

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and D&O GARBAGE SERVICE, INC., hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.
- (j) This restated and amended Agreement replaces and supersedes all prior

versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

- 1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.
- 1.2 City means the City of Salem.
- 1.3 City Council means the Council of the City of Salem, Oregon.
- 1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.
- 1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.
- 1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.
- 1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.
- 1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.
- 1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.
- 1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.
- 1.11 Franchisee means the Person, business, or entity holding and subject to

this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the collection, transportation and storage of Solid Waste done in order to place the

Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section 15; provided, however that this Agreement shall automatically terminate if

Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee.

Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally is due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all books, maps and records so as to accurately show the same and shall have such

books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." The City Manager shall

specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route records, which shall be retained for a minimum of six (6) months. Customer

records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all Customer complaints given by telephone, email, fax, or letter, and within 24

(twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in writing of the following two options: (1) the Customer may continue to negotiate

by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any changes in the Salem Revised Code, the applicable federal, state, or local laws, or

to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for litigation of any action regarding this Agreement shall be in the Circuit Court for

Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:

President
D&O Garbage Service, Inc.
PO Box 3967
Salem, OR 97302
FAX # (503) 364-6989

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris, City Manager

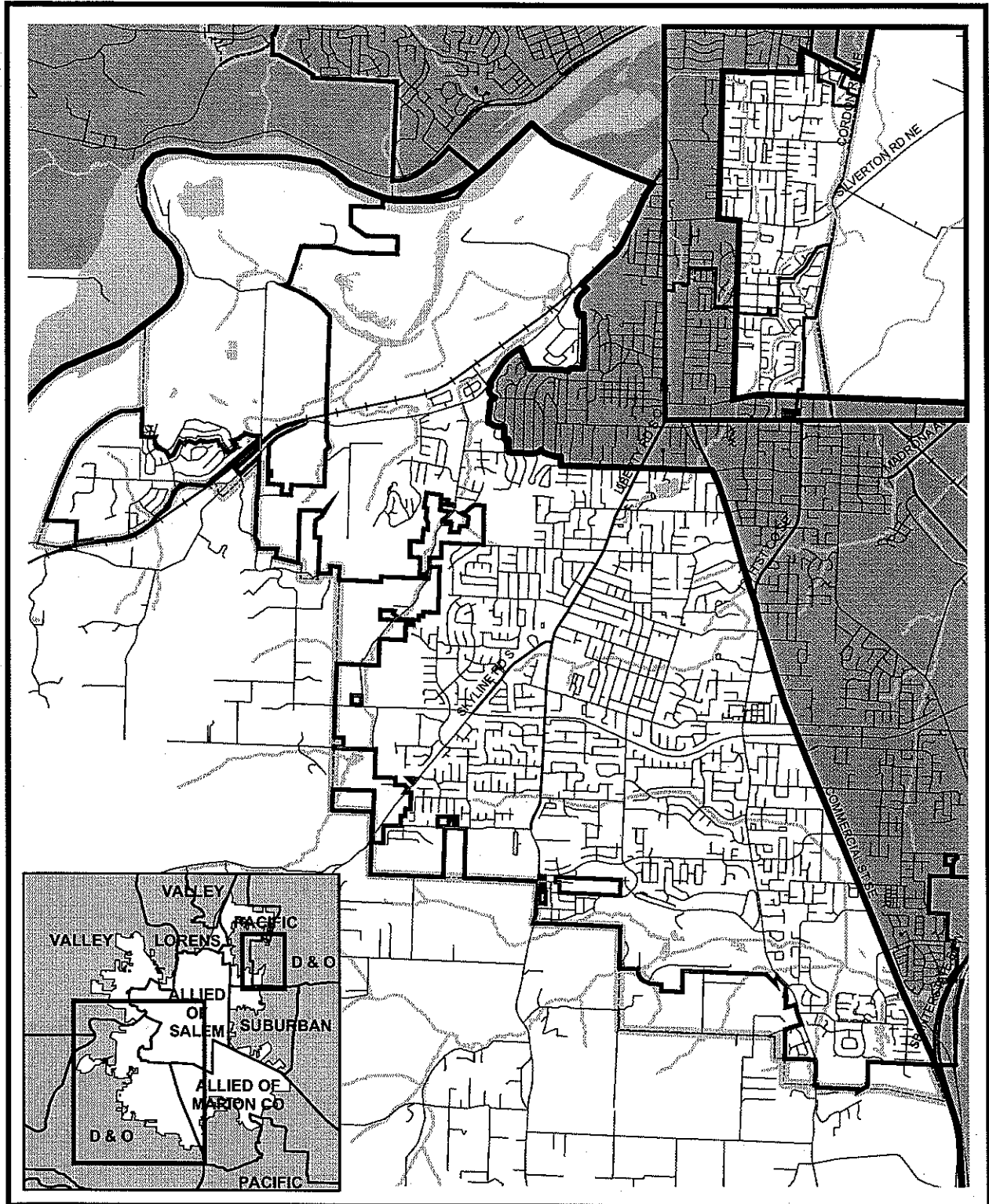
Dated: 2/23/09

D&O GARBAGE SERVICE, INC.

By: David Nelton Sec/Pres
David Nelton, President

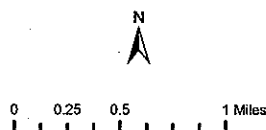
Dated: 2/10/09

EXHIBIT A



This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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Map printed January 15, 2009



D & O Garbage Service

- Salem City Limit
- Salem Urban Growth Boundary

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and LOREN'S SANITATION SERVICE, INC., hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.
- (j) This restated and amended Agreement replaces and supersedes all prior

versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

- 1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.
- 1.2 City means the City of Salem.
- 1.3 City Council means the Council of the City of Salem, Oregon.
- 1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.
- 1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.
- 1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.
- 1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.
- 1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.
- 1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.
- 1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.
- 1.11 Franchisee means the Person, business, or entity holding and subject to

this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the collection, transportation and storage of Solid Waste done in order to place the

Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section 15; provided, however that this Agreement shall automatically terminate if

Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee.

Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally is due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all books, maps and records so as to accurately show the same and shall have such

books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." The City Manager shall

specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route records, which shall be retained for a minimum of six (6) months. Customer

records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all Customer complaints given by telephone, email, fax, or letter, and within 24

(twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in writing of the following two options: (1) the Customer may continue to negotiate

by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any changes in the Salem Revised Code, the applicable federal, state, or local laws, or

to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for litigation of any action regarding this Agreement shall be in the Circuit Court for

Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:

President
Loren's Sanitation Service, Inc.
1141 Chemawa Rd. N
Keizer, OR 97303
FAX # (503) 393-2326

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris, City Manager

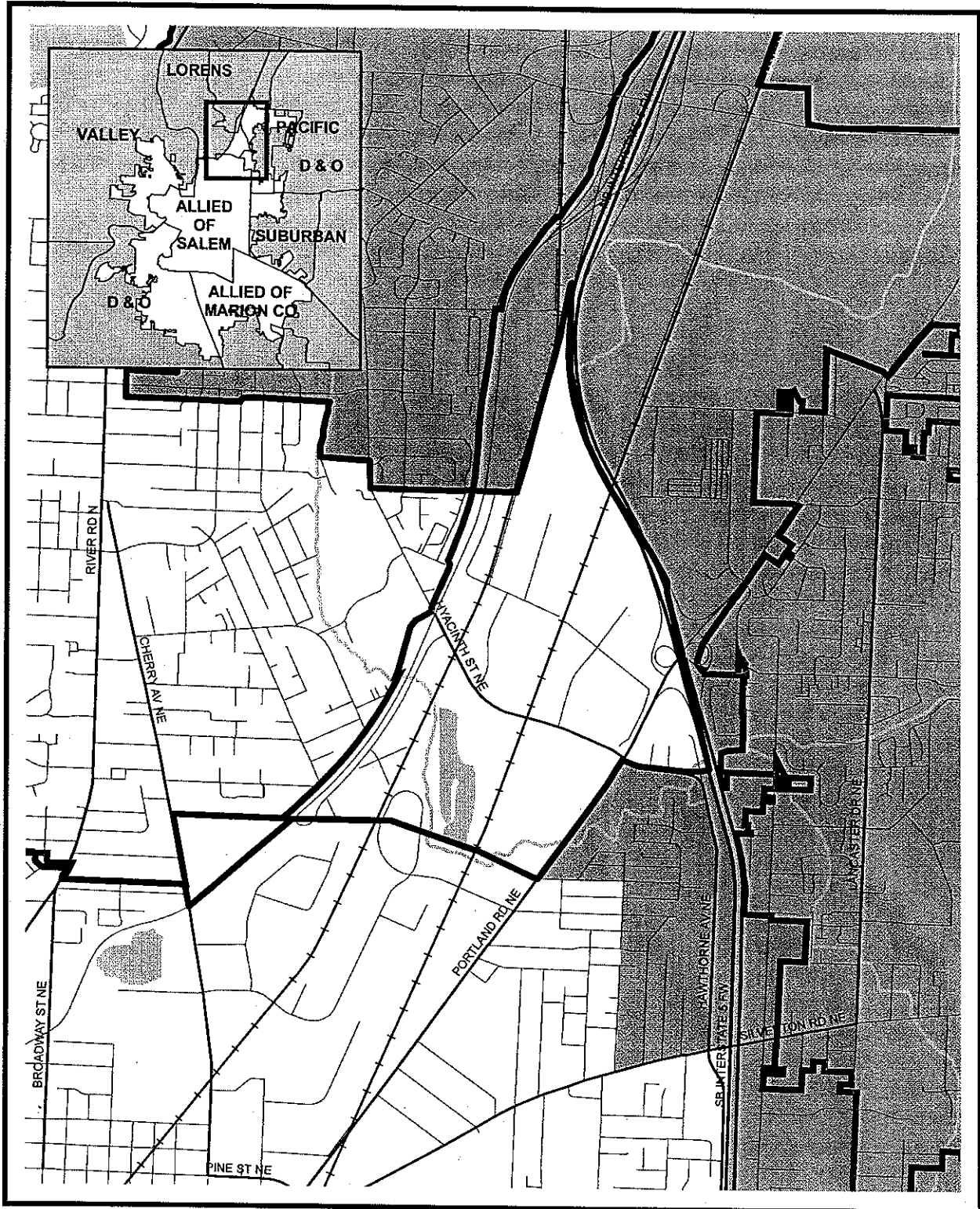
Dated: 2/23/09

LOREN'S SANITATION
SERVICE, INC.

By: Wayne A. Thackery
Wayne Thackery, President *pres*

Dated: Feb 13, 2009

EXHIBIT A





This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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Map printed January 15, 2009



0 0.125 0.25 0.5 Miles

Lorens Sanitation Service

-  Salem City Limit
-  Salem Urban Growth Boundary

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and PACIFIC SANITATION, INC., hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.
- (j) This restated and amended Agreement replaces and supersedes all prior

versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

- 1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.
- 1.2 City means the City of Salem.
- 1.3 City Council means the Council of the City of Salem, Oregon.
- 1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.
- 1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.
- 1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.
- 1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.
- 1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.
- 1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.
- 1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.
- 1.11 Franchisee means the Person, business, or entity holding and subject to

this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the collection, transportation and storage of Solid Waste done in order to place the

Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section 15; provided, however that this Agreement shall automatically terminate if

Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee.

Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally is due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all books, maps and records so as to accurately show the same and shall have such

books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." The City Manager shall

specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route records, which shall be retained for a minimum of six (6) months. Customer

records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all Customer complaints given by telephone, email, fax, or letter, and within 24

(twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in writing of the following two options: (1) the Customer may continue to negotiate

by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any changes in the Salem Revised Code, the applicable federal, state, or local laws, or

to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for litigation of any action regarding this Agreement shall be in the Circuit Court for

Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:

Vice President
Pacific Sanitation, Inc.
PO Box 17669
Salem, OR 97305
FAX # (503) 390-1303

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris, City Manager

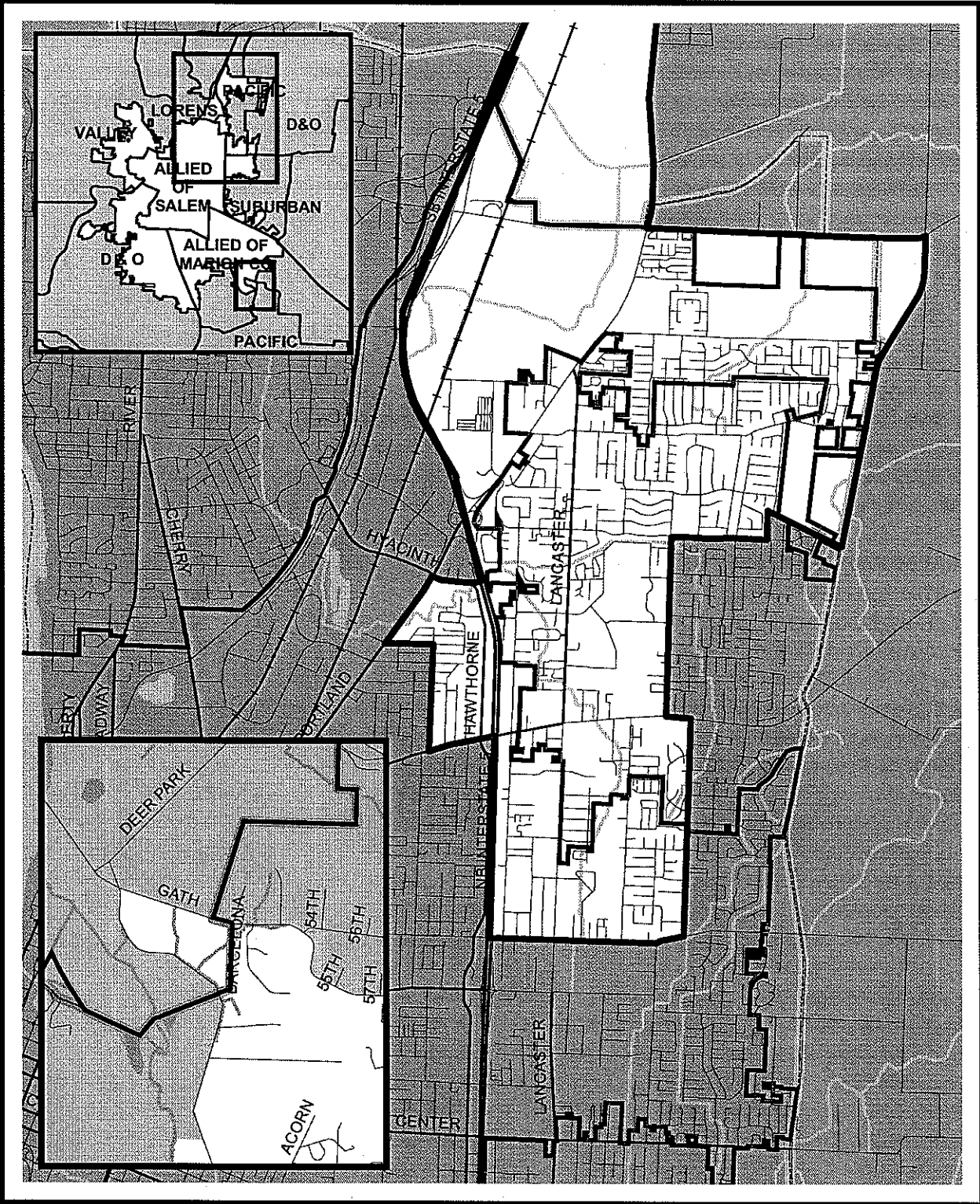
Dated: 2/23/09

PACIFIC SANITATION, INC.

By: Mike Kuenzi
Mike Kuenzi, Vice President

Dated: 2-3-09

EXHIBIT A





This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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Map printed January 15, 2009



Pacific Sanitation, Inc.

0 0.25 0.5 1 Miles

 Salem City Limit
 Salem Urban Growth Boundary

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and CAPITOL RECYCLING AND DISPOSAL, INC., DBA ALLIED WASTE SERVICES OF SALEM-OR, hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.

(j) This restated and amended Agreement replaces and supersedes all prior versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.

1.2 City means the City of Salem.

1.3 City Council means the Council of the City of Salem, Oregon.

1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.

1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.

1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.

1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.

1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.

1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.

1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.

1.11 Franchisee means the Person, business, or entity holding and subject to this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the

collection, transportation and storage of Solid Waste done in order to place the Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste

Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section

15; provided, however that this Agreement shall automatically terminate if Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a

penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee. Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all

books, maps and records so as to accurately show the same and shall have such books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as

evidence in court and is subject to penalty for perjury." The City Manager shall specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route

records, which shall be retained for a minimum of six (6) months. Customer records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all

Customer complaints given by telephone, email, fax, or letter, and within 24 (twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in

writing of the following two options: (1) the Customer may continue to negotiate by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any

changes in the Salem Revised Code, the applicable federal, state, or local laws, or to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this

Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for

litigation of any action regarding this Agreement shall be in the Circuit Court for Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:

General Manager
Capitol Recycling and Disposal, Inc.,
dba Allied Waste Services of Salem-OR
1890 16th St. SE
Salem, OR 97302
FAX # (503) 364-8592

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris, City Manager

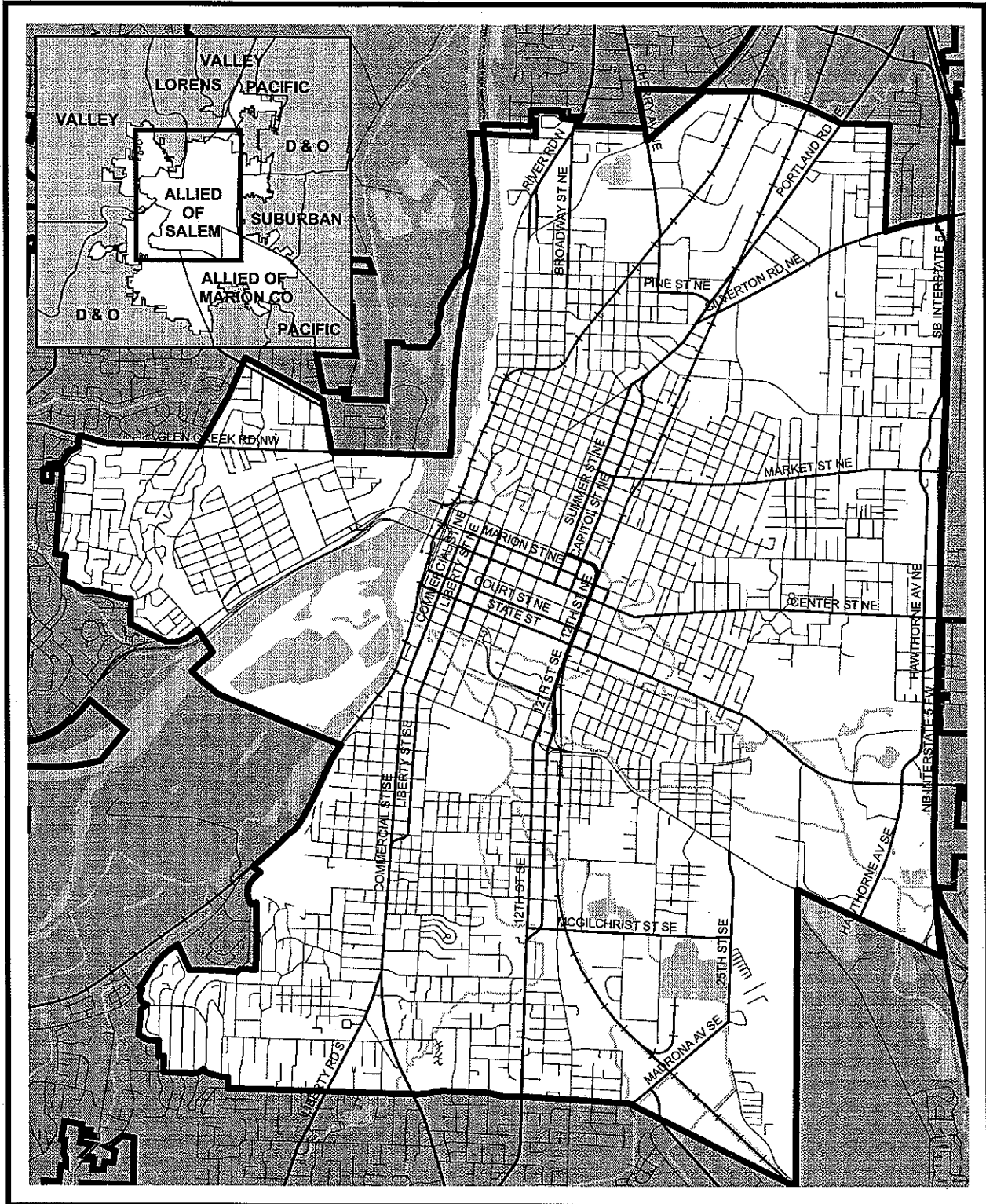
Dated: 2/23/09

CAPITOL RECYCLING AND
DISPOSAL, INC., DBA ALLIED
WASTE SERVICES OF SALEM-
OR

By: Robin Murbach
General Manager
Tim Stuart
ARSA President

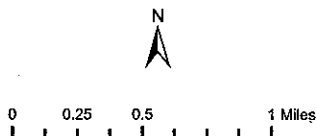
Dated: 2/3/09

EXHIBIT A



This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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Map printed January 15, 2009



Allied of Salem

— railroads

▬ Salem City Limit

▬ Salem Urban Growth Boundary

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and BGL, INC., DBA SUBURBAN GARBAGE SERVICE, hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.
- (j) This restated and amended Agreement replaces and supersedes all prior

versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

- 1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.
- 1.2 City means the City of Salem.
- 1.3 City Council means the Council of the City of Salem, Oregon.
- 1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.
- 1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.
- 1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.
- 1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.
- 1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.
- 1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.
- 1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.
- 1.11 Franchisee means the Person, business, or entity holding and subject to

this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the collection, transportation and storage of Solid Waste done in order to place the

Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section 15; provided, however that this Agreement shall automatically terminate if

Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee.

Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally is due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all books, maps and records so as to accurately show the same and shall have such

books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury." The City Manager shall

specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route records, which shall be retained for a minimum of six (6) months. Customer

records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all Customer complaints given by telephone, email, fax, or letter, and within 24

(twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in writing of the following two options: (1) the Customer may continue to negotiate

by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any changes in the Salem Revised Code, the applicable federal, state, or local laws, or

to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for litigation of any action regarding this Agreement shall be in the Circuit Court for

Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:


Vice President
BGL, Inc., dba Suburban Garbage Service
6075 State Street
Salem, OR 97317
FAX # (503) 391-2390

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

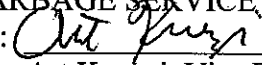
IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: 
Linda Norris, City Manager

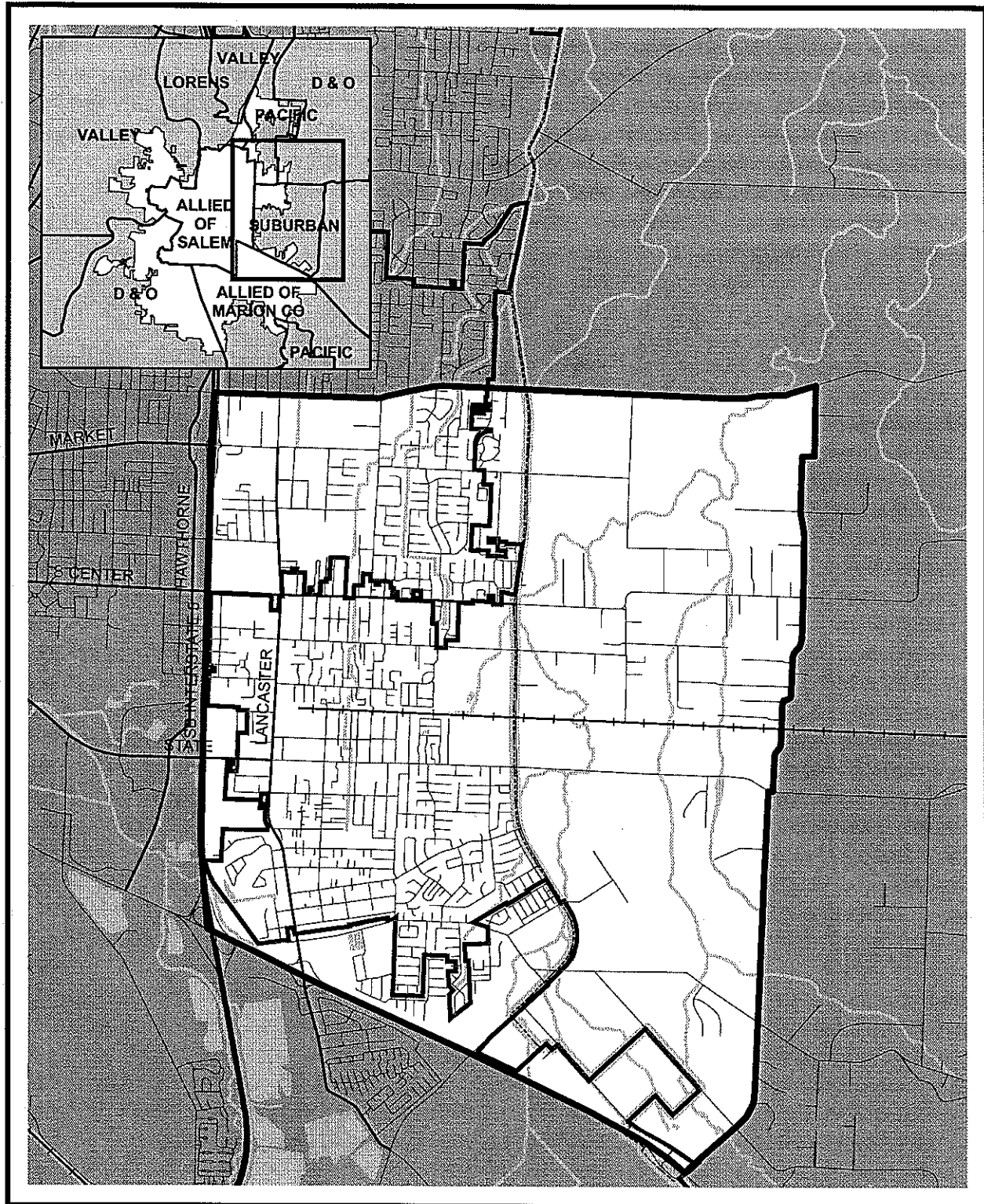
Dated: 2/23/09

BGL, INC., DBA SUBURBAN
GARBAGE SERVICE

By: 
Art Kuenzi, Vice President

Dated: 2-9-2009

EXHIBIT A





This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

N:\IT\products\haulers\suburban_bw1
Map printed January 15, 2009



0 0.25 0.5 1 Miles

Suburban Garbage Service

 Salem City Limit
 Salem Urban Growth Boundary

SOLID WASTE MANAGEMENT SERVICES FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES, hereinafter called "Agreement," is made and entered into between the CITY OF SALEM, an Oregon municipal corporation, hereinafter called "City," and VALLEY SOLID WASTE MANAGEMENT CORP., DBA VALLEY RECYCLING & DISPOSAL, INC., hereinafter called "Franchisee."

RECITALS:

- (a) Pursuant to Salem Revised Code (SRC) Chapter 47, the City previously has granted a franchise to Franchisee to collect solid waste in the City of Salem.
- (b) Franchisee's current, valid franchise with the City to collect solid waste is due to expire on December 31, 2009.
- (c) Franchisee has a majority of the service contracts in its current service area.
- (d) Franchisee has available collection vehicles, equipment, facilities and personnel sufficient to satisfy the needs of its current service area.
- (e) Franchisee has sufficient experience to insure compliance with all laws and regulations of the City regarding solid waste collection.
- (f) Franchisee's current franchise with the City is subject to all applicable provisions of SRC Chapter 47 and any amendments thereto.
- (g) In accordance with Ordinance Bill No. 126-07, codified as SRC 47.090(b), any Franchisee with a valid, current franchise term of less than seven years may request that its franchise be amended to extend the term of the existing franchise to seven years, and may request that at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year term, pursuant to SRC 47.090(c).
- (h) It is the intent of this Agreement that Franchisee shall comply with SRC Chapter 47 as revised by Ordinance Bill 126-07 on January 14, 2008, and that the terms of this Agreement shall be consistent with these revisions to SRC Chapter 47.
- (i) The City and the Franchisee mutually agree to amend the terms of the Franchisee's existing franchise to extend its term to seven years, to allow for automatic extension of the franchise pursuant to SRC 47.090(c), and to further delineate Franchisee's responsibilities under the franchise.

(j) This restated and amended Agreement replaces and supersedes all prior versions and amendments of Franchisee's existing franchise with the City.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the City and Franchisee do hereby agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

1.1 Business Day means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.

1.2 City means the City of Salem.

1.3 City Council means the Council of the City of Salem, Oregon.

1.4 City Manager means the City Manager for the City of Salem, or the City Manager's designee.

1.5 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.

1.6 Customer Arbitration Form is the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.

1.7 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.

1.8 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Recyclable Material, or Yard Debris that is usually ten (10) cubic yards or larger in size.

1.9 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.

1.10 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.

1.11 Franchisee means the Person, business, or entity holding and subject to this Agreement.

1.12 Generator means a person who produces solid waste or recyclable material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the solid waste or recyclable material after the Generator has placed the solid waste or recyclable material out for disposal.

1.13 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.14 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.15 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.16 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

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

1.18 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.19 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.20 Receptacle means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.21 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.

1.22 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Agreement, recycling includes the

collection, transportation and storage of Solid Waste done in order to place the Solid Waste in the stream of commerce for recycling or for resource recovery.

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

1.24 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.25 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A," which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.26 Solid Waste means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.

1.27 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.28 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.29 Source Separation means the separation or setting aside of waste by the Generator of the waste for recycling or reuse.

1.30 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

Section 2: Rules of Construction. When not inconsistent with the context, words used in the present tense include the future tense, words plural in number include the singular number, and words singular in number include the plural number. The word "shall" is always mandatory and not directory.

Section 3. Grant of Franchise.

3.1 The City hereby grants to Franchisee the right, privilege, and franchise to provide Solid Waste Management Services within the Service Area. Territory that becomes annexed into the City pursuant to SRC Chapter 165 shall be subject to the statutory provisions of ORS 459.085(3). Franchisee shall have the right to use the streets of the City in order to provide Solid Waste Management Services. Franchisee shall not provide, or offer or advertise the provision of, Solid Waste

Management Services for compensation outside the Franchisee's Service Area.

3.2 Nothing in this Agreement shall prohibit any of the activities that are exempt from the requirement of a Solid Waste Management Franchise as outlined in SRC 47.081

3.3 Nothing in this Agreement provides Franchisee with any authority that is not so stated herein.

3.4 Pursuant to SRC 47.101(d), Franchisee may contract with another person to provide Solid Waste Management Service within the Service Area after giving prior written notice to, and receiving approval from, the City Manager; provided, however, this shall not relieve Franchisee of Franchisee's duty to satisfy the terms of this Franchise, or to comply with SRC Chapter 47 or any applicable federal, state or local laws, rules or regulations.

3.5 Neither Franchisee, nor any of Franchisee's officer's, employees or agents, are, or shall be construed to be, employees or agents of the City for any purpose.

3.6 This Agreement may not be assigned or otherwise transferred, except as provided in SRC 47.087(b).

3.7 This Agreement does not confer, and shall not be construed to confer, on Franchisee any right, title or interest in any City right-of-way except as specifically provided in this Franchise, or confer any right or privilege to use or occupy any other property of the City or any other person.

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Recyclable Materials and Yard Debris 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.

Section 4. Effective Date; Term.

4.1 This Agreement shall become effective immediately upon the date of execution by both parties as set forth below ("Effective Date").

4.2 The term of this Agreement shall be for a period of seven (7) years, commencing on the Effective Date. Unless this Agreement is modified, revoked, suspended, or amended pursuant to SRC 47.091 or SRC 47.096, or unless the City Council determines not to extend the Franchise pursuant to SRC 47.090(d), at the end of each franchise year an additional year shall automatically be added to the term of the Franchise to maintain a seven-year term.

4.3 This Agreement may be terminated by the City as set forth under Section

15; provided, however that this Agreement shall automatically terminate if Franchisee does not pay the franchise fee required under Section 7 within one hundred and eighty (180) days of its due date.

4.4 This Agreement may be terminated by mutual consent of the parties at any time.

4.5 This Agreement may be terminated by the Franchisee by giving not less than one hundred and eighty (180) days written notice to the City.

Section 5. Performance. During the term of this Agreement, Franchisee shall comply with all terms and conditions of SRC Chapter 47. Nothing in this Agreement shall be deemed to waive any of the requirements of the Salem Revised Code.

Section 6. Recycling Services. As a condition of the rights and privileges granted under this Agreement, Franchisee shall provide all Customers with the opportunity to recycle, and Franchisee shall comply with ORS 459A.005-459A.085 and ORS 459.250, together with any applicable rules and regulations promulgated by the State of Oregon Department of Environmental Quality. Franchisee shall provide the following minimum recycling services:

- 6.1 On-route collection of source separated Recyclable Material from residential Customers provided at least twice a month on the same day that Solid Waste is collected from each Customer.
- 6.2 An expanded education and promotion program conducted to inform Customers of the manner and benefits of reducing, reusing and recycling Solid Waste. The program shall include those elements set forth in ORS 459A.010(2)(c)(A)-(C).
- 6.3 Solid Waste residential collection rates that encourage waste reduction, reuse and recycling.

Section 7. Franchise Fee; Audits.

7.1 As compensation for the rights and privileges granted under this Agreement, Franchisee shall pay to the City a franchise fee equal to five (5) percent of all gross receipts collected each year by the Franchisee from its operations in the provision of Solid Waste Management Services pursuant to this Franchise. Provided however, that such franchise fee shall not be less than that amount established by ordinance by the City Council.

7.2 Payment of the franchise fee to the City shall be made quarterly, within sixty (60) days following the end of each quarter (i.e. within sixty days of March 31, June 30, September 30, and December 31) of each calendar year, and shall be computed upon a verified statement of gross receipts for the quarter. If payment is not received within sixty (60) days following the end of the quarter, then a

penalty of \$500.00 (five hundred) dollars shall be assessed against the Franchisee. Interest on the delinquent payment shall accrue at a rate of nine percent (9%) per month for each month that payment is not received. After Fiscal Year 2010-2011, the penalty shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.3 No acceptance of any payment of the franchise fee by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable.

7.4 All amounts paid under this Section 7 shall be subject to re-computation by the City, provided that such re-computation is completed within five (5) years of the date that any recomputed payment was originally is due. If no re-computation is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be deemed waived. Upon receipt of an invoice from the City showing costs that were actually incurred by the City which were directly related to the re-computation, Franchisee agrees to reimburse the City for: (1) one hundred percent (100%) of the reasonable costs of such re-computations if the City's re-computation discloses that Franchisee paid ninety five percent (95%) or less of the Franchise Fee owing for the period at issue; or (2) fifty percent (50%) of the reasonable costs of such re-computation, if the City's re-computation discloses that Franchisee paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise Fee owing for the period at issue. Notwithstanding such percentages, the City's costs which must be reimbursed pursuant to this subsection shall not exceed \$10,000.00 for each re-computation. After Fiscal Year 2010-2011, the City's re-computation costs under this subsection shall be adjusted annually in accordance with the Portland Consumer Price Index.

7.5 If the City determines that Franchisee has made any underpayment and that the underpayment exceeded five percent (5%) of the Franchise Fee due, Franchisee shall pay interest compounded monthly at the statutory rate established by ORS 82.010. Interest shall be due on the entire amount of the underpayment from the date on which payment was due until the date on which full payment is received.

7.6 If Franchisee disputes the City's determination of an underpayment, Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest accrued during such time shall be paid to the party determined to be entitled to the funds.

7.7 The City, its officials, employees and agents shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records directly concerning any and all amounts due under this Agreement, upon no less than forty-eight (48) hours written notice to Franchisee. Franchisee shall keep all

books, maps and records so as to accurately show the same and shall have such books, maps, and records available during normal business hours within the Salem metropolitan region. Any review by the City under this subsection shall be completed within five (5) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

Section 8. Billing and Rates.

8.1 The Franchisee shall bill all Customers at least tri-monthly on forms approved by the City Manager.

8.2 The City Council shall establish and adjust rates charged by Franchisee by service or by zone. Before any rate is established or adjusted, the City Manager shall conduct an investigation of the rates and shall submit a recommendation to the City Council. Upon receipt of the City Manager's recommendation, the City Council shall schedule a public hearing, and, after receipt of evidence and testimony, shall adopt a resolution establishing or adjusting the rates and charges for Solid Waste Management Services provided by Franchisee.

8.3 Franchisee may submit, as part of the Franchisee's Operating Statement, or at such other time deemed appropriate by Franchisee, a request for a rate adjustment on forms provided by the City Manager. Any such request shall be based on information submitted by Franchisee with Franchisee's annual Operating Statement.

8.4 In establishing or adjusting rates, the City Council shall consider the factors set forth in SRC 47.099.

8.5 Where no rate has been established for a particular kind of service, the City Manager may establish an interim rate until a final rate has been set by the City Council.

Section 9. Reports.

9.1 Franchisee shall provide the City Manager with an Operating Statement for each calendar year (January 1 to December 31) or portion thereof for the duration of this Agreement. This Operating Statement shall be accompanied by a written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as

evidence in court and is subject to penalty for perjury." The City Manager shall specify the form and detail of the Operating Statement. This Operating Statement shall be provided to the City Manager within six (6) months following the close of each calendar year.

9.2 The City Manager may inspect the financial records of Franchisee or Franchisee's agents or assigns at any and all reasonable times for any purpose relevant to the performance or enforcement of this Agreement. The City Manager may require an audit of Franchisee's financial records to determine compliance with the payment of the franchise fee pursuant to Section 6 of this Agreement or if it is in the best interest of the public.

9.3 Franchisee shall make available to the City, upon two (2) weeks written notice, such information or reports pertinent to enforcing the terms of this Agreement in such form and at such time as the City may request.

Section 10. Customer Service

10.1 Franchisee shall maintain a dedicated, local, toll free business telephone line with Franchisee's business name listed as a business in the telephone directory at all times during this Agreement. Franchisee shall have at its office location toll free fax capabilities not requiring advance notice of transmission.

10.2 Franchisee shall have office staff or an answering machine or service available for accepting Customer calls and complaints at all times. Answering machines shall have remote message retrieval capability. Calls must be returned within twenty-four (24) hours of receipt of the call, or, if the day after the incoming call is not a Business Day, then by noon of the following Business Day. If a Customer's call is answered by an answering machine, the Customer shall be informed of and provided with the option of leaving a message at the conclusion of the outgoing message.

10.3 Franchisee shall provide to the City current telephone numbers where its officers, employees or agents can be reached in emergencies outside of the Franchisee's normal office hours.

10.4 Franchisee shall maintain a valid, operational electronic mail (email) address to receive email from the City during the term of this Agreement. The email address shall be capable of receiving, opening and printing documents sent in a PDF format. Franchisee shall provide one primary email address to the City. Franchisee is not required to provide Customers with an email address.

10.5 All Customer records necessary for delivery of regulated services, including but not limited to, accounts receivable and payable, billing documents, refusal of service or delinquent account notices, shall be retained by Franchisee for a period of not less than two (2) years, except for phone logs and route

records, which shall be retained for a minimum of six (6) months. Customer records may be kept in an electronic format. The City has the right to request and to receive any financial and nonfinancial records, including but not limited to route collection records, phone log records, or Customer statements which include billing dates, extra charges, amounts received or refunded relevant to this Agreement. Information requested by the City pursuant to this subsection shall be provided to the City within ten (10) Business Days of any written request.

10.6 Customer records shall contain the following information: service address; dates of service billed; the billing rate for the Customer's service; and an itemized total of any additional charges incurred during any billing period including, but not limited to, special rates, replacement bin/cart charges, overdue account service charges, if any, the total amount of fees due, the date payment is due, and any past due amount brought forward.

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a notice describing the recurring problem.

Section 11. Customer Fees and Credits.

11.1 A reasonable service interrupt fee may be charged to Customers after 60 (sixty) consecutive days of non-payment.

11.2 A vacation credit shall be given for Customers who stop Service for a period of three consecutive weeks or longer.

11.3 Any refunds due to a Customer shall be made within 30 (thirty) calendar days of Franchisee being informed or discovering that a refund is required.

Section 12. Hours for Collection.

12.1 Franchisee shall limit the hours of collection for all Solid Waste Management Services as set forth in SRC 47.120.

12.2 In-Home Waste Recovery shall be offered to all Customers on all days of the year, including all weekends and holidays, but excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Section 13. Customer Information and Complaint Resolution.

13.1 Unless prevented by Force Majeure, Franchisee shall respond to all

Customer complaints given by telephone, email, fax, or letter, and within 24 (twenty-four) hours of receipt. If the day after the day the complaint is received is not a Business Day, then a response shall be given by noon of the following Business Day. For this deadline to apply to an email sent by a Customer, the Customer must have used an email address published or distributed by the Franchisee. Both office and on-route staff shall be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding all Solid Waste Management services.

13.2 All Customer complaints, regardless of the method received, and all actions by the Franchisee in response to complaints must be recorded in a log noting the date, time, address of the complainant, the nature of the complaint, and the method of resolution. If requested, the phone number of the Solid Waste Franchise Administrator for the City shall be supplied to any caller (503-588-6255).

13.3 Franchisee shall meet with the City as often as needed to review complaints and any proffered resolutions.

Section 14. Arbitration of Customer Disputes

14.1 Upon Franchisee's receipt of any dispute from a Customer about any bill, charge, or service, excluding property damage, Franchisee shall thoroughly investigate the matter and promptly report the results of its investigation to the Customer.

14.2 If a dispute is not resolved by Franchisee to the Customer's satisfaction within 20 (twenty) Business days of receipt of the dispute, Franchisee shall inform the Customer of the City of Salem's Solid Waste and Recycling arbitration procedures set forth in this Section 14, and the Franchisee shall inform the Customer of the following contact information for the Solid Waste Franchise Manager :

Telephone number: (503) 588-6255,

Email address: Salemwaste@cityofsalem.net

Mailing address: 555 Liberty Street SE
Room 220
Salem, OR 97301

14.3 Upon written request by the Customer or Franchisee, the City shall assist the parties in an effort to reach an informal resolution of a dispute.

14.4 If a dispute cannot be resolved informally within 20 (twenty) Business Days after the City is notified of the dispute, the City will advise the Customer in

writing of the following two options: (1) the Customer may continue to negotiate by 60 (sixty) days or more, or (2) the Customer may request, in writing, that the City formally intervene by instituting binding Customer arbitration between the parties as provided in this Section 14. The City's notification shall be mailed promptly and shall include a Customer Arbitration Form. Notwithstanding any provision in this section, the City reserves the right to refuse to accept the request for Customer arbitration.

14.5 If a Customer requests arbitration under this Section 14, the Customer shall complete the Customer Arbitration Form and return it to the City within 15 (fifteen) Business days of the postmark of the City's notification. On the Customer Arbitration Form, the Customer shall state the Customer's account of the facts of the dispute and the relief requested or decision sought. The City shall notify the affected Franchisee within five (5) Business Days of the City's receipt of a request for Customer arbitration. Franchisee shall respond in writing to the City within fifteen (15) Business Days of the postmark or fax transmission of the notice. Franchisee's written response shall include Franchisee's account of the facts of the dispute and the relief requested or decision sought.

14.6 The City shall make a decision within 10 (ten) Business Days of receipt of the Franchisee's written response or the deadline for the response, if no Franchisee response is received. In making its decision the City shall seek further information from both parties as needed.

14.7 The City's decision is binding on both Franchisee and the Customer. Pending resolution of the arbitration process, the Customer continues to be obligated to pay any amounts owed to the Franchisee that are not the subject of the arbitration.

14.8 A Customer who is involved in the arbitration process with the City shall be entitled to continued or restored Service provided that:

14.8.1 The facts asserted in the dispute by the Customer entitle the Customer to Service.

14.8.2 The Customer is diligently pursuing resolution of the dispute as set forth in this Agreement.

Section 15. Suspension and Revocation of Franchise. If Franchisee fails to comply with any provision of SRC Chapter 47, this Agreement, or any other applicable federal, state or local law or regulation, the City Manager may, pursuant to SRC 47.096, issue a notice and order suspending or revoking this Agreement.

Section 16. Change of Law; Amendments.

16.1 This Agreement may be amended from time to time to conform to any

changes in the Salem Revised Code, the applicable federal, state, or local laws, or to any other regulations that are material to the parties' obligations under this Agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may also be amended by mutual consent of the parties or their successors-in-interest at any time. Any amendments to this Agreement shall be by written instrument executed with the same formalities as this Agreement.

16.2 To the extent any City code provision, ordinance, resolution, or regulation is adopted or amended and is generally imposed on similarly situated persons or entities, that code provision, ordinance, resolution, or regulation shall apply to this Agreement, without need for amendment. The City shall provide Franchisee with notice of any such change in any code provision, ordinance, resolution, or regulation prior to its adoption.

Section 17. Taxes and Fees. Payment of the Franchise Fee due under this Agreement shall not exempt Franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Franchisee that may be lawfully imposed by the City or any other taxing authority.

Section 18. Indemnification.

18.1 Franchisee shall indemnify, defend, save, and hold harmless the City of Salem and its officers, employees, and agents from and against any and all claims, suits, actions, losses, damages, liabilities, demands, and costs and expenses of any nature (including reasonable attorneys' fees and disbursements) resulting from or arising out of or relating to the activities of Franchisee or any of its officers, employees, contractors, or agents under this Agreement. Franchisee shall be responsible jointly and severally with other similarly obligated franchisees to defend any suit or action brought by any person challenging the lawfulness of this Agreement or seeking damages as a result of or arising in connection with its grant. Franchisee shall likewise be jointly and severally responsible with other similarly obligated franchisees for full satisfaction of any judgment or settlement entered against the City of Salem in any such action, without regard to the availability of any other security or surety available to the City of Salem under this or similar franchise agreements. The City shall tender the defense to Franchisee, and Franchisee shall accept the tender, whereupon City shall assign to Franchisee complete responsibility for litigation including choice of attorneys, strategy, and any settlement; provided, however, that the Franchisee may not enter into any settlement agreement or confession of judgment that would prejudice the City without first obtaining the written consent of the City.

18.2 Subject to the limitations set forth in the Oregon Constitution and ORS 30.260-30.300, the City agrees to defend, indemnify and hold harmless Franchisee, its officers, employees and agents from any liability, damages, costs and expenses sustained or incurred as a result of the performance of this

Agreement by the City, its officers, employees or agents.

Section 19. Insurance. Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of liability insurance including commercial general liability insurance with combined single limit, or the equivalent, of either: a) not less than \$2,000,000 (two million dollars) for each occurrence for Bodily Injury and Property Damage, or b) the amount required under the Oregon Tort Claims Act, whichever is greater. Such insurance shall include contractual liability coverage for the indemnity provision under this Agreement. It shall cover as additional insureds the City of Salem, its officers, employees and agents. As evidence of the insurance coverages required by this Agreement, Provider shall furnish industry-standard insurance certificates to the City prior to commencing the Services. Provider shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

Section 20. Public Records.

20.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410-192.505. Franchisee is responsible for becoming familiar with, and understanding, the provisions of the Oregon Public Records Law.

20.2 Franchisee may identify information submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. Within five (5) Business Days of receiving any such request, the City shall provide Franchisee with written notice of the request, including a copy of the request. Franchisee shall have five (5) Business Days within which to provide a written response to the City, before the City will disclose any of the requested confidential information. The City shall retain the final discretion to determine whether to release the requested confidential information in accordance with applicable laws.

Section 21. Merger. This Agreement, including all attachments and laws, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

Section 22. Choice of Laws; Venue; Notice.

22.1 This Agreement shall be governed and interpreted according to the laws of the State of Oregon, without regard to conflict of laws principles. Venue for

litigation of any action regarding this Agreement shall be in the Circuit Court for Marion County, State of Oregon, unless the action is brought in federal court, in which case venue shall be in the federal district court for the District of Oregon. Each party to this Agreement expressly waives any and all rights to maintain an action under this Agreement in any other venue.

22.2 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City set forth in this Agreement.

22.3 Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile transmission at the address or facsimile number set forth below:

If to the City:

City Manager
City of Salem, Oregon
555 Liberty Street, SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With a copy to:

City Attorney
City of Salem, Oregon
555 Liberty Street, SE, Room 205
Salem OR 97301-3503
FAX # (503) 361-2202

If to Franchisee:

President
Valley Solid Waste Management Corp.
dba Valley Recycling & Disposal, Inc.
PO Box 5700
Salem, OR 97304
FAX # (503) 585-3391

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by overnight courier shall be deemed to be given five (5) days after dispatch. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

Section 23. Waiver of Breach. One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

IN WITNESS WHEREOF:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris, City Manager

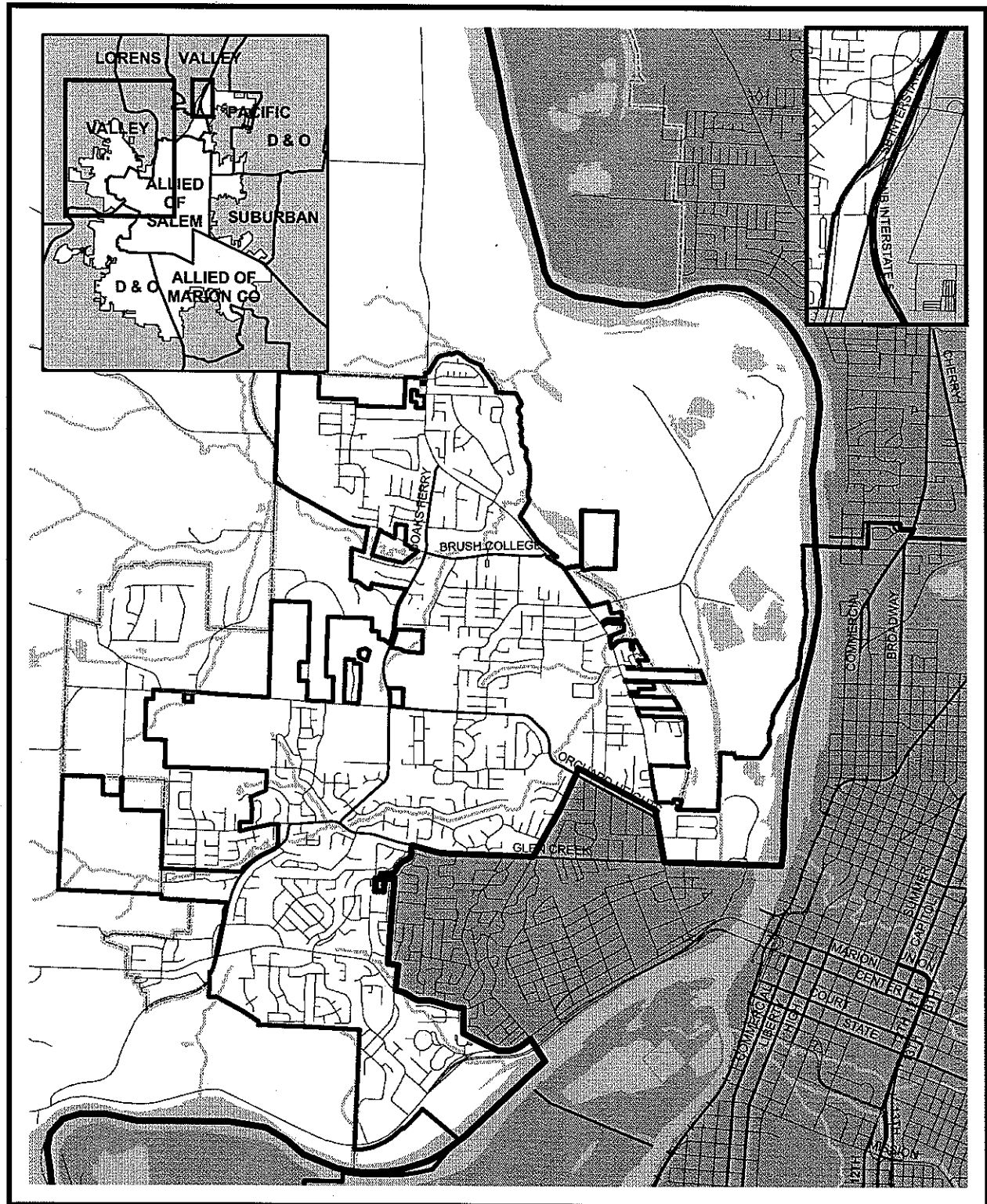
Dated: 2/23/09

VALLEY SOLID WASTE
MANAGEMENT CORP., DBA
VALLEY RECYCLING &
DISPOSAL, INC.

By: Mike Willis
Mike Willis, President

Dated: 2/4/2009

EXHIBIT A



This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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Map printed January 15, 2009



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Valley Recycling & Disposal

- Salem City Limit
- Salem Urban Growth Boundary