specifications. All vehicles used by Company in providing Solid Waste Collection services shall be registered with the Oregon Department of Motor Vehicles. All such vehicles shall have bodies designed to prevent leakage, spillage or overflow.

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. Upon reasonable notice, City may inspect vehicles at any time to determine compliance with this Agreement. 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 it requests.
- 3) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be removed from service until repaired and operating properly. 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.

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

Equipment shall comply with 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.

5.4.3 Containers

A. Residential Solid Waste Containers. Company shall provide 21-gallon, 35-gallon, 65-gallon, or 95-gallon carts for single-family residential Solid Waste Collection. Residential customers shall be given an opportunity to select the initial cart size and to change their cart size not more than once each year.

B. Residential Recycling Containers

Company shall furnish a 95-gallon cart and a 14-gallon bin to each Single-Family Residential Dwelling Unit for the collection of Recyclable Materials.

C. Residential Yard Debris Containers

Company shall furnish 65-gallon carts for collection of Yard Debris from Single-Family Residential Dwelling Units.

D. Non-Residential Solid Waste and Recycling Containers. Company shall furnish customers appropriate Containers to Collect Solid Waste and Recycling at Multi-Family Dwelling Unit, commercial, and other Premises upon customer request. Containers with a capacity of one cubic yard or more shall be available in standard sizes. The kind, size and number of Containers furnished to particular customers shall be as determined mutually by the customer and Company. Containers which are front-loading bins shall have lids. All Containers with a capacity of one cubic yard or more shall meet applicable regulations for Solid Waste bin safety, shall have reflectorized marking (unless normally located in an enclosure), shall be maintained in good repair with neatly and uniformly painted surfaces, and shall prominently display the name and telephone number of Company.

5.4.4 Litter Abatement

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

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

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

5.4.5 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 such 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.

5.4.6 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.

5.4.7 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, Recyclable Materials, or Yard Debris. Compensation or gratuity shall exclude holiday gifts.

5.4.8 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.

5.4.9 Change in Collection Schedule

Company shall notify City thirty (30) days prior to, and residential customers not later than two (2) weeks prior to, any change in the residential Collection schedule which results in a change in the day on which Solid Waste Collection occurs. Company will not permit any customer to go longer than the customer's scheduled service frequency in connection with a Collection schedule change. City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

5.4.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

Company shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) 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.

5.5 Contingency Plan

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

5.6 Transportation of Solid Waste, Recyclable Materials, and Yard Debris

5.6.1 Transportation of Solid Waste

The Company shall transport all Solid Waste collected under Section 5.1 to the Disposal Site. Company agrees to identify commercial and industrial containers containing significant quantities of Recyclable Materials and offer the Waste Generator commercial recycling service.

The Company shall maintain accurate records of the quantities of Solid Waste transported to the Disposal Site and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of the Disposal Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

5.6.2 Transportation of Recyclable Materials

The Company shall transport all Recyclable Materials collected under Section 5.2 to a processing Site meeting all applicable local, state, and federal licensing and permitting regulations.

The Company shall maintain accurate records of the quantities of Recyclable Materials transported to the processing Site and will cooperate with City in any audits or investigations of such quantities.

The Company shall cooperate with the operator of the Processing Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, and so forth.

5.6.3 Transportation of Yard Debris

The Company shall transport all Yard Debris collected under Section 5.3 to a properly permitted processing Site.

The Company shall maintain accurate records of the quantities of Yard Debris transported to the processing Site and will cooperate with the processing Site in any audits or investigations of such quantities.

The Company shall cooperate with the processing Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, and so forth.

5.7 Disposal of Solid Waste

Company shall dispose of all Solid Waste collected under Section 5.1 at the Disposal Site. If the Disposal Site becomes unable to accept and dispose of City's Solid Waste for reasons outside the Company's control, the Company shall, with the prior approval of City, to the extent it is legally able to do so, transport and dispose of City's Solid Waste at another Disposal Site that results in the lowest possible transportation and disposal cost. Additional transportation and disposal cost incurred in delivering the Solid Waste to another Disposal Site will be the responsibility of Company to recover from the Owner of the Disposal Site.

5.8 Service Exceptions; Hazardous Waste Notifications

5.8.1 Hazardous Waste Inspection and Reporting

Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to collect Hazardous Waste put out with Solid Waste. Company shall notify all agencies with jurisdiction, if appropriate, including

the Oregon Department of Environmental Quality and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Manager or the City Manager's designee.

5.8.2 Waste Generator Notification

When Solid Waste is not Collected from any Residential Waste Generator, Company shall notify the Waste Generator in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made. When Solid Waste is not Collected from any Commercial Waste Generator, Company shall notify customer by phone of the reasons why the Collection was not made.

5.8.3 Hazardous Waste Diversion Records

Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from service recipients within City, but diverted from landfilling.

ARTICLE 6
OTHER SERVICES

6.1 Services and Customer Billing

6.1.1 Service Description

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

6.1.2 Billing

Company shall bill and collect from persons receiving Collection and Disposal services at Rates fixed by City from time-to-time. City shall approve the form and content of the billings. Billing shall be performed either monthly or quarterly for each account, but in no event less frequently than once per quarter. Company may terminate Collection service to Solid Waste accounts that become more than sixty (60) days past due, following thirty (30) days written notice. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from customers who are habitually delinquent.

6.1.3 Customer Billing List

Upon request from the City, Company shall prepare a current and complete summary billing list (containing the number of accounts by service category). Company shall provide City a copy of such billing list.

6.1.4 Review of Billings

At least annually, Company shall review its Billings to customers under Section 6.1.2. The purpose of the review is to determine that the amount which Company is billing

each customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, location of Container) being provided to such customer by Company. Company shall distribute new route books to its drivers as needed to reflect changes in customer service levels. Each driver is to provide the service level shown in the route book, adding and subtracting customers and changing service levels, as necessary. Route supervisors shall periodically check the routes to ensure that drivers are providing service in accordance with their route books.

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

6.2 Customer Service

6.2.1 Local Office

Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Company shall be available during office hours for communication with the public 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 or voice-mail service available at said after-hours telephone number.

6.2.2 Complaint Documentation

All service complaints shall be directed to Company. Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint.

All written customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (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 to City during business hours and at no cost. City shall, at any time during regular Company business hours, have access to Company's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

6.2.3 Resolution of Customer Complaints

A customer dissatisfied with Company's decision regarding a complaint may ask City to review the complaint. Company shall provide the customer with the number of the City 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 City Manager and/or City's designated representative(s) to resolve customer complaints. City shall designate in writing a "City Liaison" who shall be responsible for working with Company and/or Company's designated representative to resolve customer complaints.

6.3 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with ORS 459A.035. Company agrees

to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, disposed, diverted or otherwise handled/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 for the Rate Year ending June 30, 2008 are those established by a Resolution of the West Linn City Council to be adopted at the same session as this Agreement is accepted by the City Council. 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 if the City sets Rates as set forth in the attached Exhibit 1, those rates have been calculated to generate an amount of revenue necessary to compensate Company for its costs (including Disposal) and profit and to cover City's Franchise Fees and other City fees, if any.

The Rates shall be fixed and shall not be increased to reflect decreases in revenues below those anticipated by City and Company, nor decreased to reflect increases in revenues above those anticipated by City and Company.

7.3 Subsequent Rates

7.3.1 Company's Compensation for Interim Years

For Rate Years between Detailed Rate Years, (Years Two, Four, Six, and Eight), Rates shall be adjusted as described below and illustrated in Exhibit 2. For purposes of this calculation, Rates shall be composed of three (3) components: a monthly Collection Rate, a monthly Disposal Rate, and a Franchise Fee, as shown in Exhibit 2.

A. Monthly Collection Rate Adjustment

The monthly Collection Rate shall be adjusted upward or downward to reflect eighty percent (80%) of the change in the Portland-Salem Consumer Price Index (CPI) for the most recent twelve (12) month period ending December 31, for all urban consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

B. Monthly Disposal Rate Adjustment

The monthly Disposal Rate shall be adjusted upward or downward to reflect the Metro disposal rate in effect on March 1 of the then current year.

C. Franchise Fee Adjustment

The Franchise Fee component shall be calculated by multiplying the monthly Collection Rate (as calculated in Section 7.3.1.A) by 0.05.

D. Total Monthly Service Rate

The total monthly service rate shall be the sum of the monthly Collection Rate plus the monthly Disposal Rate plus the Franchise Fee.

7.3.2 Company's Compensation for Detailed Rate Years

A. Company's Application

If requested by Company or City, on or before March 1 of every other year, Company shall submit a Calculation of Rate Adjustment as described below. The calculation shall be based on the Company's audited financial statements for the preceding Fiscal Year. Company shall assemble, provide, and submit such information that is

necessary to support the assumptions made by Company with regard to the assumptions underlying the forecast.

City shall use its best efforts to make the adjustment effective by July 1. However, City shall not make any retroactive adjustments to compensate for any delay in calculating the Company's Compensation which results in whole or in part from the failure of the Company to submit its request by March 1 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 calculation to City which extends the process.

B. Determination of Company's Compensation.

City, or its representative, will review Company's application for compliance with this Agreement, accuracy, and reasonableness. Company's Compensation shall consist of the forecasted annual cost of operations, profit and forecasted pass-through expense, calculated as set forth below.

1) Forecasted Annual Cost of Operations for Detailed Rate Years.

The forecasted annual cost of operations consists of the sum of:

- (a) Forecasted labor-related costs;
- (b) Forecasted vehicle-related costs;
- (c) Forecasted other costs; and,
- (d) Forecasted depreciation expense.

2) Determination of Sums.

Each of these sums shall be determined as follows:

- (a) Determination of Actual Costs.** Company's financial statement and supporting schedules will be reviewed to determine Company's costs for each of the foregoing categories during the most recently completed Rate Year immediately preceding any Detailed Rate Year. City will determine that

Costs have actually been incurred and have been assigned to the appropriate category.

- (b) Adjustment of Actual Costs.** City may adjust the actual costs in four ways: (1) to exclude any non-allowable costs, set out below; (2) to exclude and/or reduce any costs which were not reasonably incurred in and necessary for the performance of the services provided in accordance with this Agreement; (3) to account for an adjustment that carries forward into the following Rate Year; and, (4) to adjust for changes in service demand that materially affects Company's cost of operations.

Costs that are non-allowable consist of the following:

- (1) Payments to individuals who are directors and/or owners of Company unless paid as reasonable Compensation for services actually rendered;
- (2) Promotional, entertainment and travel expenses not directly related to the performance of services required by this Agreement;
- (3) Payments to repair damage to property of third parties or City for which Company is legally liable above one thousand dollars (\$1,000) per occurrence and ten thousand dollars (\$10,000) per Rate Year;
- (4) Fines for penalties of any nature;
- (5) Liquidated damages assessed under Section 12.3 of this Agreement;
- (6) Federal or state income taxes;
- (7) Charitable or political donations;
- (8) The amount (if any) of rental or lease charges for Collection vehicles which is greater than the cost of

acquisition of the vehicles depreciated over seven (7) years, plus interest costs;

- (9) Attorneys' fees and other expenses incurred by Company in any court proceeding in which City and Company are adverse parties, unless Company is the prevailing party in such proceeding;
- (10) Attorneys' fees and other expenses incurred by Company in any court proceeding in which Company's own negligence, violation of law or regulation, or wrongdoing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed, and attorneys' fees and expenses incurred by Company in a court proceeding in which the legal theory or statute providing a basis of liability against Company also provides for separate potential liability for City arising from the action of its citizens or rate payers (such as in a CERCLA lawsuit), unless Company is the prevailing party in such proceeding;
- (11) Payments to affiliates for products or services related to vehicle maintenance and repair in excess of current market Rates for those products or services;
- (12) Payments to affiliates for all other products or services in excess of cost to the affiliate for those products or services;
- (13) Goodwill; and,
- (14) Any additional Costs related to Company's unilateral decision to utilize an alternative Transfer Station or Disposal Site.

(c) Forecast of Costs. Allowed Costs of operations for the most recently completed Rate Year prior to a Detailed Rate Year, will

be multiplied by the change in the appropriate indices compiled and published by the United States Department of Labor, Bureau of Labor Statistics, as described below:

- (1) Labor-related costs will be forecasted for the Detailed Rate Year by: (1) multiplying the allowed labor-related costs by one (1) plus the percentage change in the Portland-Salem Consumer Price Index (Urban Wage Earners; 1982-84 = 100) between the Index most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding index published twelve (12) months earlier, and (2) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted labor-related costs for the next Detailed Rate Year;
- (2) Vehicle-related costs will be forecasted for the Detailed Rate Year by: (i) multiplying the allowed vehicle-related costs by one (1) plus the percentage change in the Portland-Salem Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor, Bureau of Labor Statistics between the Index most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding index published twelve (12) months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted vehicle-related costs for the next Detailed Rate Year;
- (3) Other costs will be forecasted for the Detailed Rate Year by: i) multiplying the allowed other related costs by one (1) plus the percentage change in the national Producer Price Index Industrial Commodities between the Index

most recently published prior to submission of the Request for Adjustment of Company's Compensation and the corresponding Index published twelve (12) months earlier, and ii) multiplying the result of step one by the same percentage change used in step one. The result is the forecasted other costs for the next Detailed Rate Year. Other costs shall include Yard Debris per ton Processing Costs; and,

(4) Depreciation shall be calculated based on the total agreed-upon depreciable value included in Company's proposal using seven years for vehicles, ten years for Containers, and twenty-five (25) years for buildings and improvements.

(d) Profit. Profit for Detailed Rate Years shall be calculated by dividing the forecasted annual costs, as described in Section 7.3.2.B.2(c), for the next Detailed Rate Year by 0.88 and subtracting the forecasted annual costs of operations for the next Detailed Rate Year from the dividend. No profit shall be calculated on pass-through expenses as calculated in Section 7.3.2.B.2(e).

(e) Pass-Through Expenses for Detailed Rate Years. The forecasted pass-through expense shall be determined by calculating the sum of:

(1) Forecasted Transfer and Disposal Expense. The forecasted transfer and disposal expense for Detailed Rate Years shall result from multiplying the tonnage of Solid Waste forecasted to be Disposed of by: 1) the effective transfer and Disposal rate for the Detailed Rate Years under review; or, 2) an alternative rate if approved by the appropriate regulatory agency but not yet placed in effect; or, 3) if no such rate has been placed

in effect, then that rate in effect at the time Company's Request for Adjustment to Compensation is submitted shall be used.

- (2) **Forecasted Interest Expense.** The forecasted interest expense for Detailed Rate Years shall be calculated by subtracting actual interest earnings (if any) from actual interest expense (if any) for the most recently completed Rate Year. The interest rate used to determine interest expense shall not exceed the one (1) year prime rate plus two percentage (2%) points in effect at the end of the most recently completed Rate Year.
- (3) **Agreement Preparation and Negotiation.** Company shall reimburse City for City's cost of the preparation and negotiation of the Agreement. Payment shall be due in full on or before the effective date of this Agreement. Said amount shall be allowed as a pass-through expense and shall be amortized on a straight-line basis over the eight-year term of the Agreement.

- (f) **Forecasted Franchise Fees.** The forecasted franchise fees for Detailed Rate Years shall be calculated in accordance with the appropriate methodology for the relevant fees using current forecasted Detailed Rate Year values.

C. Limitation on Rate Adjustments

Notwithstanding the foregoing, except for changes in Company's fuel costs, in no event shall any rate exceed the average of the current rate granted by Clackamas County and jurisdictions in Clackamas County and their franchised haulers.

7.4 Variances from Projections

The Company assumes all risk of variations from the revenue projection such that the Company shall retain any revenue from actual revenue being greater than projected but shall not be compensated for actual revenue being less than projected.

In addition, calculations of the Rates shall not be adjusted for past variances of actual revenues from those projected. However, adjustments in Metro's tip fees shall be passed through to the rates at the cost to Company, with no adjustment for profit.

7.5 Interim Rate Adjustment

In the event City directs the Company to change its operations in accordance with Section 3.2.5 of this Agreement 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 Metro, 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.

7.6 Subsequent Rates

From time to time and based on changes to the Rates, as described above, 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.

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 the Annual Report from Company at which time Company shall be present and shall participate, to review the Solid Waste Collection, services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection to achieve a continuing, advanced Solid Waste Collection 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 Solid Waste 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 Collection Services and to contain costs and minimize impacts on Rates.
- b) Any specific plans for provision of changed or new services by Company.

The reports required by 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 Solid Waste 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 Solid Waste Services and Performance Review Hearing.

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

ARTICLE 9
RECORDS, REPORTS AND INFORMATION REQUIREMENTS

9.1 General

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

9.2 Records

9.2.1 General

Company shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. 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 among the service types (residential, commercial and drop box) and to the City.

9.2.3 Solid Waste Records

Company shall maintain records for City relating to:

- a) Customer services and billing;
- b) Weight and volume of Solid Waste, Recyclable Materials and Yard Debris. Information is to be separated between Single-Family Dwelling Units and Commercial premises.
- c) Routes;
- d) Facilities, equipment and personnel used;
- e) Facilities and equipment operations, maintenance and repair;
- f) Disposal of Solid Waste;
- g) Complaints; and,
- h) Missed pick-ups.

9.2.4 CERCLA Defense Records

City views the ability to defend against CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.) and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in City was taken for Disposal, as well as where it was not taken, to be matters of concern. Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in City was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 5.6 for five (5) years after the term during which Collection services are to be provided pursuant to this

Agreement, or to provide copies of such records to City. Company agrees to notify City's Risk Manager and City Attorney before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

9.2.5 Disposal Records

Company shall maintain records of Disposal of all Solid Waste Collected in City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Solid Waste services to City, Company shall provide all records of Disposal or processing of all Solid Waste Collected in City within 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 are responsive to the objectives and audiences for each report. City and Company will mutually agree upon the format of each report. Company agrees to submit all reports on computer discs in a mutually agreed upon format at no additional charge, if requested by City. Company will provide a certification statement, under penalty of perjury, by the responsible Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within thirty (30) calendar days after the end of the report month. Quarterly reports shall be submitted within forty-five (45) calendar days after the end of the quarter. Quarters end on September 30, December 31, March 31, and June 30. Annual reports shall be submitted before September 30th 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 Quarterly Reports

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

A. Regular Services

- 1) Solid Waste Collected by Company, sorted between Single-Family Dwelling Units and Commercial Premises and the Disposal Site used, in tons.
- 2) Complaint summary, for month and cumulative for report year, summarized by nature of complaints.
- 3) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.
- 4) A summary or copy of the Hazardous Waste records required under Section 5.8.
- 5) Other information or reports that City may reasonably request or require.

B. Summary Assessment. Provide a summary assessment of the overall Solid Waste program from Company's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives

of this Agreement and ORS 459A. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

9.3.3 Annual Report

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

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

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, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court actions brought by any of the aforementioned agencies, with regard to Company's operations in the State of Oregon. Copies shall be submitted to City simultaneously with Company's filing or submission of such matters with said agencies. Company's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

9.4.2. Failure to Report.

The refusal or failure of Company to 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 the Agreement as described in Section 11.1 and shall subject Company to all remedies which are available to City under the Agreement or otherwise.

ARTICLE 10
INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

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

Company, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or

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

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

10.2 Hazardous Substances Indemnification

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

remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or Household Hazardous Waste (Collectively, "Waste") at any places where Company Collects and transports, processes, stores, or disposes of City Solid Waste, 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 which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by City or the deposit with City by Company of the insurance policies described in this provision. Company shall maintain insurance policies meeting the following specifications at all times during the term of this Agreement.

10.3.1 Minimum Scope of Insurance.

Coverage shall be at least as broad as:

- 1) Comprehensive General Liability or Commercial General Liability insurance.
- 2) Automobile Liability insurance.
- 3) Workers' Compensation insurance as required by the State of Oregon and 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: Five Million Dollars (\$5,000,000) aggregate, One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
- 2) Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.
- 3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the State of Oregon and Employers Liability limits of \$1,000,000 per accident.
- 4) Environmental Impairment Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for the release of pollution into the environment.

10.3.3 Deductibles and Self-Insured Retentions.

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

- b) Company's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
 - d) Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 2) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for City.
- 3) All Coverage - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

10.3.5 Acceptability of Insurers.

The insurance policies required by this 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. City reserves the right to review copies of all required insurance policies, at City Hall, upon the reasonable request of City.

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

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

10.3.7 Contractors and Subcontractors.

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

10.3.8 Required Endorsements

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

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

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

- a) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

- b) "City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."
- c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

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 Thousand dollars (\$100,000). The letter of credit or Performance Bond shall be in a form acceptable to City (see Exhibit 3). 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.

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 which it is 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 any or all of Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property 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 such event:

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

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

C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, 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.

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

11.2 Temporary Possession of Company's Property

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

11.3 Billing and Compensation to City during City's Possession

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

11.4 City's Right to Relinquish Possession

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

11.5 Duration of City's Possession

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

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default

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

- A. Fraud or Deceit.** If Company practices any fraud or deceit upon City.
- B. Insolvency or Bankruptcy.** If Company becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Company in a bankruptcy proceeding.
- C. Failure to Maintain Coverage.** If Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement unless such insurance becomes unavailable.
- D. Violations of Regulation.** If Company violates any orders or filings of any regulatory body having jurisdiction over Company, which orders or filings have a material impact on Company's ability to perform this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred.
- E. Failure to Perform.** If Company ceases to provide Collection services as required under this Agreement for a period of two (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 which violates the terms, conditions, or requirements of this Agreement, ORS 459 and ORS 459A, as it

may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or 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.

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 11.1.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 contract should

be terminated. In the event City decides to terminate this contract, 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 and to take possession of Company's Facility are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that City may have.

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

12.3 Liquidated Damages

12.3.1 General.

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

are, at best, a means of future correction and not remedies which make the public whole for past breaches.

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

The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 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 FK

City
Initial Here Uaj

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 commence service to a new customer account within seven (7) days after order: \$150.00
 - b) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established customer account on the scheduled Collection day and not Collected within twenty-four hours which exceeds four (4) such failures annually: \$150.00
 - c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same customer on four (4) consecutive scheduled pickup days: \$150.00
- B. Collection Quality**
- a) For each occurrence of damage to private property which exceeds eight (8) such occurrences annually: \$250.00
 - b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments which exceeds four (4) such occurrences annually: \$150.00
 - c) For each occurrence of excessive noise or discourteous behavior which exceeds four (4) such occurrences annually: \$250.00
 - d) For each failure to clean up Solid Waste spilled from Containers which exceeds four (4) such failures annually: \$150.00
 - e) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds four (4) such occurrences annually: \$250.00
- C. Customer Responsiveness**
- a) For each failure to initially respond to a customer complaint within one (1) business day: \$100.00
 - b) For each failure to process customer complaints to City as required by Article-6.2: \$500.00

D. Timeliness of Submissions to City

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

- a) Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day
- c) Service Plans for Special Events \$500 each

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, in which case the provisions relative to taking possession of Company's land, equipment and other property and engaging Company's Personnel in Article 10 and this Article 11 will apply.

12.5 Notice, Hearing and Appeal of City Breach

Should Company contend that City is in breach of this Agreement, it shall file with the City 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 to. 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 or Company shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents. Neither Company nor its officers, employees, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

13.2 Compliance with Law

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

13.3 Governing Law

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

13.4 Jurisdiction

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

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

13.5 Assignment

13.5.1 Company's Assignment

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 without the prior written approval of the City.

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.

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 Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best 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 Collection and Transportation of Solid Waste generated within City.

13.6 Contracting or Subcontracting

Company shall not engage any contractors or subcontractors for Collection or transport of Solid Waste without the prior written consent of City. Company is expressly permitted to subcontract for the collection and handling of infectious medical waste that is generated in the City.

13.7 Binding on Assigns

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

13.8 Transition to Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with City and subsequent company(ies) to assist in an orderly transition which will include Company providing route lists and billing information. Company will not be obliged to sell Collection vehicles, bins and Containers 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, bins and Containers.

13.9 Parties in Interest

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

13.10 Condemnation

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

13.11 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below, be faxed to the number 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:

Mr. Fred A. Kahut
West Linn Refuse & Recycling, Inc.
1600 S.E. Fourth Avenue
P.O. Box 1285
Canby, OR 97013
(503) 557-3900
(503) 263-6477 (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.

13.12 Representatives of the Parties

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

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

13.13 City Free to Negotiate with Third Parties

During the Term of this Agreement, City may investigate all options for the Collection, transporting, and Disposal of Solid Waste after the expiration of the Term. Without limiting the generality of the foregoing, City may solicit proposals from Company and from third parties for the provision of Collection services, and may negotiate and execute agreements for such services that will take effect upon the expiration or earlier termination under Section 12.1 of this Agreement.

13.14 Compliance with Municipal Code

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

13.15 Privacy

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

13.16 Attorney Fees and Cost Recovery

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

14.5 Agreement

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

14.6 Severability

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

14.7 Exhibits

Each of the Exhibits identified as Exhibit "1" through "5" is attached hereto and incorporated herein and 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 or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

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

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

CITY OF WEST LINN

("City")

ATTEST: 
CITY RECORDER

By: 
CITY

APPROVED AS TO FORM:

WEST LINN REFUSE & RECYCLING, INC.

("COMPANY")


CITY ATTORNEY

By: 

Name:

Title: president

By: _____

Name:

Title:

EXHIBITS

EXHIBIT 1
INITIAL RATES

Initial Rates 2009

**Residential Cart Service
(including Recycling and Yard Debris)**

		<u>Curbside</u>				<u>Backyard</u>	
		<u>Collection Frequency</u>				<u>Collection Frequency</u>	
		Monthly	Weekly			Monthly	Weekly
Cart Size (gallons)	21	\$ 9.07	\$ 18.13	Cart Size (gallons)	21	\$ 10.62	\$ 21.23
	35	\$ 10.81	\$ 21.61		35	\$ 12.64	\$ 25.29
	65	n/a	\$ 34.58		65	n/a	\$ 40.46
	95	n/a	\$ 38.04		95	n/a	\$ 44.50

**Mobile Home/Condo. Cart Curbside Service
(including Recycling and Yard Debris)**

		<u>Collection Frequency</u>
		Weekly
Cart Size (gallons)	35	\$ 15.99

Commercial Cart Service

		<u>Collection Frequency</u>
		Weekly
Cart Size (gallons)	35	\$ 21.61
	65	\$ 34.58
	95	\$ 38.04

Extra Trash Service

Bags up to 32 gallons	\$ 7.20
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Hourly Hauling Rates

Truck with 1 Person	\$ 52.45 per hour plus disposal
Truck with 2 Persons	\$ 70.85 per hour plus disposal

Major Appliances

\$ 5.00 min., appliances with freon compressors \$35.00 ea.

Tires (less than 10)

Up to 750 x 16	\$5.00 off rim / \$ 7.50 on rim
Over 750 x 16	\$7.50 min per tire + current disposal rate

Commercial Refuse Container Service 2009						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 84.78	\$ 178.03	\$ 271.29	\$ 364.54	\$ 457.80	\$ 551.06
1.5 YARD	\$ 129.50	\$ 271.94	\$ 414.39	\$ 556.83	\$ 699.28	\$ 841.73
2 YARD	\$ 155.40	\$ 326.33	\$ 497.27	\$ 668.20	\$ 839.14	\$1010.08
3 YARD	\$ 233.09	\$ 489.49	\$ 745.89	\$1002.29	\$1258.68	\$1515.09
4 YARD	\$ 310.78	\$ 652.64	\$ 994.51	\$1336.37	\$1678.23	\$2020.10
6 YARD	\$ 512.79	\$1076.85	\$1640.92	\$2204.93	\$2769.05	\$3333.11

Additional Commercial Refuse Container						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 93.25	\$ 195.83	\$ 298.42	\$ 401.00	\$ 503.58	\$ 606.16
1.5 YARD	\$ 142.45	\$ 299.13	\$ 455.83	\$ 612.51	\$ 769.20	\$ 925.90
2 YARD	\$ 170.94	\$ 358.96	\$ 547.00	\$ 735.03	\$ 923.05	\$1111.00
3 YARD	\$ 256.40	\$ 538.43	\$ 820.47	\$1102.51	\$1384.56	\$1666.60
4 YARD	\$ 341.86	\$ 717.91	\$1093.96	\$1470.00	\$1846.06	\$2222.10
6 YARD	\$ 564.06	\$1184.53	\$1805.00	\$2425.48	\$3046.01	\$3666.43

Commercial Container Trash & Recycling Rates - Compacted						
Number of stops per week/charges per month						
Collections/Week						
Bin Size	1.00	2.00	3.00	4.00	5.00	6.00
1 YARD	\$ 205.15	\$ 430.83	\$ 656.52	\$ 882.20	\$1107.88	\$1333.55
1.5 YARD	\$ 313.39	\$ 658.09	\$1002.83	\$1347.52	\$1692.24	\$2036.98
2 YARD	\$ 376.07	\$ 789.71	\$1203.40	\$ 1617.07	\$2030.71	\$2444.20
3 YARD	\$ 564.08	\$1184.55	\$1805.03	\$2425.52	\$3046.03	\$3666.52
4 YARD	\$ 752.09	\$1579.40	\$2406.71	\$3234.00	\$4061.33	\$4888.62
6 YARD	\$1240.93	\$2605.97	\$3971.00	\$5336.06	\$6701.22	\$8066.15

EXHIBIT 2

RATE ADJUSTMENT METHODOLOGY

West Linn Refuse & Recycling, Inc.

Rate adjustment effective January 1, 2009

Rate Adjustment Methodology Interim Years (Section 7.3.1)

	Line Item Description	Source	Residential	Commercial
A	Initial Rate (July 2007)	Exhibit 1	\$ 21.28	\$ 83.53
B	Disposal Portion	Company Proposal Form 10 (Disposal/Rate Revenue)	22.41%	25.32%
C	Disposal Rate	Initial Rate x Disposal Portion	4.77	21.15
D	Franchise Fee %	Section 4.1.1.	3.00%	3.00%
E	Franchise Fee	Initial Rate - Disposal Rate x Franchise Fee %	0.50	1.87
F	Collection Rate	Initial Rate - Disposal Rate - Franchise Fee Amt	16.02	60.51
G	Additional 2% Franchise Fee	Section 7.3.1.A.	2.00%	2.00%
H	January 2009 Collection Rate	Collection Rate x 1 + Additional 2% Franchise Fee	16.34	61.72
I	<i>Change in Metro Tipping Fee</i>	** Metro - Regional Environmental Management **	0.00%	0.00%
J	January 2009 Disposal Rate	Disposal Rate x 1 + Change in Metro Tipping Fee	4.77	21.15
K	Franchise Fee	Jan. 2009 Collection Rate ÷ 0.97 - Jan. 2009 Collection Rate	0.51	1.91
L	January 2009 Total Rate	Jan. 09 Collection Rate + Jan. 09 Disposal Rate + Franchise Fee	\$ 21.61	\$ 84.78

Note: July 2002 rate was the pass-through increase in Metro tipping Fees from \$62.50 per ton to \$66.25 per ton

Note: September 2004 Metro tipping fee went to 70.96 per ton

Note: September 2006 Metro tipping fee went to 69.86 per ton (but was 71.41 Sept 05 - Sept 06).

Note: January 1, 2009 Franchise fee increase from 3% to 5%

EXHIBIT 3
FAITHFUL PERFORMANCE BOND

Company's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That West Linn Refuse & Recycling, Inc., an Oregon Corporation, as PRINCIPAL, and Amwest Surety Insurance Co., a Corporation organized and doing business by virtue of the laws of the State of Oregon, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Oregon, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of One hundred thousand dollars (\$100,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "SOLID WASTE, RECYCLING AND YARD DEBRIS COLLECTION SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste, Recycling and Yard Debris generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2008.

an Oregon Corporation

By: _____

(PRINCIPAL)

(SEAL)

SURETY

By: _____

(ATTORNEY IN FACT)

(SEAL)



AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

CREDIT NUMBER: 53-147
ISSUE DATE: November 6, 2006

BENEFICIARY	APPLICANT
City of West Linn City Manager Office 22500 Salamo Road West Linn, OR 97068	West Linn Refuse & Recycling, Inc. 1600 SE 4 th Avenue Canby, OR 97013

We hereby issue this Amendment to the above captioned Irrevocable Standby Letter of Credit as follows:

Effective as of January 1, 2009, decrease Irrevocable Standby Letter of Credit # 53-147 from \$400,000.00 to \$100,000.00.

Amend Letter of Credit #53-147 to expire on December 31, 2009; This letter of credit shall be automatically extended for additional consecutive period[s] of one year from the present or each future expiration date unless Issuing Bank has notified Beneficiary in writing, not less than sixty (60) days before such expiration date, that Issuing Bank elects not to renew this letter of credit. Issuing Bank's notice of such election shall be sent air courier to the above address of the Beneficiary

All other terms and conditions remain unchanged.

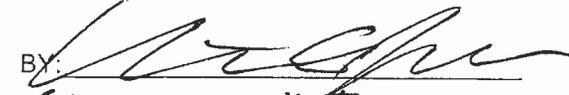
The Beneficiary is requested to sign a copy of this amendment in acknowledgement and acceptance or rejection of the terms changed herein. The signed copy is to be returned to West Coast Bank, 25977 S.W. Canyon Creek Road, Suite J, Wilsonville, Oregon 97070, Attn: Standby Letter of Credit Operations.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" ("UCP") International Chamber of Commerce Publication No. 600 and shall in all respects be deemed part hereof as fully as if incorporated herein and shall apply to this Letter of Credit. This Letter of Credit shall be governed by and construed in accordance with the laws of the State of Oregon, United States of America, except to the extent such laws are inconsistent with the "UCP".

Accepted Rejected

City of West Linn

West Coast Bank

BY: 
Christopher A. Jordan, CMA
Name Title

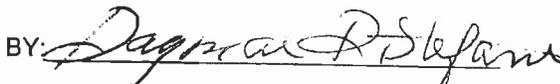
BY: 
Dagmar DiStefano **VP**
Name Title

EXHIBIT 4
NOTARY CERTIFICATION

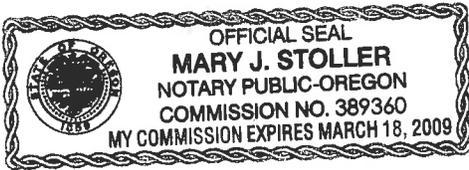
NOTARY CERTIFICATION

STATE OF OREGON

COUNTY OF CLACKAMAS

On November 17, 2008, before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared Fred A. Kahut
_____, known to me to be the President of Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of Clackamas this 17th day of Nov., 2008.



Mary Stoller
Notary Public

My Commission Expires: 3/18/2009

EXHIBIT 5
CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the 12th day of November, 2008, by West Linn Refuse and Recycling, Inc. , a corporation organized under the laws of the State of Oregon (hereafter "Guarantor"), to the City of West Linn, a municipal corporation (hereafter the "City").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. West Linn Refuse & Recycling, Inc. (hereafter "Contractor") is a corporation organized under the laws of the State of Oregon. The majority of the issued and outstanding stock of Contractor is owned by the shareholders of Guarantor.

B. Contractor and City have negotiated a Franchise Agreement for Solid Waste, Recycling and Yard Debris Collection Services dated as of November 12, 2008, (hereafter "Agreement"), under which the Contractor is granted the right to and assumes the duty of collecting Solid Waste, Recyclables and Yard Debris generated within the City and arranging for its transport, processing, and disposal. A copy of this Agreement is attached hereto and incorporated herein by this reference.

C. It is a requirement of the Agreement, and a condition to the City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy and observe them in the place of the Contractor. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Agreement.

2. **Guarantor's Obligations are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement.

3. **Waivers.** The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement; (3) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives the right to require the City to (a) proceed against the Contractor, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may now hold or hereafter hold. Guarantor agrees that the City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other

indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; or (d) any assignment of the Agreement is effected which does not require City's approval.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorneys' fees and all other costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to the Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of Oregon and shall be governed and construed in accordance with the laws of Oregon without regard to its conflicts of laws or rules for all purposes, including but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of Oregon and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in Oregon:

Mr. Fred A. Kahut

Name

1600 S.E. Fourth Avenue

Address

Canby, Oregon 97013

City, State, Zip

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. **Subordination.** Any claims Guarantor may have against Contractor are hereby subordinated to any and all claims of the City against Contractor until such time as the obligations of Contractor to City are fully satisfied and discharged.

Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follow:

To the City:
City Manager
City of West Linn
22500 Salamo Road
West Linn, OR 97068

With a copy to the City Attorney, at the same address.

To Guarantor:
Mr. Fred A. Kahut
West Linn Refuse & Recycling, Inc.
1600 S.E. Fourth Avenue
P.O. Box 550
Canby, OR 97013

IN WITNESS HEREOF, Guarantor has executed this Guaranty on the day and year first above written.

West Linn Refuse and Recycling, Inc.

By: Fred A Kahut

Title: President

By: _____

Title: _____