

## RESOLUTION NO. 2317

### A RESOLUTION APPROVING AN EXCLUSIVE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT OF OREGON TO PROVIDE SOLID WASTE COLLECTION SERVICES WITHIN THE CITY OF TROUTDALE

#### THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The current solid waste franchise was authorized on January 1, 2008 and expires on December 31, 2015.
2. Section 8.40.050 of the Troutdale Municipal Code provides that the franchise agreement for solid waste shall be authorized by a resolution of the Council and may, from time to time, be changed by resolution of the Council.
3. The City Council held a work session on April 7, 2015 to discuss the option of conducting a competitive process for the solid waste and recycles services franchise.
4. The City Council found the service level, customer relations, employee relations, community involvement, safety record, and cleanliness of operation of Waste Management of Oregon acceptable and directed staff to renew the franchise agreement with Waste Management of Oregon.
4. The new franchise agreement includes revisions to bring the agreement up to date with changes in the solid waste industry and to meet the needs of the community.

#### NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The mayor is authorized to sign the attached exclusive franchise agreement with Waste Management of Oregon for collection services within the City of Troutdale.

Section 2. This resolution is effective immediately upon adoption.

**YEAS: 5**

**NAYS: 2** Councilor White, Councilor Wilson

**ABSTAINED: 0**

*Doug Daoust*

Doug Daoust, Mayor

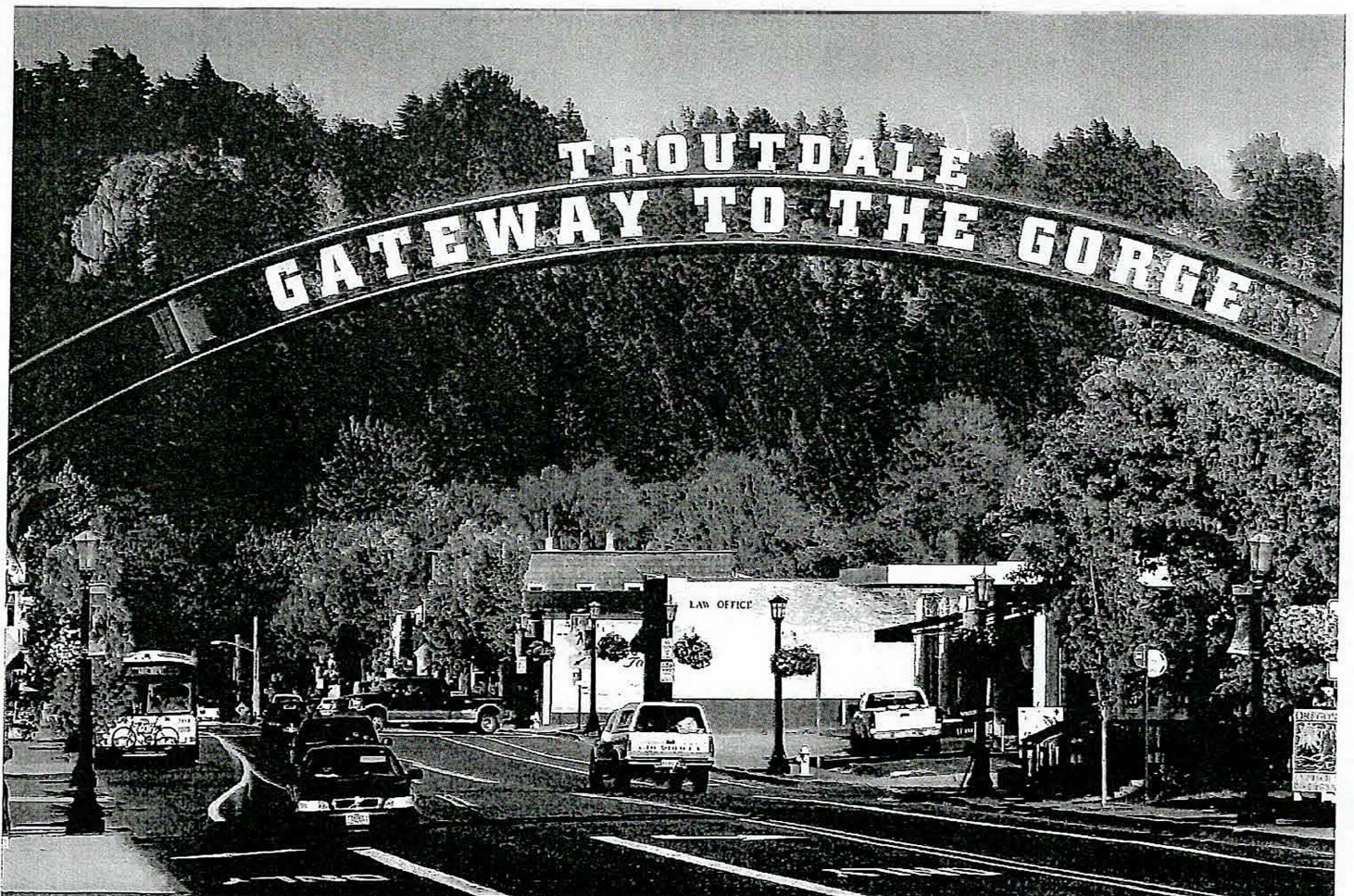
*11/13/15*

Date

*Sarah Skroch*

Sarah Skroch, City Recorder

Adopted: November 10, 2015



Exclusive Franchise Agreement  
with Waste Management of  
Oregon to Provide Solid and  
Recycling Collection Services  
within the City of Troutdale

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**SECTION 1. Short Title.**

This franchise agreement shall be known and may be cited as the "Solid Waste Management Franchise Agreement" and referred to herein as the "Franchise".

**SECTION 2. Purpose.**

The purpose of this franchise shall be to:

1. Ensure safe, economical, and comprehensive Solid Waste and Recycling service;
2. Ensure that rates are just, reasonable, and adequate to provide necessary public service;
3. Prohibit rate preferences and any other practice that might be discriminatory; and
4. Provide for technologically and economically feasible recycling and resource recovery by and through the Franchisee.

**SECTION 3. Definitions.**

**Agreement.** Refers to the body of this Franchise Agreement contained in Sections 1 – 35.

**Allowable Expenses.** Those expenses incurred by the Franchisee in the performance of this Agreement that are allowed by the City as reimbursable by the ratepayer as enumerated below. Allowable Expenses are allowable only to the extent that such expenses are known and measurable, calculated according to Generally Accepted Accounting Principles (GAAP) on an accrual basis and when applicable, prorated or allocated to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable expenses shall include, but not be limited to the following:

1. The costs of complying with all laws, regulations or orders applicable to the Franchisee's obligations under federal, state or local law, including this ordinance, as now or hereafter amended;
2. Disposal costs;
3. Labor costs, including operational and supervisory labor, payroll taxes workers' compensation, and benefits;
4. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
5. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;
6. Performance bonds and insurance in the amounts and coverages required by the City;
7. Administrative expenses related to data processing; billing and supplies, finance and accounting, franchise administration, human resource and labor management, rate analysis, and regulatory compliance;

8. Compensation paid to officers;
9. Utilities;
10. Training and worker safety expenses;
11. Promotion and public education costs;
12. Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and outgoing basis in the provision of services under this franchise over standardized economic useful lives of the various assets.
13. Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
14. Interest expense, other than interest paid with respect to route or franchise acquisition that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
15. All surcharges, taxes or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
16. Direct write-off charges for bad debts; and
17. Franchise fees assessed by the City.

**Bulky Waste.** Large items of solid waste such as appliances, furniture, tree branches greater than 4 inches in diameter and 36 inches in length, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

**City.** City of Troutdale.

**Collection or Collection Service.** All or any part of the activities involved in collecting and transporting solid waste, recyclable materials or yard debris to an appropriate disposal or recycling facility.

**Collection Franchise.** A franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service and to use City streets.

**Commercial.** Stores, offices including manufacturing and industrial offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include business manufacturing or processing activities in residential dwellings.

**Compactor.** Any self-contained, power-driven, mechanical equipment designed for the containment and compaction of Solid Waste or Recyclable Materials.

**Compensation. Includes:**

1. Any type of consideration paid for service, including but not limited to rent, the proceeds from resource recovery, and any other direct or indirect provision for the payment of money, goods) services or benefits by owners, tenants, lessees, occupants, members or similar persons; or
2. The exchange of service between persons; or
3. The flow of consideration from one person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning, possessing, or generating the solid waste.

**Construction and Demolition Debris.** Used or discarded construction materials removed from a premise during construction, demolition or renovation of a structure where a city permit has been issued.

**Container** means a receptacle ranging in volume from 1, 1.5, 2, 3, 4, 5, 6 and 8 cubic yards for the storage and Collection of Solid Waste, Recyclable Materials, or Organic Waste provided by the Franchisee.

**Council.** The City Council of the City of Troutdale.

**Commingled Recycling.** The collection of various types of recyclable material in one commingled cart (excluding glass, which shall be collected separately).

**Curbside.** A location within three (3) feet of the edge of a public street. The street may be a public alley if the Franchisee desires to pick up receptacles from the alley. This does not allow the receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three feet of said road or roads. For residences on a flag lot, or other private driveway, or any private street not meeting the standards, "curbside" shall be the point where the driveway or private street intersects the public street, or at such other location agreed upon between the Franchisee and customer or as determined by the City.

**Customer.** Those generators of solid waste, recyclable materials, or yard debris to whom a franchisee provides collection service.

**Depot.** A facility for transferring containerized solid waste, recyclable materials, or yard debris from one mode of transportation to another. The term also refers to a place for receiving source-separated recyclable materials.

**Drop Box.** A single container designed for the storage and collection of large volumes of solid waste recyclable materials or yard debris materials that is ten cubic yards or larger in size.

**Force Majeure.** Acts of God, fire, landslides, lightening, storms, floods, freezing, earthquakes, epidemics, volcanic eruptions, public riots, civil disturbances, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, embargoes, or acts of civil or military authority, breakage, explosions or accident to machines or other materials, pipelines or materials, governmental restraint, unavailability of a disposal site and any other event which

could not with reasonable diligence be controlled or prevented by the party affected by the event.

**Franchisee.** The Person granted the exclusive franchise by Section 4 of this franchise or a subcontractor to such person.

**Generator.** A person who last uses a material and makes it available for disposal or recycling.

**Gross Revenue.** The gross receipts derived by the franchisee from fees actually collected from customers for Solid Waste, Recyclable Materials, and Yard Debris collection services and other services provided in the City under this Agreement.

**Hazardous Waste.** A waste as defined in ORS 466.005 (or any successor thereto) and/or solid waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste", pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et Seq., and the Hazardous Waste Management Act, Chapter 466 ORS as amended, and the regulations promulgated thereunder. Hazardous waste shall not include incidental household hazardous waste or small quantity generator waste which is commingled with solid waste.

**Household Hazardous Waste.** 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. Household hazardous waste includes, but is not limited to, some cleaners, solvents, pesticides, automotive, and paint products.

**Infectious Waste.** Biological waste, culture and stocks, pathological wastes, and sharps as defined in ORS 459.386.

**Multifamily.** Any multiple building or group of buildings that contains five or more dwelling units on a single tax lot.

**Off Curb.** An area more than three feet from the edge of a public street.

**Net Income.** Gross Revenues minus Allowable Expenses. This is also referred to as franchise income.

**Operating Margin.** Is the ratio of Net Income to Gross Revenues.

**Organic Waste.** Materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, paper, and putrescible material which are generally a source of food for bacteria.

**Oregon Administrative Rule (OAR)** are Oregon State agency directives, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy.

**Oregon Revised Statutes (ORS)** are the codified body of statutory laws governing the State of Oregon.

**Person.** An individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.

**Processing.** An operation where collected, source-separated recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.

**Putrescible Materials.** Organic materials including, but not limited to bones, meat, grease, fat, food containers contaminated with food waste, prepared vegetable and fruit food waste, manure, feces, sewer sludge, dead animals or similar 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.

**Rates.** The amounts of compensation paid for various levels of solid waste and recycling service.

**Receptacle.** A Roll Cart, Container, or Drop Box provided by the Franchisee used by the customer to contain Solid Waste, Recyclable Materials, or Yard Debris for Collection Service in accordance with the terms of this franchise.

**Recyclable Material, Recyclables.** Any material that has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and is separated from Solid Waste by the Generator or at a Material Recovery Facility.

**Recycling.** The process of collecting, sorting, cleansing, treating or reconstituting recyclable materials which would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new; reused, or reconstituted products.

**Residential.** A single family dwelling or a multifamily dwelling with up to and including four dwelling units on a single tax lot.

**Resource Recovery.** The process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling and reuse.

**Return on Revenues.** The quotient of Net Income divided by the Gross Revenues.

**Roll Carts.** Franchisee provided 20, 35, 60 or 90 gallon plastic carts equipped with wheels, handles, and a tight fitting cover, which are capable of being mechanically unloaded into the Franchisee's collection vehicles.

**Service.** Collection, transportation, storage or disposal of, or resource recovery from, solid waste, or recyclable material, or both.

**Solid Waste.** All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage; rubbish; refuse; ashes; wastepaper and cardboard; commercial, industrial, demolition and construction materials; sewage sludge; septic tank and cesspool pumping or other sludge; discarded or abandoned vehicles or parts thereof; discarded home appliances; manure, vegetable or animal solid or semisolid materials, dead animals, infectious waste as defined in ORS 459.386, special waste and other wastes; but the term does not include:

1. Materials defined as principal recyclable materials in OAR 340-90-070, and any others designated by the City, which have been correctly placed for collection or taken to a Depot by the generator;
2. Hazardous wastes as defined in ORS 466.005; and
3. 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. (OAR 340-90-010(36))

**Solid Waste Collection Service or Service.** The collection, transportation, storage or disposal of or resource recovery of solid wastes, from residential, multifamily, commercial) and industrial generators, as required by City regulations, and administrative rules; and the collection, transportation and processing of recyclable materials and yard debris from residential and commercial generators.

**Solid Waste Management.** The prevention or reduction of solid waste; storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

**Source Separated Recyclable Materials.** Any recyclable material separated from the solid waste stream prior to collection.

**Unallowable Expenses.** Shall include the following:

1. All charitable and political contributions;
2. Fines and penalties, including without limitation judgments for violation of applicable laws, incurred by a Franchisee;
3. Payments for services provided by individuals related by blood or marriage or by affiliated companies to a licensee to the extent that such payments exceed the reasonable cost that would be charged by an independent third party to provide the substantially equivalent service;
4. Accruals for future unknown regulatory changes;
5. Costs associated with purchase of other companies including, but not limited to, employee stock ownership plan payments, goodwill, amortization of goodwill and premiums on key- person life insurance policies;
6. Principal or interest payments on the acquisition of solid waste, recyclable materials and yard debris collection routes; the purchase of equipment and/or facilities to the extent that the price includes goodwill or a premium in excess of fair market value at the time of acquisition;
7. State and federal income taxes;
8. Fees paid to a Franchisee's Board of Directors;
9. Advertising expenses beyond basic collection and recycling promotion and education, and minimal telephone listings under "Garbage Collection" or "Recycling Collection". Display advertisements and entertainment expenses are specifically excluded;

10. Attorney's fees and related expenses resulting from:
  - a. Any judicial proceeding in which the City and a licensee are adverse parties, unless the Franchisee is the prevailing party;
  - b. Any judicial proceeding in which a Franchisee is ruled to be liable due to willful misconduct or gross negligence, or in violation of law or regulation;
11. Any other expenses defined as "unallowable" and approved by the Council.

**Waste.** Material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, "utilized" means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery, or landfilling for reclamation, habilitation, rehabilitation of land.

**Yard Debris.** Compostable materials including grass clippings, leaves, pruning and similar vegetative materials; but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

#### **SECTION 4. Exclusive Franchise and Exemptions**

1. There is hereby granted to Waste Management of Oregon Inc., the Franchisee, an exclusive franchise to provide solid waste collection service to any person within the corporate limits of the City of Troutdale or areas later annexed thereto. The Franchisee shall have the right to use the streets of the City for this purpose. No other Person shall provide Solid Waste Collection Service for compensation, offer to provide, or advertise for, the performance of such service to any owner, tenant, lessee, member, or occupant of any real property in the City.
2. Nothing in this franchise shall:
  - a. Prohibit any person from transporting Solid Waste, Recyclable Materials, or Yard Debris generated by said person to a disposal site or to a resource recovery facility;
  - b. Prohibit any person transporting Solid Waste, Recyclable Materials, or Yard Debris through the City that is not collected nor disposed of within the City;
  - c. Prohibit federal or state agencies that collect, store, transport or dispose of Solid Waste, Recyclable Materials, and Yard Debris or any Person who contracts with such agencies from performing the service if the service is performed by or for such agencies under a written contract with such agencies;
  - d. Prohibit any Person from engaging in the collection of Source Separated Materials for Resource Recovery for the purpose of raising funds for a charitable, civic, or benevolent activity;
  - e. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or a structure, or in connection with land clearing and development, provided such material is being recycled;

- f. Prohibit a Person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service, landscaping, gardening, construction and demolition, tree or rendering service, but a Person shall not provide collection service for any accumulated or stored waste generated by a customer;
  - g. Require Franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided however, that the Franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter;
  - h. Prevent the City from conducting an annual clean-up campaign for the collection of yard debris or other recyclable materials, or solid waste from residences in the City or in any other way providing for the beauty of the City and the safety and convenience of its citizens.
3. Solid Waste, Recyclable Materials and Yard Debris placed out for Collection, which meet the definitions of this franchise, belongs to the Franchisee when so placed.
4. If, at the request of the Franchisee, the City takes administrative, enforcement, or other action against any Person who infringes on the Franchisee's exclusive rights, Franchisee must reimburse the City for its reasonable costs related to such action; however, nothing herein shall be construed to require the City to take such action. Franchisee may independently enforce the exclusivity provision of this Agreement against third party violators, including but not limited to, seeking injunction relief.

#### **SECTION 5. Franchise Term.**

The rights, privileges, and franchise granted herein shall continue for the Franchisee for the period of eight (8) years starting January 1, 2016, unless extended per the provisions of the municipal code.

#### **SECTION 6. Franchise Fee.**

1. The Franchisee will pay to the City a franchise fee equal to five percent of gross revenues, net of franchise fees. The term gross revenues, for purposes of calculating the franchise fee, shall not include federal, state, or local taxes or surcharges, or any revenues generated from the sale of recyclables or any recycling rebates resulting from the Solid Waste Services conducted under the franchise. Such fees shall be computed on a quarterly basis, which consist of the quarters ending March 31, June 30, September 30, and December 31. The fee shall be paid by the Franchisee not later than 30 days following the end of each quarterly calendar year period.
2. In the event that the Franchisee shall pay a franchise fee of more than five percent to any city or municipal corporation within the Portland-Metro area during the duration of this Agreement, the Franchisee shall inform the City of the same and the City shall have the right to require and receive the same percentage as said other city or municipal corporation, to be effective upon the next rate change following a rate review and adjustment process.

3. Deliberate or malicious misrepresentation of gross revenues and franchise fees by the Franchisee constitutes cause for revocation of the franchise.
4. In addition to the above, the Franchisee shall provide support for an annual curbside City clean-up to be held in the spring of each year. Support and assistance shall include, but is not limited to: one-time collection and disposal at the curb of bulky waste and of up to five extra bags of garbage from each residential customer at no additional charge; and providing staffing, equipment and/or services for special events. The costs of providing this service will be allowable costs used to establish appropriate rates.

## **SECTION 7. Rates**

1. The Council, by resolution, shall establish rates for all service levels for Solid Waste, Recyclable Materials, and Yard Debris collection service which the Franchisee may charge for Solid Waste Services and may, from time to time, by resolution, change those rates. The City or the Franchisee may request a rate change whenever a significant change in revenue or expenses occurs or is anticipated. In the event the Franchisee requests a rate adjustment under this Agreement, the City shall consider such request in good faith and shall act upon the request without undue delay, but in no case later than 120 days from the date the request was made.
2. When a new or unusual Solid Waste Service, not included in the rate structure approved by the Council is requested, the Franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the Franchisee shall notify the City Manager or his/her designee in writing of the service provided, the rate established, and the basis for the rate. If the City Manager or his/her designee finds the rate or basis to be unreasonable, the City Manager shall submit the rate to the Council for consideration.
3. The rates that may be charged by the Franchisee for collection service shall conform to the latest schedule on file with the City. Any rate not set by current resolution and charged in the City of Troutdale must be approved by the City Manager or his/her designee prior to implementation.
4. All books, records, accounts, and data relating to Collection Service operations conducted within the City by the Franchisee are subject to inspection and audit by the City or its agents.
5. In determining fair rates, Council will consider all relevant factors, and the City Manager or his/her designee and the Franchisee shall work in good faith to develop and adjust rates, as necessary to allow Franchisee to earn a reasonable rate of return. The City agrees that it shall not unreasonably withhold its consent or unreasonably delay a rate review request submitted by Franchisee.
6. Rates shall be adequate to provide an Operating Margin equal to ten percent (10%) of Franchise Gross Revenues; however, the City shall not be required to change rates if the expected Operating Margin in the reviewed year falls between eight and twelve percent of Gross Revenues. The ten percent target return on Gross Revenues is considered sufficient to reflect the level of business risk assumed by the Franchisee, to allow investment in equipment, and to ensure quality collection service.

## SECTION 8. General Franchisee Responsibility.

The Franchisee shall:

1. Provide collection service for properly prepared Solid Waste, Recyclable Materials, and Yard Debris for all customers within the City in accordance with such standards and specifications as set forth in this franchise and applicable federal, state, county, and local laws and regulations. The Franchisee shall make available for subscription all levels of Solid Waste, Recyclable Materials, and Yard Debris collection services for which the City sets a Rate.
2. Provide sufficient collection vehicles, containers, equipment, facilities, personnel, and finances to provide all types of necessary service.
3. Provide a Receptacle to all customers of Solid Waste, Recyclable Materials and Yard Debris collection services, as set forth more fully in Section 15.
4. Dispose of collected Solid Wastes, Recyclable Materials and Yard Debris at a site approved by the governmental agency having jurisdiction of the disposal of Solid Waste; Recyclable Materials and Yard Debris or recover resources from the Solid Wastes both in compliance with ORS Chapter 459 and 459A, and regulations promulgated thereunder.
5. Provide the opportunity to recycle for all persons within the City in accordance with ORS 459A. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality, Metro rules applicable in the City, and City ordinances, and other governmental agencies having proper jurisdiction. The Franchisee shall collect Recyclable Materials as outlined in this franchise provided the materials comply with the preparation requirements and other requirements set forth in this franchise.
  - a. Residential customers. The Franchisee will provide its Residential customers with weekly Curbside collection or Off Curb collection, if desired, of all properly prepared Recyclable Materials. All recyclables shall be collected commingled in the recycling Roll Cart, except for glass, which shall be collected separately in a glass recycling bin, and motor oil, which shall be collected separately in accordance with Franchisee's collection requirements. Customers that subscribe to Off Curb Collection Service shall pay an additional fee, as set forth in the adopted rate scheduled.
  - b. Multifamily customers. The Franchisee will provide each of its multifamily customers with adequate receptacles for the storage and collection of Recyclable Materials. The Franchisee will provide at least weekly collection of Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.
  - c. Commercial customers. The Franchisee shall offer collection of Recyclable Materials to all existing and new Commercial customers. The Franchisee will provide each of their Commercial customers with receptacles of adequate number and size for the collection of Recyclables. The Franchisee will provide at

least weekly collection of Recyclable Materials unless an alternate schedule is agreed upon by the customer and the Franchisee.

- d. The Franchisee must obtain approval from the City prior to providing collection of additional Recyclable Materials not defined in this franchise as Recyclable Materials, as well as any proposed service standards for collecting such Recyclable Materials.
  - e. The Franchisee shall deliver all properly prepared and collected Recyclable Materials to a processor or broker of Recyclable Materials, or to an end-use market and shall collect and transport Recyclable Materials in the same sortation in which the materials are collected from the Generator. The Franchisee shall not deliver, or cause to be delivered, any collected Recyclable Materials for disposal, unless the Recyclable Materials are improperly prepared and rejected by a commonly used processor, broker or end-market. The Franchisee should not collect Recyclable Materials that are improperly prepared at the time of collection.
6. Provide, at no cost, Collection and disposal of 12 containers, four yards or less that are open to public use in the Central Business District, and collection of dumpsters within Glenn Otto Park and Columbia Park.
  7. Participate in City directed promotion and education efforts.
  8. Permit inspection by the City of the Franchisee's facilities, equipment, records, and personnel at reasonable times.
  9. Collect medical and Infectious Wastes, as defined by ORS 459.386, and comply with all state regulations. The Franchisee is not required to collect medical and Infectious Waste that is not properly prepared and separated. The Franchisee may subcontract with other entities for the collection of medical and Infectious Waste with the approval of the City Manager or his/her designee.
    - a. The Franchisee and /or subcontractor(s) shall conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transportation, storage, treatment, and disposal of medical and Infectious Wastes.
  10. Not be responsible for collecting unacceptable Solid Waste materials, such as liquid fats, non-petroleum oils, semi-solid wastes, flammable materials, sewage sludge, septic tank and cesspool pumping or other sludge; manure, dead animals, and vehicles.
  11. Participate in studies or evaluations for programs and service needs, as proposed by the City.
  12. Maintain passage on public streets. To the greatest extent practicable; the Franchisee shall avoid stopping of collection vehicles while collecting Solid Waste, Recyclable Materials, or Yard Debris so as to block the passage of other vehicles and pedestrians on public streets and sidewalks. Franchisee shall work with City to alter routes to the extent necessary to accommodate special events and/or paving work.
  13. Submit required rate-reporting forms and other reports as required by the City.

14. Limit the hours of Collection of Solid Waste, Recyclable Materials or Yard Debris in predominantly Residential and Multifamily neighborhoods to between the hours of 6:00 a.m. and 6:00 p.m., unless weather or holiday schedules require extended hours of collection. There shall be no limit on the hours of collection activity for any Solid Waste, Recyclable Materials, and Yard Debris in predominantly Commercial and industrial areas.
15. Collect Yard Debris materials provided the materials have been prepared in accordance with the requirements in this franchise.
  - a. Yard Debris materials placed in a solid waste receptacle by a customer who has qualified for yard debris exemption service described in Section 20 of this Franchise shall be collected by the Franchisee notwithstanding that such disposal contravenes the yard debris exemption program. When Franchisee collects the contents of a receptacle under these circumstances Franchisee will apply the procedures in Section 20 of this Franchise as applicable, and will also report the violation to the City Manager or his/her designee as part of the Franchisee's quarterly report required under Section 14(1) of this Franchise.
  - b. The Franchisee shall transport all properly prepared and collected Yard Debris materials to a state approved processor of Franchisees choosing. The Franchisee shall not deliver or cause the delivery of any collected Yard Debris materials for disposal as Solid Waste unless the Yard Debris materials are improperly prepared and the Franchisee has received approval of the City Manager or his/her designee. The Franchisee should not collect Yard Debris that is improperly prepared at the time of Collection.
16. Provide the opportunity for Collection Service for other properly prepared Solid Waste as defined and provided for in this franchise for all persons within the City.
  - a. Tires. The Franchisee shall acquire all necessary permits from the Department of Environmental Quality for the storage and transportation of tires.
  - b. Other solid waste materials shall be collected on a day as agreed upon between the customer and the Franchisee and within seven working days of their request.
17. Pick up all Solid Waste and Recyclable Material I blown, littered, broken, or leaked during the course of Collection.
18. Be responsible for scheduling all Solid Waste, Recyclable Materials, and Yard Debris Collection Services.
  - a. The regular collection frequency for Residential Solid Waste, Recyclable Materials, and Yard Debris Collection Service shall be weekly and on the same day, except for materials defined as Bulky Wastes, unless a customer subscribes to monthly service.
  - b. The collection frequency for Commercial and Multifamily Solid Waste Collection Service shall be at a frequency that is mutually agreed-upon between the Franchisee and the Customer. The collection frequency for Drop Box Compactors may reach but not exceed one collection every 14 days. Collection of Recyclable Materials will occur weekly but may occur less frequently if agreed

upon by the Franchisee and the customer. The Franchisee shall provide occasional or special collection of Solid Waste, Recyclable Materials, or Yard Debris on request by the Customer at a fee approved by the City for such collections.

19. Collect from Residential Customers occasional extra receptacles of Solid Waste or Yard Debris set at the curb as an "extra" beyond a Customer's subscribed service level. The Franchisee may charge the fee established by the City for such "extras", except in cases of missed collections that are the fault of the Franchisee. The Franchisee may require a customer to give 24 hours prior notification of an extra set out that would require extraordinary time, labor, or equipment, or if the Customer has a record of non-payment of charges for extras.

## **SECTION 9. Franchisee Customer Service Requirements**

The Franchisee shall:

1. Respond within 24 hours or by the next business day to customer telephone calls and complaints unless prevented by Force Majeure. Both office and on-route staff shall be knowledgeable and courteous in answering customer information requests and resolving customer complaints regarding Collection Services for Solid Waste, Recyclable Materials, or Yard Debris.
2. Maintain a written log and respond in writing to any written questions or complaints within three working days (weekends and holidays excluded).
3. Provide telephone service so that the Franchisee may be reached by Customers from 8:00 a.m. to 5:00 p.m. daily (weekends and holidays excluded). Franchisee will also provide a means for callers to leave telephone messages, and will return such calls within one working day.
4. Provide notification to new Residential Customers. At the time a new customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the Customer of the following:
  - a. Service level options and rates;
  - b. Billing procedures;
  - c. Issuance of Roll Carts and glass recycling bins;
  - d. The Yard Debris exemption program; and
  - e. Restrictions on the storage of putrescible materials for subscribers to monthly garbage collection.

Additionally, the Franchisee shall provide City-approved written informational materials to all new Customers within seven days of sign up. These materials will include information on Solid Waste, Recyclable Materials, and Yard Debris Collection Service options; rates for these services, including an explanation of extra charges; listing of the Recyclable Materials collected; the collection schedule; the proper method of preparing materials for Collection; and

the reasons that people should recycle. Customers shall also be given written notice of any changes in services.

5. Provide notification to new Multifamily Customers. At the time a new Multifamily Customer contacts the Franchisee to request start-up of Collection Service, the Franchisee will inform the customer of:
  - a. Service level options and rates;
  - b. Billing procedures;
  - c. State of Oregon requirements that all tenants be provided the opportunity to recycle; and
  - d. The availability of Yard Debris collection service.

The Franchisee shall provide City-approved written information on the proper preparation of Recyclable Materials to all new Multifamily Customers within seven days of sign up.

6. Provide notification to new Commercial Customers. At the time the new Commercial Customer contacts the Franchisee to request start-up of Collection Service the Franchisee will inform the customer of:
  - a. Service level options and rates;
  - b. Billing procedures;
  - c. The availability of Collection of Recyclable Materials;
  - d. The availability of Yard Debris Collection Service; and
  - e. The availability and benefits of waste evaluations. The Franchisee will also provide this information to each existing Commercial Customer when any change in level or type of service is made to that customer.

Additionally, the Franchisee shall provide City-approved written information on the proper preparation of recyclable material to all new commercial customers within seven days of sign up.

## **SECTION 10. Missed Collection.**

1. The Franchisee shall respond promptly to reports of missed collections. A complaint of missed collection service received by the Franchisee from a customer or the City that is not due to the late or improper set-out by the customer shall be remedied by collecting the material at no extra charge:
  - a. By 5:00 p.m. of the same day if the report is received prior to 12:00 noon on the normal collection day; or
  - b. Within 24 hours (excluding Saturdays, Sundays, and holidays) if notification is received after 12:00 noon on the normal day of collection; or
  - c. At another time if mutually agreed upon by the Franchisee and the Customer.
2. When a missed collection occurs due to improper or late set out by the Customer, this must be documented by the Franchisee through a verifiable means such as maintaining

a log book for set-outs or annotating the time and status on the route sheet, and in the case of improper set-out, by leaving a notice.

3. The Franchisee shall pick up collections missed due to hazardous weather conditions as weather and road conditions permit, or the customer may set out the missed collection; at no additional charge provided it does not exceed double the subscribed service level, on the subsequent regular collection day. The Franchisee must notify the City immediately of missed collections due to hazardous weather conditions.

## **SECTION 11. Refusal of Collection Service.**

1. The Franchisee may refuse Collection Service when there is a hazardous condition that creates undue hazard or risk to the person providing service, Franchisee's collection vehicles and equipment, private property, or the public. Hazardous conditions may include overhanging branches, steep slopes, unusual topography, wet or icy ground or pavement, vicious animals, low hanging wires or basketball nets, poor access to the point of collection, or locations where the weight of the collection vehicle or equipment would damage private roads, driveways, or bridges. The Franchisee must make a reasonable effort to notify the Customer of the reason for refusal on the same day such refusal occurs. If the Franchisee is unable to notify the Customer on the same day, the Franchisee shall send written notice of the reason for refusal of service to the Customer that same day. If hazardous conditions occur as identified above, and the Franchisee determines that Collection Service shall not occur that day, the Franchisee shall notify the City immediately, and provide a person to receive Customer inquiries on the day of canceled service or, at a minimum, leave a recorded message stating the revised collection schedule. If more than one collection day is affected, the above procedures will be repeated.
2. The Franchisee may refuse Collection Service when the preparation of Solid Waste, Recyclable Materials, or Yard Debris does not satisfy the requirements of this franchise.
3. The Franchisee may refuse Collection Service for a Receptacle that is over the weight limits listed in Sections 16, 19, and 22 of this Franchise. When a Receptacle is overweight, it is the Customer's responsibility to separate materials into additional Receptacles / containers to comply with weight requirements. If the Customer requests, the Franchisee must provide the actual weight of the overweight receptacle by 5:00 p.m. on the business day following the request.
4. The Franchisee may refuse Collection Service when a Receptacle is in a location that does not satisfy the requirements of this franchise.
5. The Franchisee shall leave a written notice at the time of non-collection when it refuses Collection Service as allowed in this franchise. The written notice shall describe the specific reason for refusing service, the actions needed to resume service, and the pick-up options for the materials not collected. The Franchisee shall leave the notice securely attached to the Customer's Receptacle or to the Customer's front door at the time of the refused service. The Franchisee shall document the date, time and reason for refusal of any Collection Service.

6. When there is a refusal to collect materials, the Franchisee will provide collection of double the customer's subscribed service level volume of properly prepared materials at no additional cost, on the subsequent regular collection day.

## **SECTION 12. System and Equipment Requirements**

1. All Solid Waste, Recyclable Materials, and Yard Debris collection vehicles shall be constructed, loaded, operated, and maintained in a manner to reduce to the greatest extent practicable, the dropping, leaking, blowing, sifting, or escaping of Solid Waste, Recyclable Materials, or Yard Debris, vehicle fuel, hydraulic fluid or lubricants from the vehicle onto private property and public streets while stationary or in transit. The Franchisee shall clean up all dropped, leaked, blown, or escaped Solid Waste, Recyclable Materials, or Yard Debris, spilled vehicle fuel, hydraulic fluid or lubricants as soon as practicable. The Franchisee will immediately notify the City of all significant vehicle fluid spills.
2. All open-body vehicles shall have a cover which may either be an integral part of the vehicle or a separate cover for the vehicle. This cover shall be used while in transit except, except when the loading or transportation of Bulky Wastes prevents safe use of this cover.
3. The Franchisee shall ensure that all Solid Waste, Recyclable Materials, and Yard Debris collection vehicles bear a Metro identification tag and are clearly identified with the Franchisee's name and telephone number prominently and conspicuously displayed on both sides of the vehicle.
4. The Franchisee shall ensure that all of its containers, drop boxes, and compactors are clearly identified by displaying the Franchisee's name and telephone number prominently and conspicuously.
5. The Franchisee shall comply with all applicable federal, state and local laws and regulations relating to driving, transportation, collection, disposal and processing of solid waste, recyclable materials, and yard debris. Franchisee will report all vehicle accidents or infractions within the City to the City Manager or his/her designee within the 24 hours of occurrence.

## **SECTION 13. Billing Procedures.**

1. The Franchisee may invoice customers either once per month or once every two months but shall not invoice more than sixty days in advance of the service. Customer payments shall not be due more than thirty-one days before the end of the service' period being billed, nor less than fourteen days after the date of the postmark on the invoice. The Franchisee may require payment at time of service for services requested by customers that are less frequent than monthly. The Franchisee may also require payment at time of service from customers whose accounts are overdue or who have demonstrated a pattern of late or non-payment.
2. The Franchisee shall give a partial vacation credit to customers who stop service for a minimum period of two consecutive weeks and up to three consecutive weeks, and a full vacation credit to customers who stop service for a minimum period of four consecutive

weeks. The Franchisee will calculate and administer vacation credits according to a formula established by the Franchisee and approved by the City. The vacation credit formula must be reviewed and approved by the City prior to implementation.

3. The Franchisee shall provide new Customers with a copy of the billing procedures and shall give the procedures to any Customer upon request. If the Franchisee or Customer determines that there is an error on the invoice, the Customer's account shall be debited or credited for the under billed or overbilled amount if the billing error occurred one year or less prior to the date the error was discovered.

#### **SECTION 14. Reporting and Record Maintenance.**

The Franchisee shall provide to the City:

1. A monthly report listing: the quantities of recyclable materials collected from Troutdale customers during the previous calendar month; the amount of locations to which these materials were delivered for processing or remanufacturing; and other information as requested. The report shall be submitted on a form approved by the City and shall be submitted within 30 days of the last day of the month.
2. A quarterly report listing the names and addresses of Commercial Customers that were offered waste evaluations during the reported month and that received waste evaluations from the Franchisee during the reported months. The report shall be submitted on a form approved by the City and shall be submitted within 30 days following the end of the calendar quarter. A quarterly report providing Residential service and revenue information, Commercial service and revenue information, Drop Box service and revenue information, tonnage data, driver hour data, recycling data, and other relevant information for Collection Service within the City as requested by the City Manager or his/her designee. . The report shall be submitted in a format approved by the City Manager or his/her designee and shall be submitted within 45 days following the end of the calendar quarter.
3. The annual detailed cost report for collection operations within the City or other location in the Portland hauling district for the calendar year. The report details the total revenues, total costs, driver hour and customer count information, disposal information, container counts, a recycling summary, the value received or cost paid per ton for the Recyclable Materials, and other relevant information necessary to determine if the collection rates provide the Franchisee and adequate Operating Margin (Section 7). This report shall be submitted in a format approved by the City Manager or his/her designee and shall be submitted within 90 days following the end of the calendar year.
4. Other reports as required by the City.
5. The City has the authority to commission audits, reviews, or analysis of reports submitted by the Franchisee to validate the accuracy of the submissions.
6. Franchisee will prepare and maintain all records at Franchisee office during the Term and for an additional period of
  - a. Not less than 3 years following the expiration or termination of the Agreement; or

- b. The period of time necessary to allow the City to complete a review, audit or inspection in accordance with this Section, or
- c. Any longer period required by Applicable Law. Franchisee will prepare and maintain records in electronic format acceptable to City, such as Microsoft Excel files or PDF files. Franchisee will use Reasonable Business Efforts to promptly provide City with any additional records or other information relevant to this Agreement.

## **SECTION 15. Roll Carts and Other Receptacles.**

1. Franchisee shall provide 20, 35, 60 or 90 gallon Roll Carts to all Customers of Solid Waste, 35 or 60 gallon Roll Carts for Recyclable Materials, and 60 gallon Roll Carts for Yard Debris Collection Services, which Customers shall be required to use as their primary Receptacles. The default roll cart size for Recyclable Materials and Yard Debris shall be 60 gallons; however, Customers may request and receive a smaller 35 gallon cart with no reduction to the base service rate. The Roll Carts shall be color coordinated by the type of service being provided (e.g., green body with yellow lid for recyclables, green body and green lid for solid waste, etc.) as mutually agreed upon by the Franchisee and the City. All Solid Waste and recycling Roll Carts shall be equipped with a bungee cord or other lid device, to help secure the cart lid and reduce litter potential. Franchisee may charge customers an additional fee for Roll Cart repair or replacement due to lost carts or damage beyond ordinary wear and tear attributable to the customer.
2. The Franchisee shall provide all Receptacles that are mechanically collected, except that a Commercial Customer may arrange with the Franchisee to provide a Compactor. A Commercial or Multifamily Customer may provide its own mechanically collected receptacles subject to compatibility with the Franchisee's equipment and the Receptacle requirements of this franchise. All Compactors shall comply with applicable federal and safety regulations and shall be compatible with the Franchisee's equipment.
3. The Franchisee shall provide a recycling Roll Cart (and a separate recycling bin for glass) to each Residential Customer and other Customers as agreed to between the City and the Franchisee.
4. In the event that a Customer damages a cart or requests more than one replacement cart more frequently than a time period allowing for reasonable wear and tear during the term of the Agreement, or due to negligence or intentional misuse, a replacement Roll Cart(s) or bins shall be provided to the Customer for an amount equal to the cost incurred by the Franchisee to purchase such carts or bins.
5. In the case of carts or bins missing when a customer has moved out of premises served by Franchisee, the Franchisee may bill such customer for the replacement cost or require that the carts or bins be returned to the service address.
6. Receptacles provided by the Franchisee or customer shall be designed for safe handling, non-absorbent, vector resistant, durable, leak-proof, and, except for drop boxes and glass recycling bins, provided with tight fitting watertight lids or covers that can be readily removed or opened. Receptacles must remain watertight and free of holes throughout their period of use.

7. Customers must use Franchisee provided Roll Carts as their primary Receptacle, but may use their own cans or bins as supplementary receptacles (subject to extra charges). The Franchisee shall take care not to damage receptacles.
8. The customer shall ensure that Household Hazardous Waste, chemicals, paint, corrosive materials, medical and Infectious Waste, or hot ashes are not put into a can, cart, container, or drop box. The Franchisee may invoice a customer for the cost to repair or replace a receptacle owned by the Franchisee when the customer does not take reasonable care to prevent abuse, fire damage, vandalism, excessive wear, or other damage to the receptacle.
9. The Franchisee shall leave emptied receptacles in a location that does not obstruct mailboxes, the sidewalk, fire hydrant, or impede traffic flow or on-street parking. The Franchisee is responsible for closing Receptacles as securely as possible to prevent lids from blowing away or rain from getting into the Receptacles. The Franchisee shall secure Receptacles in the same manner as the customer secured the Receptacle to prevent Receptacles from blowing away. All garbage and recyclables Roll Carts shall include a Franchisee provided bungee cord or other lid device to help secure such roll carts. When possible, the Franchisee shall place drop boxes on private property locations.
10. The Franchisee is not required to remove Customer owned receptacles from an in-ground or "sunken" location.
11. The Customer shall remove each emptied Receptacle from the set out location and return the Receptacles to the Customer's yard or storage area within 24 hours of collection.
12. Receptacles provided by the Franchisee are the property of the Franchisee. The Customer shall leave the Franchisee's receptacles at the service address when the Customer moves. Any receptacles for the collection of extras provided by the Customer are the property of the Customer.

## **SECTION 16. Public Responsibility.**

1. The following requirements shall pertain to service under this franchise:
  - a. All Residential, Multifamily and Commercial properties in the City shall provide for collection of Solid Waste, Recyclable Materials, and Yard Debris in accordance with this franchise and may not utilize the services of a collector other than the Franchisee for the collection of Solid Waste, Recyclable Materials, or Yard Debris unless authorized under Section 4 of this Agreement.
  - b. The owner of any Residential or Multifamily dwelling complex who rents, leases or lets dwelling units for human habitation shall subscribe to and pay for Collection Service with the Franchisee on behalf of his/her tenants or, if the dwelling complex has four or fewer units, self-haul Solid Waste from tenants to a Metro approved disposal facility; and provide a sufficient number of Receptacles of adequate size to prevent the overflow of Solid Waste,

Recyclable Materials, and Yard Debris from occurring; and provide for sufficiently frequent, but at least weekly, collection of Solid Waste and Recyclable Materials, except for Compactors, which shall be collected at least every 14 days; and if the dwelling has four or fewer units and the owner is self-hauling tenants' Solid Waste, provide for the same level and frequency of collection of Recyclable Materials and yard debris as is required of the Franchisee. The owner is responsible to provide proof of compliance with this requirement upon request of the City.

- c. No 35 gallon garbage Roll Cart shall weigh more than 60 pounds (gross) loaded weight and no 60 gallon garbage roll cart shall weigh more than 120 pounds (gross) loaded weight. No Customer provided can used for extra collections shall exceed 32 gallons in size and weigh more than 60 pounds. Cans for extras shall be tapered so that they are larger at the top and shall have handles at the top and a place for a handhold at the bottom as well as a lid.
  - d. Sunken refuse cans shall not be installed and will not be serviced by Franchisee unless they are placed above ground-by the Customer.
  - e. The Customer shall provide safe access to the pick-up point which does not jeopardize the persons or equipment supplying service or the motoring public.
2. To protect the privacy, safety, pets, and security of Customers and to prevent unnecessary physical and legal risk to the collectors, a Residential Customer shall place the Roll Cart to be emptied outside any closed gate or outside any garage or other building. The Receptacle shall also be placed in a location that does not obstruct mailboxes, water meters, the sidewalk, fire hydrants, driveways, or impede traffic flow or on-street parking. The Customer shall provide for reasonable vertical clearance for Receptacles picked up away from the Curbside or roadside.
- a. Residential customers must place Receptacles at the Curbside unless the Customer subscribes to Off-Curb Collection Service. Special placement arrangements for mobility impaired Customers, or those whose lots are not physically configured to allow Curbside placement, may be made by agreement between the Customer and the Franchisee.
  - b. Multifamily and Commercial Customers shall set Solid Waste, Recyclable Materials, and Yard Debris Receptacles at a location that is readily accessible and safe to empty or load that does not require the Franchisee to go up and down stairs, and that is agreed-upon by the Franchisee and the Customer. The owner of any Multifamily complex with five or more dwelling units shall provide tenants with separate location(s) for receptacles or Depots for the collection of four or more types of Recyclable Materials and must provide a sufficient number of collection areas to accommodate the reasonable needs of the Generators for which the owner is responsible.
  - c. The Customer shall place Roll Carts at the Curbside or roadside or at such other location agreed-upon by the Customer and their Franchisee.

- d. When possible, the customer should arrange for Drop Boxes to be placed on private property locations.
  - e. The customer shall place Compactors at a location that protects the privacy, safety, and security of the Customers that provides access needed to prevent unnecessary physical and legal risk to the Franchisee and that is agreed-upon by the Customer and the Franchisee.
3. Any Person who receives service shall be responsible for payment for said services.
  4. The Customer is responsible for proper placement of Solid Waste, Recyclable Materials, and Yard Debris receptacles by 6:00 a.m. on the Customer's designated collection day.
  5. A Customer may not deduct the cost of past unreported missed collections from the Customer's invoices.
  6. The Customer is responsible for requesting a vacation credit from the Franchisee. The Customer may request a vacation credit to stop service for a minimum period of two consecutive weeks and must give at least 48 hours advance notice to the Franchisee of the request for service suspension.
  7. Putrescible solid waste shall be removed from the premises of a Customer at regular intervals not to exceed 7 days. An exemption may be made to this rule for the storage of putrescible materials in a Compactor that is totally sealed, non-leaking and non-odorous. Putrescible waste stored in such a Compactor may be stored for no more than 14 days.
  8. Stationary Compactors for handling Solid Waste shall comply with applicable federal and state safety regulations. No such Compactor shall be loaded so as to exceed the safe loading design limit or operation limit or weight limit of the collection vehicles used by the Franchisee. A Person who wishes services for a Compactor shall acquire a Compactor approved by the Franchisee which is compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire and shall provide the Franchisee with a key to access and transport such Compactor.
  9. When Customer abuse, fire, the nature of discarded materials, or vandalism causes excessive wear or damage to a Roll Cart, Container or Drop Box, the cost of repair or replacement may be charged to the Customer. The Customer shall take appropriate actions to ensure that Hazardous Waste, chemicals, paint, corrosive materials, Infectious Waste or hot ashes are not put into a roll cart, container, or drop box.
  10. The Customer shall promptly notify the Franchisee about a missed collection or billing error.

## **SECTION 17. General Customer Preparation of Materials.**

1. The Customer shall place Solid Waste, Recyclable Materials and Yard Debris safely and securely in the Receptacles to prevent lightweight materials from blowing away prior to being collected.
2. All loose and lightweight waste items capable of becoming wind-blown debris shall be placed in a bag so as to prevent this occurrence. If waste materials are not secured in bags and

the items become wind-blown debris prior to collection, the Customer may be charged the cost to clean up the preventable spill.

3. The Customer shall load the contents of a Receptacle in such a manner that the contents fall freely from the Receptacle when emptied by the Franchisee. The Franchisee shall not be responsible for digging the contents out of a Receptacle.

4. The Customer shall not overfill a Roll Cart or Container so that the lid cannot be securely closed. The Customer is responsible for closing and latching the Receptacle as securely as possible to prevent the lid or materials from blowing away or rain from getting into the Receptacle.

5. The Customer shall bag cold ashes, animal wastes, kitty litter and other fine materials separately from other Solid Waste. The Customer may dispose of these materials in the Solid Waste Receptacle.

## **SECTION 18. Customer Preparation of Recyclable Materials.**

1. Recyclables from Commercial and Multifamily customers shall be prepared in accordance with City-approved instructions provided by the Franchisee.
2. Residential Customers may include the following Recyclable Materials Commingled in recycling Roll Carts and shall prepare these materials generally outlined below and in alignment with the proper sorting requirements as agreed upon between the City and the Franchisee per the current material list of local processors:

**Aerosol Cans.** Cans must be completely empty. Do not crush or flatten. Remove all paper labels and plastic lids. Leave the nozzle buttons in place.

**Aluminum.** Include aluminum cans, aluminum foil and food trays. Remove all organic material.

**Plastic Bottles and Jugs.** Include plastic bottles (type 1-7) with a neck smaller than the base. Remove lids, caps, and pumps, rinse out, and flatten. Do not include bags, motor oil, pesticides or other hazardous material bottles.

**Scrap Metal.** Limit any single piece of metal to 30 inches in any direction and 30 pounds.

Do not include appliances, car parts, bicycles, or lead batteries.

**Fiber.** Includes office paper, scrap paper (opened unwanted mail, envelopes, paper egg cartons, cereal and shoe boxes, post-its, wrapping paper, etc.), newspaper, magazines brown paper bags, and corrugated cardboard that is flattened and not larger than 36 inches in any direction. Do not include foil, waxy or plastic paper, or food contaminated paper.

**Steel (tin) cans.** Remove labels and rinse. May include steel can ends and jar/bottles lids.

**Plastic tubs.** Includes plastic tubs 6 oz. or larger, buckets (5 gallons or less), and rigid nursery pots (4 inches or larger).

In addition, the following materials shall be prepared and collected separately:

**Glass bottles and jars.** Remove lids and rinse containers. Do not include broken glass, drinking glasses, cooking ware, plate glass, safety glass, light bulbs, ceramics, and non-glass

materials. Glass bottles and jars shall be source separated by the customer in glass recycling bins.

**Motor oil.** Place in a clear leak proof, unbreakable plastic container of not more than one gallon each with a screw on cap. Do not include other fluids.

**SECTION 19. Customer Preparation of Yard Debris Materials.**

1. The Customer may place Yard Debris in 60 gallon Roll Carts provided by Franchisee. Any excess Yard Debris that does not fit within the closed lid of the Yard Debris Roll Cart may be set alongside such cart in 32 gallon cans; in "kraft" type yard debris paper bags, or in bundles, and shall be assessed an extra charge, based on fees established by the City, and such excess Yard Debris shall only be collected if properly prepared. The Customer must securely tie bundles with string or twine to support the bundle when lifted. Bundles may be no greater than 48 inches in length and 18 inches in diameter. The Customer shall not use plastic bags to contain Yard Debris for Collection.
2. The Customer is responsible for including only those materials that meet the definition of Yard Debris provided in Section 3 of this Agreement. "
3. The Customer shall limit the weight of a Receptacle and its contents to the maximum weights listed as follows:

Receptacle Type / Capacity	Maximum Weight
60 gallon roll cart	120 pounds
Bundled yard debris	60 pounds
"kraft" paper bag (30-gallon)	45 pounds
32-gallon can	60 pounds

4. The Customer is responsible to mark all rigid Yard Debris Receptacles for excess material with a "yard debris only" sticker provided by the Franchisee. The "yard debris only" sticker needs to be clearly visible from the street. Kraft bags containing Yard Debris must be clearly identifiable as such from the street.

**SECTION 20. Yard Debris Exemption Program**

1. Residential Customers may request exemption from curbside Yard Debris Collection Service if they compost or use their Yard Debris for on-site land application, or retain a person that (a) hauls their Yard Debris to a state approved processor and (b) is licensed to conduct business within the City. Customers approved for this exemption will have the monthly cost of providing Yard Debris Collection deducted from their invoices and must comply with all terms of the Yard Debris Collection exemption program agreement. A Residential Customer interested in receiving an exemption from Yard Debris Collection Service must request and submit a completed application to the Franchisee.

2. A Customer will remain exempt from Yard Debris Collection Service and the accompanying charges unless he/she receives a notice of disqualification, discontinues Collection Service or voluntarily reinstates curbside collection of Yard Debris.
3. If a Customer is found in violation of the Yard Debris Collection exemption agreement, the Franchisee will issue written warning and an explanation of the violation to the Customer. If a Customer is found in violation for a second time, the Franchisee will issue a notice of disqualification from the yard debris collection exemption program and reinstate curbside collection of yard debris and the associated charges.

**SECTION 21. Other Solid Waste (Customer).**

1. The Customer shall set other Solid Waste out at the time and location agreed upon with the Franchisee.
2. The Customer shall place medical and Infectious Wastes in appropriate Receptacles. The Customer shall not place medical and Infectious Waste materials into a Receptacle for Collection with Solid Waste, Recyclable Materials, or Yard Debris. The Customer should contact the Franchisee for information on proper disposal options.
3. The Customer is responsible to prepare other wastes as agreed upon with the Franchisee.

**SECTION 22. Allowed Weight of Receptacles.**

1. The Customer shall limit the weight of a Solid Waste Receptacle and its contents to the maximum weights listed as follows:

<b>Receptacle Type / Capacity</b>	<b>Maximum Weight</b>
20 gallon roll cart	35 pounds
32 gallon can (for extras)	60 pounds
35 gallon roll cart	60 pounds
60 gallon roll cart	120 pounds
90 gallon roll cart	145 pounds

2. The weight of material put into a Container or Drop Box, whether compacted or not, shall not exceed the lifting capacity of the Franchisee's equipment nor shall the weight put the Franchisee over the weight limit for the loaded vehicle. The Franchisee shall furnish their customers with information concerning limitations on their equipment, upon request. A Franchisee is not required to collect Containers exceeding 350 pounds gross loaded contents per loose cubic yard; but if an overweight container is collected, the Franchisee may charge the compacted rate, as set forth in the adopted rate schedule. If Drop Boxes are overloaded to exceed the weight limit for a loaded vehicle, the Customer shall be charged for any fine resulting from overweight ticket.

## **SECTION 23. Transfer, Suspension, Modification, or Termination of Franchise**

1. The Franchisee shall not transfer this franchise or any portion thereof without the prior written approval of the City Council, but such consent shall not be unreasonably withheld. The City Council in reaching its decision may consider, among other factors, whether the transferee meets all applicable requirements met by the original Franchisee. Any transfer without the prior written consent shall be void and shall be grounds for termination of this franchise.
2. The Franchisee shall not discontinue or terminate service to the City without approval of the Council. Council approval is contingent upon arrangements being made to ensure that there is no interruption of service between the time of the Franchisee's scheduled service termination date and the date of service start-up by a replacement Franchisee. Council approval must be received not less than 90 days before termination of service. Upon approval of the Council, the Franchisee must give at least 60 days notice of the service discontinuation to the affected Customers along with information of the new service provider.
3. If the Franchisee fails to comply with the terms of this Franchise; ORS Chapter 459 and 459A or the rules and regulations promulgated thereunder; other applicable ordinances of the City; or is unable to provide adequate service, the City shall provide the Franchisee with written notice of such noncompliance. After receiving the aforementioned written notice from the City, the Franchisee shall have 30 days from the date of mailing of the notice in which to comply. The Franchisee may request a public hearing before the City Council if the Franchisee makes such a request within ten days from the mailing date of written notice from the City. In the event of a public hearing the Franchisee and other interested Persons shall have an opportunity to present information and testimony subject to procedures established by the City Council. Failure to comply with written notice from the City to provide necessary service or otherwise comply with the provisions of this franchise after written notice and a 30 day opportunity to comply shall be grounds for modification, termination, or suspension of the Franchise.

## **SECTION 24. Preventing Interruption of Service**

In the event the City Council finds an immediate and serious danger to the public, creating a health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to the Franchisee, authorize another person to temporarily provide service under this Franchise, or the City may provide such service. In either event, the Franchisee agrees as a condition to the Franchise that any of his/her real property, facilities, or equipment may be used without additional consideration to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of the service.

## **SECTION 25. Interruption or Termination of Service**

The Franchisee shall not terminate Solid Waste, Recyclable Material, or Yard Debris Collection Service to a Customer unless:

1. The street or road access is unavoidably blocked through no fault of the Franchisee, and there is no reasonable alternate route or routes to serve all or a portion of the affected Customers; or
2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service, or if such interruption or termination is caused by a Force Majeure; or
3. An undisputed bill has not been paid by a Customer for services rendered within 60 days of the billing due date. In such case, the Franchisee may terminate service after notifying the customer in writing of the intention to terminate service, postmarked not less than seven (7) days prior to the date of intended termination of service. The Franchisee shall not take any action to collect any portion of an unpaid bill subject to a dispute or terminate service for an unpaid bill subject to a dispute until there is resolution of the dispute. The Franchisee shall have a City-approved written policy for resolving disputed billings. The Franchisee must provide a copy of the disputed billing policy to the City for review and approval prior to implementation; or
4. If the provisions of Section 11 are met.

**SECTION 26. Subcontracts.**

The Franchisee may subcontract with others to provide only a specialized service under this franchise. Such subcontracts shall not relieve the Franchisee of any responsibility for compliance with this franchise. No such subcontract is enforceable without prior written approval by the City.

**SECTION 27. Specialized Services.**

The City reserves the right to contract with others to supply specialized service to recycle materials if the Franchisee chooses not to recycle such materials or supply services for such materials to be recycled.

**SECTION 28. Amendments Clause.**

This franchise may only be amended by written agreement between City Council and the Franchisee.

**SECTION 29. Compliance with Applicable Law**

1. Compliance. Franchisee will comply with all applicable laws. No obligation in this Agreement will be construed to relieve the Franchisee of any obligations imposed by applicable law.
2. Franchisee is solely liable for all fines and penalties that may be imposed on Franchisee or may be due to Franchisee's actions, including fines and penalties that are the result of Franchisee's violation of applicable law (including permits). Franchisee will not seek direct or indirect reimbursement from City or Customers for any fines or penalties.
3. Provisions of applicable law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to City.

4. Franchisee acknowledges that City is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Management services to protect the public's health, safety, and welfare. No provision in this Agreement may be deemed to limit the power of City to regulate the Franchisee or to take any action as City deems appropriate or necessary in City's sole and absolute discretion, under City's police power, including to protect the public's safety, health and welfare.

## **SECTION 30. Insurance**

Franchisee must provide the following insurance coverages including any necessary endorsement, schedule or other documentation, and maintain them at all times during the Term:

1. General Liability Insurance. Written on ISO policy form CG 00 01 (occurrence) or its equivalent (and not CG 00 02 claims made) with limits of not less than the following:

General Aggregate:	\$4 million
Products/Completion Operations Aggregate:	\$4 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$2 million
2. Liability coverage for pollution conditions resulting from transported cargo. With a limit of not less than \$2 million per occurrence covering loss (including cleanup costs) that the Franchisee becomes legally obligated to pay as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, City or third parties) resulting from pollution conditions caused by transported cargo (including waste). For the purpose of this subsection, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered. Franchisee's general liability policy may be endorsed to provide for this pollution liability coverage.
3. Automobile Liability Coverage. Insurance meeting the following requirements:
  - a. Written on ISO policy forms CA 00 12 or CA 00 20 (or their equivalent) with a limit of liability not less than \$2 million for each accident,
  - b. Endorsed to delete the pollution and/or the asbestos exclusion and include pollution liability (using form CA 99 48 or its equivalent) for accidental spills and discharges while transporting and/or processing materials, and
  - c. Covering all collection vehicles that drive on public roads.
4. If Franchisee is subject to federal regulations, Franchisee also will maintain any other coverage necessary to satisfy state or federal financial responsibility requirements.
5. Workers' Compensation and Employers' Liability. Insurance providing the following:
  - a. Workers' compensation benefits required by Applicable Law (including the State Labor Code or by any other state labor law), and for which Franchisee is responsible, and
  - b. Employers' Liability coverage with limits of not less than the following:
    - (1) Each accident: \$2 million

6. Insurer qualifications. Franchisee will secure insurance provided by an insurer meeting the following qualifications:
  - (1) is acceptable to City,
  - (2) is an admitted company in Oregon,
  - (3) has a size category of VII or larger by A.M. Best Company, Inc., and
  - (4) has a rating of A or better by A.M. Best Company, Inc.
7. Evidence of Coverage. Franchisee will provide the certificate of insurance and required endorsements, requested by and acceptable to at City at the following times:
  - (1) on or before the Contract Commencement Date,
  - (2) promptly upon renewal of policies, and
  - (3) within 10 days of City's request.
8. If any Person makes a claim against Franchisee exceeding the amount of any deductibles or self-insured retentions, Franchisee will promptly notify City of the claim.
9. Franchisee will comply with all requirements of its insurance policies and insurers.
10. If any required policy lapses or is cancelled by its carrier, Franchisee must notify City Manager no later than 5:00 pm on the date of such cancellation or lapse, or by 5:00 pm on the date a reasonably careful person would have learned of such cancellation or lapse.
  - a. Lapse of any required coverage is grounds for termination of this Franchise.
  - b. Notwithstanding the right to terminate this Franchise, City reserves the right to purchase any coverage required by this Franchise and collect the cost of such coverage from Franchisee as additional franchise fee. Such additional franchise fee will not be recognized as an Allowable Expense.

### **SECTION 31. Performance**

The Franchisee shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument acceptable to and approved in writing by the City in the amount of one hundred thousand dollars (\$100,000). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one (1) year, and the Franchisee shall provide a new bond, letter of credit or similar instrument, and evidence satisfactory to the City of its renewability, no less than sixty (60) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The City shall have the right to call the bond, letter of credit or other similar instrument in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration.

The security shall guarantee faithful performance of all the obligations contained with this Agreement. The premium for the bond or cost for the letter or similar instrument shall be paid by the Franchisee.

### **SECTION 32. Indemnity and Hold Harmless.**

The Franchisee shall indemnify the City, its officers, employees, and agents, and shall hold them harmless from all loss, damage, claim, expenses, or liability arising out of the operation by the Franchisee under its franchise, except to the extent such claims arise from the sole negligence of the City. In the event that any notice of claim, suit, or action is brought for injury or damage to persons or the property against any of the foregoing based upon, or alleged to be

based upon, any loss, damage, claim, expense, or liability arising out of the operations of the Franchisee under its franchise, the Franchisee shall defend the same at its own costs and expense; provided, however, that the City reserves their right to retain counsel of its own choosing and join in the defense of any such suit or action with the reasonable cost of such additional counsel to be borne by the Franchisee.

**SECTION 33. Franchisee's Service Requirements.**

The Franchisee may, subject to review and approval by the City, establish reasonable rules on matters directly affecting the safety of the Franchisee's employees and its ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the Franchisee can comply with disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon or Metro.

**SECTION 33. Protection of Containers.**

The City agrees that it shall use good faith efforts when adopting an administrative rule or a new provision of the City code which makes it unlawful for any person, other than the Franchisee or the person producing the materials, to interfere with any solid waste container, take recyclable material or any other solid waste set out to be collected from such container, or to remove any such container or its contents without first obtaining written consent from the Franchisee or the person producing the materials. The Franchisee shall have a private right of action to independently enforce the terms of such administrative rule or code provision should it be enacted, against a third party, including a claim for injunctive relief.

**SECTION 34. Severability Clause.**

Any finding by a court of competent jurisdiction that any portion of this Agreement is unconstitutional or invalid shall not invalidate any other provisions of this Agreement. However, in the event of such finding, the City Council may, at its discretion, modify or terminate this Agreement if it determines such act is in the public interest.

**SECTION 35. Effective Date.**

The terms and provisions of this franchise shall become effective on January 1, 2016.

IN WITNESS WHEREOF, the undersigned parties have entered into this exclusive Solid Waste Management Franchise Agreement effective January 1, 2016.

City of Troutdale:

Doug Daoust  
Signature

11/13/15  
Date

Mayor Doug Daoust  
Typed or printed name

CITY OF TROUTDALE  
219 E Historic Columbia River Highway  
Troutdale, OR 97060

(503) 665-5175  
Telephone Number

Approved as to form

[Signature]  
City Attorney

Waste Management of Oregon:

[Signature]  
Signature

12/7/15  
Date

Adam Winston  
Typed or printed name

Waste Management of Oregon

1221 NE 55th Ave, Portland, OR 97218  
Business Address

503-493-7858  
Telephone Number