

**CITY OF SILVERTON**  
**ORDINANCE**  
**20-06**

**AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF SILVERTON, OREGON, INCLUDING BUT NOT LIMITED TO, GRANTING AN EXCLUSIVE FRANCHISE TO PROVIDE SOLID WASTE MANAGEMENT SERVICE OVER AND UPON THE STREETS OF THE CITY, REPEALING ORDINANCE NO. 09-11, AND DECLARING AN EMERGENCY**

**THE CITY OF SILVERTON DOES ORDAIN AS FOLLOWS:**

Section 1. Short Title. This Ordinance shall be known as the "Solid Waste Management Ordinance" and shall be cited herein as "this Ordinance."

Section 2. Purpose and Policy. It is declared to be the public policy of the City of Silverton to regulate Solid Waste Management to:

- (1) Provide comprehensive, economical, and safe Solid Waste Management Service.
- (2) Provide rates that are just and reasonable and adequate to provide necessary Solid Waste Management Service without preferential treatment for any customer or discriminatory treatment towards any customer.
- (3) Provide for technologically and economically feasible resource recovery by and through the Franchisee.

Section 3. Definitions.

(1) Allowable Expenses. Allowable Expenses means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the franchisee in the course of performing its obligations under this Franchise. The following may not be included as Allowable Expenses:

- (a) Interest and amortization on the purchase of franchise routes or other routes or business opportunities;
- (b) Political and charitable contributions;
- (c) Federal, state, and local income taxes;
- (d) Loss on sale of assets;
- (e) Officer's life insurance premiums;
- (f) Director fees;
- (g) Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase;

- (h) Penalties and fines.
- (2) City. The City of Silverton, Marion County, State of Oregon.
- (3) Compact and Compaction. The process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.
- (4) Compensation. Includes:
  - (a) Any type of consideration paid for service, including, but not limited to, rent, the proceeds from resource recovery, any direct or indirect provision for the payment of money, goods, services or benefits by tenants, lessees, occupants or similar persons; and
  - (b) The exchange of service between persons.
- (5) Council. The City Council of the City of Silverton.
- (6) Dispose or Disposal. The accumulation, storage, discarding, collection, removal, transportation, recycling or resource recovery of waste.
- (7) Franchise. The grant by the City to a person to provide Solid Waste Management service, as provided by this Ordinance.
- (8) Franchisee. The person granted the exclusive Franchise under Section 4 of this ordinance, proposed to be United Disposal Services, Inc. dba Republic Services of Marion County-Woodburn, whose principal place of business is Wilsonville, Oregon, and whose corporate agent is CT Corporation System, of 388 State Street, Suite 420, Salem, Oregon 97301.
- (9) Generator. The person who produces Solid Waste or Recyclable Material to be placed, or that is placed, out for collection and disposal. As used in this ordinance, a Generator does not include any person who manages an intermediate function resulting in the alteration or compaction of the Solid Waste or Recyclable Material after it has been produced by the Generator and placed out for collection and disposal.
- (10) Gross Revenue. Gross Revenue means all gross receipts associated with Solid Waste and Recycling services performed within the City.
- (11) Hazardous Waste. This has the meaning given in ORS 466.005.
- (12) Operating Margin shall be the Gross Revenue less the sum of Allowable Expenses and Pass-Through Expenses.
- (13) Pass-Through Expenses includes:
  - (a) The franchise fee required under this Franchise;

- (b) Surcharges or taxes (other than income taxes) levied by state or local governments upon the collection of Solid Waste; and
- (c) Business license fees paid to the City.

(14) Person. An individual, partnership, association, corporation, firm, trust, estate, cooperative or other private legal entity.

(15) Placed for Collection. To put Solid Waste or Recyclable Material out for collection by the Franchisee, as provided in this ordinance.

(16) Receptacle. A trash can, cart, bin, container, drop box or other vessel used for the disposal of Solid Waste and Recyclable Material, and into which solid waste and recyclable material may be placed for collection and disposal.

(17) Recyclable Material. Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than cost of collection and disposal of the same material.

(18) Resource Recovery. The process of recovering useful materials or energy resources from Solid Waste, including energy recovery, materials recovery, recycling or reuse of Solid Waste.

(19) Return on Revenue. Return on Revenue is the Operating Margin divided by the Gross Revenue expressed as a percentage

(20) Service. The collection, transportation, storage, transfer or disposal of or resource recovery from Solid Waste by the Franchisee. It also includes, without limitation, collection of source separated Recyclable Materials for compensation. "Service" includes the providing of "Special Service" as defined below in this Ordinance.

(21) Solid Waste. All putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, grass clippings, compost, tires, equipment and furniture; commercial, industrial, demolition, and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable or animal solid and semi-solid wastes, dead animals; infectious waste as defined in ORS 459.386; and other wastes; but for the purposes of this Ordinance, the term does not include:

(a) Hazardous waste as defined in ORS 466.005.

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

(c) Beverage containers, subject to reuse or refund provisions, contained in ORS 459A.700 to 459A.740.

(d) Sewage sludge and septic tank and cesspool pumpings or chemical toilet wastes.

(22) Solid Waste Management. The prevention or reduction of Solid Waste; the business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling and resource recovery of Solid Waste; and the facilities necessary or convenient to such activities.

(23) Special Service. The collection of bulky waste, including furniture, appliances and large quantities of Solid Waste.

(24) Temporary Service. Subcontracted service for a period not exceeding thirty (30) days, within which time Franchisee may subcontract with another person to provide a certain type of service to one or more customers or classes of customers.

(25) Waste. Any material that is no longer wanted by or is no longer usable by the Generator, producer or source of the material, which material is to be disposed of or to be resource-recovered by another person. Even though materials which would otherwise come within the definition of "waste" may from time to time have value and, thus, be resource recovered, does not remove them from this definition.

(26) Yard Debris. Grass clippings, leaves, tree and shrub prunings of no greater than four inches in diameter, or similar yard and garden vegetation. Yard debris does not include dirt, sod, stumps, logs or tree/shrub prunings larger than four inches in diameter.

#### Section 4. Exclusive Franchise and Exceptions.

(1) Exclusive Franchise. There is hereby granted to United Disposal Services, Inc. dba Republic Services of Marion County-Woodburn, the exclusive right, privilege, and Franchise to provide service within the City limits as of the effective date of this Ordinance, and in any area that may be hereafter annexed to the City. For the purposes of the Franchise, the Franchisee shall have the exclusive right to use the streets of the City of Silverton for Solid Waste Management Service. No other person shall provide Solid Waste Management service for compensation or offer to provide for the performance of such service to any owner, tenant, lessee, or occupant of any real property in the City of Silverton.

(2) Exceptions. Nothing in this Ordinance shall prohibit:

(a) Any person from engaging in the collection of source separated materials for resource recovery for the purpose of raising funds for a charitable, civic, or benevolent activity, after notice to the Franchisee and permission from the Franchisee or the Council.

(b) Any person from transporting Solid Waste that person produces to an authorized disposal site or resource recovery facility. For purposes of this Ordinance, the Solid

Waste produced by a tenant, licensee, occupant, or person other than the owner of the premises is produced by such person and not by the landlord or property owner.

(c) Any person from contracting with a state or a federal agency, or federally authorized not-for-profit corporation to provide service to such agency under a written contract with such agency.

(d) The collection, transportation, or redemption of returnable beverage containers under ORS Chapter 459A and that portion commonly known as the "Bottle Bill."

(e) The Generator or producer who transports and disposes of Solid Waste or Waste created as an incidental part of regularly carrying on the business of janitorial service, septic tank pumping, sludge collection or disposal service; or gardening or landscape maintenance. The business of "janitorial service" does not include a business that primarily or solely transports and disposes of Solid Waste accumulated, created, generated or produced by a property owner or occupant.

(f) The City from conducting an annual clean-up campaign or abating a nuisance as set forth in Section 16 of this Ordinance.

Section 5. Subcontracts. The Franchisee may subcontract with others to provide Special Service or Temporary Service for up to thirty (30) days under this Ordinance. Such subcontracts shall not relieve the Franchisee of total responsibility for compliance with this Ordinance. The subcontractor shall comply with all terms and provisions of this Ordinance. The subcontract shall not result in any assignment or transfer of the Franchise without approval of the Council, as provided in Section 10 of this Solid Waste Management Ordinance.

Section 6. Franchise Term.

(1) The Franchise granted herein is for a continuing term of seven (7) years beginning January 1, 2021.

(2) Unless grounds exist for suspension, modification, or revocation of the Franchise as set forth in Section 21, the Franchise shall be considered as a continuing seven (7) year term. Beginning January 1 of each year, an additional year will be added to the continuing seven (7) year term, unless the City provides a written notice of termination. For example, on January 1, 2022 the term of this Franchise will be extended through December 31, 2028. Upon the City giving a written notice of termination to the Franchisee, the Franchise will terminate seven years from the date of the termination notice. Any such notice of termination shall only be made after notice to all interested parties and a public hearing.

(3) If Franchisee desires to terminate Solid Waste Management service under this Franchise, Franchisee shall give the City not less than three years prior written notice of its intent to terminate service and its obligations under this Franchise. Franchisee shall continue providing the services described in this Franchise for: (a) three years after giving notice of termination, or (b) the date the City has indicated through a written notice that Franchisee's services are no

longer needed because the City has obtained services from another provider, whichever is sooner.

Section 7. Franchise Fee. In consideration of the Franchise granted by this Ordinance, the Franchisee shall pay the City, seven percent (7%) of the quarterly gross revenue figured on an accrual basis, collected by the Franchisee for the collection of Solid Waste and Recycling within the corporate limits of the City. Franchise fee will take effect upon the date this Franchise is effective. The Franchise Fee shall be due quarterly, on or before the 30th day of the month following the end of the calendar quarter.

Section 8. Review of Records.

(1) An Annual Franchise Report must be completed and remitted to the City Manager or designee on or before each July 15, covering previous calendar year (January 1<sup>st</sup> through December 31<sup>st</sup>) with the following information:

(a) Gross Revenues in an income statement format and provided information about Customer counts, Services provided, disposal volumes, and Recycling activities for all Customer classifications and for all programs identified in this Ordinance.

(b) A summary of communication, marketing, and educational outreach conducted by Franchisee during the reporting period.

(c) A list of rolling stock and major equipment (assets worth more than \$10,000) that will be used by the Franchisee in the City service area for the next ten years.

(d) A synopsis of the operations of the previous Calendar Year, a description of the measures the Franchisee has taken to make its operations more efficient, a listing of efficiency measures which it intends to take on the next Calendar Year, a composite table showing the type and number of customer service complaints and a description of the measures that the Franchisee has taken or is planning to take to correct the cause of commonly reported complaints, and such other information as requested by the City Manager or designee.

(e) Annual reports shall include a written log of all oral and written complaints or service issues registered with the Franchisee from customers within the City. Franchisee shall record the name and address of complainant, date and time of issue, nature of issue, and nature and date of resolution. The City Manager may require more immediate reports documenting complaints and resolutions.

(f) The Franchisee shall complete a waste evaluation for each of the following facilities at least once every two years. The City will designate a point-of-contact for each facility and coordinate with Franchisees' Municipal Contract Administrator to plan and execute the site evaluations. In conjunction with this Section 8(1) a waste stream analysis report will be presented to the City Manager and Council.

- a. City Hall. Address: 306 S Water St, Silverton, OR. 97381
- b. City Shops. Address: 830 McClaine St, Silverton, OR. 97381

- c. Silverton Municipal Pool. Address: 601 Miller St, Silverton, OR. 97381
- d. City of Silverton Waste Water Treatment Plant: 400 Schemmel Ln, Silverton, OR. 97381

(2) Franchisee may identify specific information submitted to the City in Annual Franchise Reports as “CONFIDENTIAL” and it will not be subject to public disclosure except as required by applicable federal or state law. If the City receives a request for disclosure of information marked as “CONFIDENTIAL” pursuant to this Ordinance, the City Manager or designee will notify Franchisee within seven (7) calendar days after receiving the request to allow Franchisee an opportunity to defend against the requested disclosure through appropriate legal action. The City is not obligated to defend against the disclosure of any information marked “CONFIDENTIAL” by Franchisee.

(3) No later than 10 business days after Written Notice, Franchisee must make available for inspection, copying, and review by the City Manager or designee, at any time during normal business hours, all records in Franchisee’s possession that the City Manager or designee deems relevant to verifying the accuracy of Franchise Fees paid to the City, regulating Service Rates, or carrying out any responsibility that Franchisee or the City has under this Ordinance.

(4) No more often than once during any Fiscal Year, the City may perform a review of the revenues, billing records, and billing accounts of Franchisee for the prior year through a certified public accountant, or such other professional chosen by the City, to verify the accuracy of Franchise Fees paid to the City. If the City determines it will perform a review pursuant to this Section, City must notify Franchisee of its intent to proceed with the review within 45 Days of the City receiving the annual report.

(a) In the event such review discloses any difference in payment due to either the City or Franchisee, the review will be submitted to the Council. The Council may accept, reject, or modify the findings in the review. If the Council orders, by resolution, payment to the City or Franchisee, such payment owed is due and payable within thirty (30) calendar days of the date of the resolution.

(b) If Franchisee owes the City a payment of the Franchise Fee, and the payment is more than one percent (1%) of the annual Franchise Fee, Franchisee will reimburse the City all its actual costs for the review and the City may request an additional review during the next Fiscal Year, with all actual costs of such additional review paid by Franchisee. The City may also charge interest retroactive to the payment due date, at a rate of twelve percent (12%) per annum.

(c) City and Franchisee are not required to make payments to the other for years that previously have been, or could have been, reviewed by the City. Prior review years may not be reopened based on findings made in connection with the review of a subsequent year unless the City finds evidence implicating intentional misrepresentation by Franchisee.

(d) For the purposes of City review, the Franchisee shall make the records to be reviewed available for review at a location not more than 30 miles from the City.

- (5) Written notice must include a specific and detailed list of what the City would like to review.
  - a. Review will take place at franchisee location and data will remain with the franchisee.

Section 9. Supervision. Service provided under this Franchise shall be subject to the supervision of the City Manager or the City Manager's designee. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, personnel and records as they relate to the Solid Waste Management provided under this Franchise.

Section 10. Franchisee Responsibility.

- (1) The Franchisee shall:

- (a) Dispose of Solid Waste at sites approved by the Department of Environmental Quality, or recover resources from the Solid Waste, in compliance with this Ordinance and in compliance with all other applicable federal, state, and local laws.

- (b) Provide and keep in force the below insurance coverages and minimum coverage limits:

- (i) Commercial General Liability including bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate.
    - (ii) Commercial Auto Liability for all owned, hired/borrowed and non-owned vehicles of \$1,000,000 combined single limit.
    - (iii) Commercial Umbrella Liability that includes the commercial general liability and commercial auto liability policies under the schedule of underlying policies in the amount of \$1,000,000.
    - (iv) Pollution Liability of \$2,000,000 per occurrence.
    - (v) The above policies shall name the City of Silverton as additional insured with respect to this Franchise Agreement.
    - (vi) In addition, evidence of the following insurance coverages and minimum coverage limits are required:
      - Worker's Compensation Insurance as required by ORS Chapter 656.
      - The above shall be evidenced by a Certificate of Insurance filed with the City Recorder within thirty (30) days after the adoption of this Ordinance and renewed and filed annually thereafter. If the City determines that the initial insurance coverage should be increased during the term of this Franchise, the City shall notify the Franchisee in writing of the basis for such determination and of the amount of insurance coverage which the City has reasonably determined to be appropriate.



(c) Provide prompt and efficient service.

(d) Provide sufficient collection vehicles, receptacles, facilities, personnel and finances to provide all types of necessary Service and Solid Waste Management; but, where necessary, the Franchisee may subcontract with others to provide certain types of specialized service in accordance with the provisions of this Ordinance.

(e) Provide trucks that are equipped with metal bodies of the compactor type that are leak proof to the greatest extent practicable. If the Franchisee uses a specially designed, motorized local collection vehicle for transporting Solid Waste short distances from residential or commercial stops to waiting trucks, the container portion of such vehicle shall be equipped with a cover adequate to prevent scattering of the load. If any pick-up truck or open bed truck is used by the Franchisee, such truck shall be covered with an adequate cover to prevent scattering of the load. All vehicles shall be operated in conformity with all ordinances of the City and motorized vehicle laws of the State of Oregon.

(f) Allow a pro-rata credit on the regular monthly charge for Service where the Generator cancels Service for three (3) weeks or more, but no such pro-rate reduction shall be required for Service that is canceled for less than three (3) weeks. A Generator shall give prior written or verbal notice to Franchisee of such request for a credit of three (3) weeks or more.

(g) Not be obligated to provide service to non-owners of property, where the landlord does not request and pay the bill, unless payment for such service has been guaranteed in advance by such non-owner requesting service.

(h) May terminate Service and Solid Waste Management Service to a customer for non-payment by the customer within forty-five (45) days of the mailing of the bill. If service is terminated for non-payment after forty-five (45) days or more, a Service interrupt fee may be charged before resuming service, and the Franchisee may require advance payment in the future from any previously non-paying customer before resuming service.

(i) Respond within two (2) working days to any written or oral complaint regarding service. The Franchisee shall be notified of any complaint filed with the City within one (1) business day, and the City shall furnish the Franchisee with a copy of any written complaint.

(j) Provide the opportunity to recycle in accordance with ORS 459A, together with all rules and regulations adopted thereunder.

(k) Provide drop boxes for the semi-annual "City Clean-up Campaign" described in Section 17. Franchisee may charge as a pass-through cost the CFC evacuation fee on appliances.

(l) Provide receptacles for City facilities and property in accordance with a written list kept on file with the City, which may be changed from time to time upon mutual agreement between the City and Franchisee. The service provided by Franchisee under this subsection and sub-section (k) shall be at no fee to the City, but shall be included in the operating costs of the Franchisee.

(2) The Franchisee shall not:

(a) Give any re-occurring rate preference to any person, locality, or type of Solid Waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of Solid Waste handled, and location of customers so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates.

(b) Sell, assign, transfer, lease or dispose of this Franchise, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable or any right, interest or property therein, pass to or vest in any person or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld.

(3) The Franchisee shall promptly notify the City of any actual or proposed change in the transfer of, or acquisition by any other party of control of the Franchisee. The word "control" as used herein is not limited to majority stockholders, but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Franchisee shall make this Franchise subject to cancellation unless and until the City Council has consented thereto.

(a) The parties to the sale or transfer of this Franchise shall make a written request to the City Council for its approval and furnish all information reasonably required for City Council consideration.

(b) The City Council's approval shall be based upon the financial responsibility of the party whom the Franchisee is proposing for sale, assignment or transfer. In reviewing a request for sale or transfer of this Franchise, the City Council may inquire into the financial capability, technical ability, legal qualifications, demonstrated ability and experience of the prospective controlling party or transferee, to comply with the terms of the Franchise as determined by the City, and must agree to comply with all provisions of the Franchise.

(c) The City Council shall render a final written decision on the request within sixty (60) days, and such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(d) Within thirty (30) days of any transfer or sale of this Franchise, if approved or deemed granted by the City Council, Franchisee shall file with the City a copy of the deed, agreement, lease, bill of sale, stock power or other written instrument evidencing such sale or

transfer of ownership or control, certified and sworn to as correct by the Franchisee and the transferee.

(e) As part of any assignment or transfer of Franchise, as provided in this subsection (b), the assignee shall provide a performance bond in the form acceptable to the City, in the amount of \$1,000,000 with a surety licensed to do business in the State of Oregon, conditioned upon the full and faithful performance of this Agreement and Franchise and this Ordinance.

Section 11. Customer Service Standards. Franchisee shall:

(1) Provide sufficient collection vehicles, carts, bins, containers, drop boxes, facilities, personnel and finances to provide all types of necessary services as determined by the City Manager.

(2) Sufficiently staff, operate and maintain a business office and operations facility within 20 miles of the City of Silverton.

(3) Establish minimum office hours of 8:00am through 5:00pm, Monday through Friday, not including holidays.

(4) Ensure a responsive, customer service oriented business. Provide customers with a local telephone number and listed in a local directory. Adequately staff operations to provide prompt response to customer service requests or inquiries and respond promptly and effectively to any complaint regarding service. Calls received by 1:00pm by office staff shall be returned the same day as call received, and by Noon of the following day if call is received after 1:00pm. Franchisee shall promptly respond to all written complaints about service or rates.

(5) Train collection crews prior to their beginning solid waste and recycling collection, and office staff prior to having public contact. The scope of the training shall include, but is not limited to, acceptable safety practices, acceptable standards of service to the public, courteous customer service, and accuracy and completeness of information.

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

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

(8) Annual reports shall include a written log of all oral and written complaints or service issues registered with the Franchisee from customers within the City. Franchisee shall record the name and address of complainant, date and time of issue, nature of issue, and nature

and date of resolution. The City Manager may require more immediate reports documenting complaints and resolutions.

Section 12. Customer Responsibility.

(1) The Franchisee, the City and the public shall comply with ORS Chapters 459 and 459A, the regulations promulgated pursuant thereto including those regulations issued by the Department of Environmental Quality, Workers' Compensation Board, and the State Accident Insurance Fund. The following requirements shall pertain to service under this Ordinance:

(a) Preparation of Solid Waste for Collection:

- (i) Garbage shall be drained of surplus liquid and placed in a closed, leak-proof receptacle.
- (ii) Pet feces, sharp objects such as broken glass and knives, and any other waste with potential of causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public, the Franchisee, or employees of the Franchisee.
- (iii) Hazardous Waste, chemicals, paint, corrosive materials, infectious waste or hot ashes shall not be put into a receptacle. Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any receptacle. When materials or customer abuse, fire or vandalism causes excessive wear or damage to a receptacle, the cost of repair or replacement may be charged to the customer.

(b) Solid Waste Receptacles

- (i) Receptacles for mechanical collection shall be provided to the Generator by Franchisee, unless otherwise authorized by the Franchisee. The loaded weight of a receptacle shall comply with the manufacturer's specifications.
- (ii) Except for drop boxes, receptacles shall be equipped with lids sufficient to keep out water and to prevent disturbance by animals and entrance of pests; they shall be kept closed, except when being filled, emptied or cleaned; and they shall be kept in a clean, leak-proof and sanitary condition by the Generator of the solid waste.
- (iii) Sunken receptacles shall not be installed or used.
- (iv) Stationary compactors shall comply with applicable federal and state safety regulations. No stationary compactor or other container or drop box shall be loaded so as to exceed the safe design limit or operation

limit for collection vehicles used by Franchisee. A person who wishes service for a compactor that such person is going to acquire shall acquire a compactor approved by the Franchisee that is compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire.

(c) Placement of Receptacles for Collection

- (i) Receptacles shall be kept or placed so that there is convenient and safe access for collection service. Nothing contained herein shall prevent or discourage the use of sight obscuring waste receptacle screening for commercial or industrial receptacles.
- (ii) All carts designed for mechanical collection shall be placed at the curb or roadside by the Generator prior to collection time.
- (iii) The Generator shall provide safe access to the pick-up point so as not to jeopardize the persons or equipment supplying service, or to the motoring public.
- (iv) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure.
- (v) No person shall block service access to a commercial receptacle that is one cubic yard capacity or larger, a drop box or roll-off box or other similar receptacles for collection.

(d) Multiple Dwelling Units. Apartment houses, trailer courts, duplexes or other multiple dwelling units shall have weekly solid waste collection for a volume that is equivalent to at least 35 gallons for each dwelling unit.

(e) Payment for Services. Any person who receives Service shall be responsible for payment of that Service. The landlord of any premises impliedly consents to the provision of Service to the tenant thereof, and shall be responsible for payment of that Service if the tenant does not pay.

(f) Frequency of Service. Contractor shall remove Solid Waste from the premises of a customer at regular intervals not to exceed seven (7) days.

Section 13. City Service Requirements. City Council and the Franchisee may provide specialized types of service upon mutual agreement. The costs and income from such specialized service shall be considered in the determination of rates, so as to make providing of specialized services economically feasible.

Section 14. Franchisee's Service Requirements for Customers. In addition to the customer requirements in Section 12 of this Ordinance, the Franchisee may, subject to review and revision by the City Council, establish reasonable rules concerning the size, weight and location of containers or compactors and on other matters directly affecting the safety of the Franchisee's employees and its ability to perform the service with available technology and equipment. Such reasonable rules may be established so the Franchisee can comply with weights, disposal site requirements, and general requirements of federal, state and local law.

Section 15. Preventing Interruption of Service. In the event the City Council finds an immediate and serious danger to the public, creating a health hazard or serious public nuisance, the City Council may, after a minimum of 24 hours actual notice to the Franchisee, authorize another person to temporarily provide service under this Ordinance, or the City may provide such service. In either event, the Franchisee agrees that as a condition of its Franchise that any real property, facilities or equipment of the Franchisee may be used to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of service. In the event the power under this section is exercised, the usual charges for service shall prevail and the Franchisee shall be entitled to collect such usual charges, but shall reimburse the City for its actual cost, as determined by the City.

Section 16. Service to be Provided; When Such Service May be Interrupted or Terminated.

(1) The Franchisee shall provide weekly Solid Waste Management Service at the various residences, businesses, establishments and other places within the incorporated limits of the City where such service is requested and required, promptly and with dispatch, upon the payment of not more than the maximum rates authorized by the most recent rate schedule approved by the City Council.

(2) Franchisee shall provide for Residential pick-up of Garbage and Yard Debris (including food scraps) every week, and Recyclable Material every other week.

(3) Franchisee shall provide for Commercial and Industrial pick-ups of Garbage and Recycling up to five (5) days a week based upon demand.

(4) Franchisee shall provide notice to customers when new items will be accepted as Recyclable Material and when items are no longer accepted as Recyclable Material.

(5) Franchisee shall provide stickers for Recyclable Material receptacles indicating what Recyclable Material is allowed and not allowed in each receptacle.

(6) Franchisee shall assist City in evaluating how effective the recycling efforts are within the City to support the City's Earthwise Certification.

(7) The Franchisee shall not terminate service to any or all of its customers served

under this Franchise except in accordance with the provisions of this Ordinance. Service may be interrupted or terminated when:

(a) The street or road access is unavoidably blocked through no fault of the Franchisee, and if there is no reasonable alternate route or routes to serve all or a portion of its customers; but, in either event, the City shall not be liable for any such blocking of access, or

(b) Adverse weather conditions make providing service unduly hazardous to persons or equipment providing such Services, or if such interruption is caused by an Act of God, including but not limited to fires and floods, or a public enemy.

(8) Franchisee shall operate and provide staffing for the Source Separated Recycling Depot located at the Silverton Public Works Shops every Saturday from 8 a.m. to 1 p.m.

(9) Franchisee shall provide leaf pick-up for leaves dropped off by City customers on two separate days annually at the Silverton Public Works Shops in coordination with the City of Silverton at no cost to the City.

Section 17. City Collections. Nothing herein contained shall be construed in any way preventing the City of Silverton from:

(1) Conducting a semi-annual clean-up campaign for the collection of yard debris and appliances located in the City so as to provide for the beauty of the City and the safety of its citizens. The Franchisee shall provide drop boxes for such an annual clean-up campaign in accordance with a written agreement between the City and Franchisee, which shall be kept on file with the City and may be changed from time to time upon the mutual agreement of the parties.

(2) Abating any public nuisance such as the undue accumulation of Solid Waste upon any private or public property in the City of Silverton, as provided for in Section 20 of this Ordinance, or by any other ordinance or law.

Section 18. Annexations. The City and the Franchisee agree to comply with ORS 459.085(3) in the event the City annexes all or a portion of a service area previously Franchised, so as to protect the quality of service within the service area and protect the rights of affected persons and local government units.

Section 19. Rates.

(1) Setting Rates. The City shall establish a rate schedule for all Solid Waste Services to be provided under this Franchise. The City shall set rates sufficient for Franchisee to recover its Allowable Expenses, Operating Margin, and Pass-Through Expenses.

(2) Rate Adjustment. The Franchisee may provide the City with a written request to adjust the rates during the term of this Franchise. The City will conduct a rate review on the proposed adjustment consistent with subsection (3) below. The City Council will have ninety (90) days from the date it receives the proposed rate adjustment from the Franchisee to make a formal decision on the requested rate adjustment.

(3) Rate Review - Annual Service Rate Adjustment. On an annual basis within one year from the date this Franchise begins, the Franchisee shall submit a Cost of Service Analysis (COSA) for City review. Based on the COSA, the City will conduct an annual rate review. It is the goal of the City to provide Franchisee with a ten percent (10%) Return on Revenue, but no less than eight percent (8%) and no greater than twelve percent (12%). The City may, at its discretion, have Franchisee's COSA reviewed by an independent third party who is selected and paid for by the City. Any adjustments recommended by the independent third party may be taken into consideration in the rate review process. In addition to the independent third party review, the City may consider information submitted by Franchisee or others. All such information shall be part of the rate review record. Based on the City's rate review, the City, in its discretion will establish an adjusted rate schedule for all services provided under this Franchise. The adjusted rate schedule must be reviewed and approved by the City Council before implementation.

Section 20. Ownership of Solid Waste and Waste and Recyclable Materials.

Unless otherwise stated, Solid Waste, Waste and Recyclable Material properly placed for collection are the property of the Franchisee. The customer placing said material for collection may retrieve any item or material erroneously placed for collection until those items or materials have been collected by the Franchisee's vehicle. Title to and liability for Hazardous Waste shall at no time pass to Franchisee and shall remain with the Generator.

Section 21. Suspension, Modification or Revocation of Franchise.

(1) Failure to comply with written notice from the City Council to provide necessary service or to otherwise comply with the provisions of this Ordinance, state or federal law after written notice and reasonable opportunity to comply, shall be grounds for modification, revocation, or suspension of this Franchise. Additional grounds for modification, revocation, or suspension of this Franchise include but are not limited to:

- (a) That Franchisee has practiced any fraud upon the City or customer.
- (b) That Franchisee has become insolvent, unable or unwilling to pay its debts, or is adjudged to be bankrupt.
- (c) That Franchisee has misrepresented a material fact in the negotiation of, or renegotiation of, or renewal of the Franchise.



After receipt of the aforementioned written notice from the City Council, the Franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the City Council. In the event of a public hearing, the Franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.

- (2) If the Franchisee fails to comply within the specified time or fails to comply with the order of the City Council entered upon the basis of findings at the public hearing, the City Council may suspend, modify, or revoke the Franchise, or make such action contingent upon continued noncompliance with this Ordinance.

(a) The City Council shall adopt findings of fact and conclusions that will support or deny the alleged violation. The City Council may, on the basis of such findings, suspend, modify or revoke the Franchise or condition such action upon continued non-compliance with the alleged violation. Franchisee shall comply with the time specified in the notice or with the order of the City Council.

Section 22. Franchisee Penalties. In addition to the provisions of Section 21, the City may impose penalties upon the Franchisee for violations of this Ordinance, occurring without just cause. Subject to the procedures set forth in Section 23 below, the City Manager may assess penalties against Franchisee as follows:

- (1) For failure to adhere to material provisions of this Franchise, Two Hundred Fifty Dollars (\$250.00) per day for each provision not fulfilled.
- (2) For failure to comply with Oregon Occupational Safety and Health Administration and Oregon Department of Transportation safety requirements or Oregon Department of Environmental Quality rules and regulations, the penalty shall be Two Hundred Fifty Dollars (\$250.00) per day, per occurrence.
- (3) For failure to comply with any provision of this Franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Twenty Five Dollars (\$125.00) per day, per occurrence.
- (4) For failure to comply with reasonable requests of the City Manager related to service, the penalty shall be One hundred Dollars (\$100.00) per day per request.

Section 23. Procedure for Imposition of Franchisee Penalties.

(1) Whenever the City Manager finds that Franchisee has violated one (1) or more terms, conditions or provisions of this Franchise, a written notice, or a verbal notice followed by a written notice, shall be given to Franchisee informing it of such violation or liability. If the violation concerns requirements mandated by the Oregon Occupational Health and Safety Administration or the Oregon Department of Environmental Quality, a verbal notice followed by

a written notice may be given. For these safety or public health violations, Franchisee shall have 24 hours from notification to correct the violation. For all other violations and liabilities the written notice shall describe in reasonable detail the specific violation so as to afford Franchisee an opportunity to remedy the violation. Franchisee shall have ten (10) business days subsequent to receipt of the notice in which to correct the violation. Franchisee may, within five (5) business days of receipt of notice, notify the City Manager that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Franchisee to the City Manager shall specify with particularity the matters disputed by Franchisee.

(2) The City Council shall hear Franchisee's dispute at its next regularly or specially scheduled meeting. The Council shall supplement its decision with written findings of fact.

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

(4) Franchisee shall be liable for full payment of all penalties imposed under this Section if it fails to cure the alleged breach in accordance with this Section.

#### Section 24. Enforcement of Franchisee Requirements.

(1) The City Manager shall have the right to observe and inspect all aspects of collection operations, facilities, services, and records that are subject to the provisions of this Franchise to ensure compliance.

(2) If Franchisee at any time fails to promptly and fully comply with any obligation of this Franchise after receiving a written notice and a reasonable opportunity to comply, the City Manager may elect to perform the obligation at the expense of Franchisee.

(3) If Franchisee defaults in any of the terms required to be performed by it under the terms of this Ordinance, the Franchise may become subject to the provisions and procedures set forth in Sections 21 through 23 of this Ordinance.

(4) The City Manager reserves the right to make such further regulations as may be deemed necessary to protect the interests, safety, welfare and property of the public and carry out purposes stated in Section 2 of this Ordinance. The City Manager or Franchisee may propose amendments to this Franchise. Proposals shall be in writing and shall be afforded an adequate review process. After review of the proposed amendments to the Franchise, the Council may adopt the amendments. If the amendments are proposed by Franchisee, the procedures set forth in Section 29 of this Ordinance shall be followed.

Section 25. Nonenforcement of Franchisee Requirements by the City. Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance. The City should make a reasonable effort to

maintain consistency in enforcement.

Section 26. Prohibited Actions by Customers and the Public. The following is prohibited:

(1) On Public Property. It shall be unlawful for any person without prior written authorization from the City to accumulate Solid Waste or Waste upon any of the streets, alleys or other public property belonging to the City.

(2) On Private Property. It shall be unlawful:

(a) For any person to leave or store Solid Waste or Waste upon any private property in such a manner or for such a period of time that it creates a public nuisance.

(b) For the owner of private property, as shown by the latest tax rolls of the Assessor of Marion County, to fail to remove Solid Waste or Waste stored or left upon such private property where a public nuisance has been created.

(3) General Offenses:

(a) Except as otherwise provided in this ordinance, it shall be unlawful for any person other than the Franchisee to offer or to advertise to provide, or to provide, Solid Waste Management Service to another person for compensation.

(b) No person shall dispose of Hazardous Waste in any manner that is not authorized or permitted by federal, state or local laws and regulations. No person shall place Hazardous Waste out for collection or into any receptacle supplied by the Franchisee.

(c) No person shall enter into a receptacle for the purpose of compacting the contents of the receptacle.

(d) No person shall remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the Generator.

(e) No person shall remove the lid from any receptacle and remove, disturb, collect, compact or scatter solid waste or recyclable material placed in such receptacle, nor shall they deposit solid waste or recyclable material into such receptacle, unless the person is authorized to do so by the Generator.

Section 27. Customer and Public Penalties. Violation by any person of the provisions in Section 26 of this Ordinance shall be deemed to be a violation and shall be punishable upon conviction by a fine of not more than \$500.00. Each day of the violation shall constitute a separate offense.

Section 28. Indemnity and Hold Harmless. The Franchisee shall indemnify the City, elected

officials, and any officers, employees, representatives, or agents of the City and hold them harmless from all loss, damage, claim, expense, and liability arising out of the negligent operation by the Franchisee under this Franchise. In the event that any suit or action is brought for injury or damage to persons or property against any of the foregoing, based upon or alleged to be based upon any loss, damage, claim, expense, or liability arising out of the negligent operation of the Franchisee under this Franchise, the Franchisee shall defend the same at its own cost and expense. The Council and the City Manager reserve the right to retain counsel of their own choosing and to join in the defense of any such suit or action, with the reasonable cost of such additional counsel to be borne by the Franchisee, unless the claim contains allegations of negligence specifically directed at the City in which case the City will bear the expense of counsel of its choice.

Section 29. Petition for Amendment. The Franchisee may petition the City for alterations or amendments to this Franchise to accommodate a significant change in circumstances or to permit technical variations which will satisfy the purpose of this Franchise. The City shall review the application within 30 days of receipt thereof, and shall issue a report on its findings to the City Council. The City Council shall determine whether the amendment shall be granted within 45 days after receiving the staff report. Amendments shall be approved in ordinance form and shall be effective ten days after acceptance of the amendment by Franchisee.

Section 30. Non-Litigation. Franchisee agrees, by accepting this Franchise, that all applicable requirements have been met fully and that the process of awarding this Franchise and content herein are consistent with federal, state and local laws and regulations. Franchisee therefore stipulates that it will not commence, fund or prosecute any litigation or administrative proceeding before any competent tribunal against the City, its officers, employees, agents, or representatives arising out of the content of or process used in the development of this Franchise. This is a material provision of this Franchise and the failure to adhere to its requirements shall render the Franchise null and void as of the time that such action is filed. This provision shall not interfere with the right of the Franchisee to seek review regarding the application of this Franchise during its term.

Section 31. Equal Employment Opportunity Compliance. Franchisee shall comply at all times with applicable Federal, State and local laws and all executive and administrative orders relating to nondiscrimination, equal employment and affirmative action.


Section 32. Construction. Any findings by any court of competent jurisdiction that any portion of this Ordinance is unconstitutional or invalid shall not invalidate any other provision of this Ordinance.

Section 33. Force Majeure. Notwithstanding anything in this Ordinance to the contrary, any failure or delay in performance due to contingencies beyond a party's reasonable control, including strikes, riots, terrorist acts, epidemics, compliance with applicable laws or governmental orders, fires and/or other Acts of God, shall not constitute a breach of this Agreement.


Section 34. Repealing Clause. Ordinance Number 09-11 is hereby repealed upon the effective date of this Ordinance.

Section 35. Effective Dates/Declaring an Emergency. The current franchise in effect is set to expire December 31, 2020 and as a result it is necessary for this Franchise to be in place upon expiration. As such, the City Council declares an emergency and this ordinance shall take effect January 1, 2021 after passage by the Council, and shall be valid for a term of franchise as stated in Section 6 and provided that Grantee files its acceptance.

Ordinance adopted by the City Council of Silverton, this 7<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Mayor, City of Silverton  
Kyle Palmer

ATTEST

  
\_\_\_\_\_  
City Manager/Recorder, City of Silverton  
Christy S. Wurster

ACCEPTED BY THE FRANCHISEE.

The Franchise granted to United Disposal Services, Inc. dba Republic Services of Marion County-Woodburn is hereby accepted by the Franchisee on this 17<sup>th</sup> day of Dec, 2020.

By:   
\_\_\_\_\_

Name: Jason Jordan

Title: General Manager