ORDINANCE NO. 1318-11

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT AND AMENDING FRANCHISE TERRITORY WITH UNITED DISPOSAL SERVICES, INC. dba ALLIED WASTE OF CLACKAMAS AND WASHINGTON COUNTIES; AND RESCINDING ORDINANCE NO. 1140-03.

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Title.

This ordinance shall be known as the "Solid Waste Management Ordinance.

Section 2. Purpose, policy and scope.

It is the public policy of the City of Tualatin to regulate solid waste management by:

(a) Insuring safe, economical, and comprehensive solid waste service;

(b) Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;

(c) Prohibiting rate preferences and other discriminatory practices;

(d) Providing technologically and economically feasible resource recovery by and through the franchisees.

Section 3. Definitions.

Except where the context clearly indicates a different meaning, the definitions appearing in ORS Chapters 459 and 459A and regulations promulgated thereunder are applicable to this ordinance. The singular includes the plural and vice versa. As used in this ordinance, the following words have the meanings as follows:

(a) "City" means the City of Tualatin. When the city limits are extended, the City shall include the extended geographic boundaries.

(b) "Collection franchise" means a franchise, issued by the City authorizing a person to provide collection service, for use of City streets.

(c) "Compaction" means the process by which material is shredded, manually compacted or mechanically compacted.

(d) "Compensation" includes:

(1) 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 similarly situated persons;

(2) The exchange of service between persons; and

(3) The flow of consideration from a person owning, possessing or generating solid waste to another person who provides services or from a person providing services to another person owning, possessing or generating solid waste. Compensation does not include the benefits, incidental advantages or tax advantages resulting from the donation of services or any form of solid waste.

(e)"City Council" means the City Council of the City of Tualatin;

(f) "Curbside/roadside" means a location within three feet of the edge of a public street, excluding such area separated from the street by a fence or enclosure. The "street" may be a public alley if the franchisee desires to pick up receptacles from the alley. For residences on a flag lot or other private driveway, or a private street not meeting the standards, "curbside" shall be the point where the driveway or street intersects the public street, or at such other location agreed upon between the franchisee and customer or as determined by the City.

(g) "Franchisee" means the person or persons to whom a franchise is granted by the City Council pursuant to this ordinance. A franchise may be delineated as to the form or geographic boundaries of service to be provided. Except as otherwise provided, within the defined geographic locations of the City, such franchise shall grant exclusive rights to provide service and solid waste management services for compensation.

(h) "Generator" means the person who produces the solid waste and recyclable material and places it for collection and disposal. The term does not include a person who manages an intermediate function of altering or compacting the material after it has been produced by the generator and placed for collection and disposal.

(i) "Hazardous waste" has the meaning defined in ORS 466.005.

(j) "Infectious waste" means biological waste, cultures and stocks, pathological wastes and sharps as defined in ORS 459.386 and 459.387.

(k) "Mixed recyclables" means two or more recyclable materials collected together that are not separated, in the combination of materials allowed by the City.

(l) "Organic waste" means materials that can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose and are readily broken down by biological processes into soil constituents. Organic waste includes, but is not limited to food waste, yard debris, paper and putrescible materials that are generally a source of food for bacteria.

(m) "Person" means an individual, partnership, association, corporation, cooperative, trust, firm, estate or other private legal entity.

(n) "Placed for collection" means solid waste, recyclable materials or yard debris that has been placed by the generator for collection by the franchisee in accordance with the terms of this ordinance.

(o) "Processing" means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, identified or otherwise prepared for end use markets.

(p) "Rate" means the amount approved by the City as a charge for service rendered and charged by the franchisee, including the franchise fee, to users of the service.

(q) "Recyclable materials" 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, or other materials as may be designated by the City.

(r) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.

(s) "Solid waste" means all putrescible and non-putrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, grass clippings, compost, tires, manure, equipment and furniture; sewage sludge, septic tank and cesspool pumping or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts of vehicles; discarded home or industrial appliances; vegetable or animal solid and semi-solid wastes, dead animals and other wastes; but the term does not include:

(1) Hazardous waste as defined in ORS 466.005;

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

(3) Beverage containers subject to reuse or refund provisions in ORS 459.810.

(t) "Solid waste collection service" or "service" means collection of solid waste and recyclable materials, and the transportation, storage and disposal or resource recovery of the materials to an approved disposal facility or facility accepting recyclable materials.

(u) "Solid waste management" means the prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

(v) "Source separate" means the removal of recyclable materials by the generator from the solid waste that is to be landfilled.

(w) "Special waste" means this waste shall have the meaning defined in the Metro Code. The collection of special waste shall be controlled by this ordinance.

(x) "Transfer site" or "transfer facility" means a facility used as an adjunct to collection vehicles, a resource recovery facility, or a disposal site between the collection of the waste/solid waste and disposal site, including but not limited to a concrete slab, pit, building, hopper, railroad gondola or barge. Transfer site or transfer facility may also mean resource recovery facility where mixed materials are brought and sorted to remove recyclable materials. Transfer site or transfer facility does not include a self-propelled, compactor type solid waste collection vehicle into which scooter, pickups, small packers or other satellite collection vehicles dump collected solid waste for transport to a transfer site, disposal site, landfill or resource recovery site or facility.

(y) "Waste" means useless or discarded materials.

(z) "Yard debris" means organic solid waste material generated from residential or commercial landscaping or gardening activities and includes grass clippings, branches, shrubs, weeds and other woody waste not larger than six inches in diameter.

Section 4. Exclusive franchise and exceptions.

(a) Exclusive franchise. Pursuant to the Tualatin City Charter, section 4 and ORS 459A.085, the City hereby exercises its authority to franchise the service and solid waste management service within the City. When a franchise is granted by the City under this ordinance, the franchise shall be the exclusive right, privilege and franchise to provide service and solid waste management service within a defined geographic boundary within the City as of the date the franchise is granted. For the purpose of this franchise, the franchisee shall have the exclusive right to use the public

rights-of-way of the City. Except as otherwise provided in this ordinance, no other person shall provide, offer to provide, or advertise for the performance of service or solid waste management service for any person on any real property in the City.

(b) Except as provided in paragraph (3) of this subsection, the following person are declared the holders of an exclusive franchise to conduct solid waste collection, solid waste management and resource recovery within the City:

(1) ~~For all territory located within the City, except for property lying east of the Interstate 5 freeway and north of the Tualatin River and further excepting property east of SW 50th Avenue and south of the Tualatin River, United Disposal Service, Inc., 9500 SW Boechman Road, Wilsonville, Oregon 97070.~~

(2) For all territory located within the City limits, east of the Interstate 5 Freeway and north of the Tualatin River, and east of SW 50th Avenue and south of the Tualatin River, United Disposal Services, Inc. dba Allied Waste of Clackamas and Washington Counties. ~~Rossman Sanitary Service Inc., 100 S. Wilda Road, West Linn, OR 97034.~~

(3) ~~The holder of an exclusive franchise within the City to conduct a drop box pickup and disposal service is Keller Drop Box, Inc., 10295 SW Ridder Road, Wilsonville, Oregon 97070.~~

(c) Regulations may be adopted by resolution of the City Council to administer this ordinance.

(d) The exclusive right, privilege, and franchise granted under subsection (a) is subject to the following exceptions:

(1) A person may engage in the collection of source separated materials for recycling or resource recovery, but only for the purpose of raising funds for a charitable, civic or benevolent activity under the following conditions:

(A) Such activity shall be conducted in accordance with the terms and conditions in this ordinance, regulations adopted under this ordinance and the notice submitted to the City as required.

(B) A prior written notice of such activity shall be prepared and signed by the person intending to engage in such activity, or an authorized representative and delivered to the City, which notice shall specify the geographic areas and

times in which such activities are intended to take place.

(2) A person may transport solid waste that such person produces, directly to an authorized disposal site or recycling or resource recovery facility. The solid waste produced by a tenant, licensee, occupant or person other than the owner of the leased, occupied or licensed premises shall be considered produced by the tenant, licensee, occupant or person and not produced by the landlord or property owner.

(3) A person may contract with the State or a federal agency to provide service to such agency under a written contract with such agency.

(4) The Council may grant an exclusive franchise to provide drop box service.

5) A person may engage in the practice of towing or otherwise removing damaged, discarded or abandoned vehicles or parts of vehicles, so long as such activity is conducted in compliance with applicable state and local laws.

(6) A person may engage in the practice of pumping, transportation, and disposal of septic tank and cesspool pumpings or other sludge, provided such activity is conducted in compliance with applicable state and local laws.

(7) A person who engages in an occupations, such as gardener, landscaper, grounds keeper, or construction contractor for a property owner or tenant in the City and who produces thereby small volumes of solid waste as a result of such work for a property owner or tenant in the City may transport such solid waste in such person's own equipment where the solid waste produced is incidental to the particular job the person is performing.

Section 5. Franchise term.

The rights, privilege and franchise granted by this ordinance is considered as a continuing five-year franchise, subject to termination as follows:

(a) Unless grounds exist for suspension, modification or revocation of the franchise under this ordinance, the franchise is granted for a continuing five-year term. Upon the fifth anniversary of the grant or renewal of the franchise, the particular franchise shall be renewed for an additional five-year term unless the City sends written notice of termination to the franchisee. The City may give notice at any time, however,

termination may not occur prior to five years following the notice of termination.

(b) If a franchisee desires to terminate service or solid waste management service under this ordinance, the franchisee shall give the City and any other franchisees not less than two years prior written notice of its intent to terminate service and obligations under the franchise and this ordinance.

(c) When a franchisee gives notice to voluntarily terminate the franchise, the remaining franchisees shall have the first right and option to purchase all or part of the equipment and geographic territory of the terminating franchisee at a price to be agreed upon by the parties. The remaining franchisees shall exercise this first right and option within six months following the notice by the terminating franchisee.

Section 6. Franchise fee.

(a) In consideration of the rights, privileges and franchise granted by this ordinance, the franchisee shall pay to the City three percent of the gross receipts collected each year by the franchisees for service, for solid waste management service, and for the sale of recycled materials within the City. Provided that the City gives at least 60 days advance written notice to the franchisee, the City may adjust the amount of the franchise fee by resolution in an amount not prohibited by law.

(b) Payment shall be made according to the following schedule: For the period from January through March, payment shall be made in the immediately following April; for the period from April through June, payments shall be made in the immediately following October; and for the period from October to December, payment shall be made in the immediately following January.

(c) Payments shall be accompanied by a complete statement setting forth the gross receipts collected during the preceding quarter. Upon request from the City, the franchisee shall provide written confirmation or other acceptable means of substantiation of particular items or information being submitted.

Section 7. Franchise responsibility.

(a) The franchisee shall dispose of solid waste collected at a site approved by the City, Metropolitan Service District (Metro) and the Department of Environmental Quality (DEQ), and recover resources from the solid waste in compliance with ORS Chapter 459 and 459A and any rules and regulations adopted pursuant to those chapters, including but not limited to any solid waste reduction plan or plans adopted by the City by resolution in conjunction with Washington County and in furtherance of criteria approved for such plans by Metro and DEQ.

(b) The franchisee shall provide and keep in force a public liability

insurance policy that provides coverage for bodily injury, including personal injury and property damage insurance, and including automobile coverage that will protect the franchisee from all things or damage that may arise from operations under or in connection with the franchise, including all operations of subcontractors. The insurance shall provide coverage for not less than $100,000 for injury to a single person, $500,000 to a group of persons within a single occurrence, and $50,000 for property damage within a single occurrence or where the limits of liability for public bodies under ORS 30.270 are raised, then in accordance with such raised liability limits. The insurance shall be evidenced by a certificate of insurance filed with the City Recorder within 30 days of the granting of the franchise and thereafter upon renewal or modification of the policy. Such insurance shall be maintained in full force and effect and shall name the City of Tualatin, its officers, agents and employees as named insureds. The insurance shall not be modified or cancelled without at least 30 days prior written notice by certified mail to the City.

(c) The franchisee shall provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service and solid waste management service; but where necessary the franchisee may subcontract with others to provide certain types of specialized service in accordance with this ordinance.

(d) Except as otherwise provided, all vehicles used in the collection and/or transportation of waste shall be equipped with a metal body of the compactor type that is leak-proof to the greatest extent possible. If a franchisee uses a specially designed, motorized local collection vehicle for transporting solid waste over 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 the load. If a pickup truck or open bed truck is used by a franchisee, the load shall be covered with an adequate cover to prevent scattering the load. All vehicles shall be operated in conformity with all ordinances of the City. All vehicles shall be properly licensed, registered and equipped in compliance with the State of Oregon's motor vehicle laws.

(e) The franchisee shall allow a pro rata credit on the regular monthly charge for service and waste management service where services are cancelled for three weeks or more, but no such prorate shall be allowed for services that are cancelled for less than three weeks.

(f) The franchisee is not obligated to provide service or solid waste management service to non-owners of property where the landlord or owner does not request and pay the bill, unless the payment has been guaranteed in advance by the property owner.

(g) The franchisee may terminate service and solid waste management service to a customer for non-payment by the customer within 45 days of the mailing of the bill. The franchisee may require advance payment in the future from a previously non-paying customer before resuming service.

(h) Each franchisee shall furnish a bond in a form acceptable to the City that will insure the faithful performance by the franchisee of the service that the particular franchisee is required to provide under this ordinance. The amount of the bond shall be $5000.

(i) The franchisee shall respond to any written or oral complaint regarding the franchisee's service no later than the work day immediately following the date of the complaint.

(j) The franchisee shall provide the Opportunity to Recycle in accordance with ORS chapter 459A. The franchisee shall comply with all rules and regulations adopted by the Department of Environmental Quality and the Metropolitan Service District, if any.

(k) The franchisee whose territory includes the following City-owned facilities shall provide service at those facilities at no charge to the City:

(1) The Community Center;

(2) The Senior Center;

(3) The Lafky House;

(4) The Community Park, located long the Tualatin River; and

(5) The Parks Administration Building.

Such consideration shall be in addition to other consideration provided by such franchisee.

(l) Except as otherwise provided, the franchisee shall not give a 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, or location of customers, so long as such rates are reasonably based upon the cost of the particular service and are approved by the City Council in the same manner as other rates. This provision shall not prohibit the franchisee from negotiating for or agreeing to either purchase or charge from recyclable materials collected from commercial customers based on quantity or quality of such materials, so long as comparable rates are offered to customers of the same class.

(m) The franchisee shall not assign or transfer the franchise, a part of the franchise, or anything pertaining to the franchise without the approval of the City Council. The Council may approve the assignment or transfer if the proposed transferee qualifies for service under all applicable standards and requirements of this ordinance, state law and regulations. Nothing contained in this ordinance shall be construed as

prohibiting a pledge or assignment an interest in the franchise or monies due for service as financial security by a franchisee so long as the franchisee remains primarily responsible for obligations under this ordinance. Such assignment shall be subject to all proper setoffs in the nature of franchise fees owing to the City.

(n) The franchisees shall be responsible for providing collection of infectious waste, as defined in ORS 459.386, either directly or through a sub-contract, subject to the prior approval by the City. Such collection shall be provided in a manner that meets the requirements of state statutes and regulations promulgated by the Department of Environmental Quality and the State Health Division.

Section 8.

Service provided under this franchise shall be subject to the supervision of the City Manager or the City Manager's designee. The franchisee shall, at reasonable times, permit inspection of this facilities, equipment, personnel and records as they relate to the service and solid waste management service provided under this ordinance. The franchisee shall file an annual report in the manner provided by the City by resolution.

Section 9. Suspension, Modification or Revocation of Franchise.

(a) The City Council may suspend, modify or revoke a franchise upon a finding that the holder of the franchise has committed any of the following acts:

(1) Willfully violated this ordinance or ORS Chapter 459 or 459A or any rule promulgated under these chapters;

(2) Materially misrepresented statements in an application for a franchise, the annual report of gross receipts or any other report, including but not limited to a recycling or solid waste management program report;

(3) Willfully refused to provide adequate service in the defined service area;

(4) Willfully refused a request for inspection of facilities, equipment, personnel or records;

(5) Operated or provided service or waste management service within the city limits without a franchise or in violation of a franchise or condition attached to such franchise from the City Council.

(b) When the City Council, the City Manager, or the City Manager's

designee receives information, indicating a violation of this section, the City shall provide a written notice of such violation to the non-complying franchisee. The notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

(c) Upon receipt of the written notice of violation, the non-complying franchisee shall have 30 days from the date the notice was mailed to comply or to request a public hearing before the City Council. The franchisee's request for a public hearing must be in writing. If a public hearing is held, the franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral, written and electronic form.

(d) The Council shall adopt written findings of fact and conclusions that will support or deny the alleged violations. On the basis of such findings, the Council may suspend, modify or revoke the franchise of the non-complying franchisee or condition such action upon continued non-compliance with the alleged violation. The franchisee shall comply with the time specified in the notice or with the order of the City Council.

Section 10. Preventing Interruption of Service.

If the City Council finds an immediate and serious danger to the public that creates a health hazard or serious public nuisance, the City Council may, after not less than 24 hours prior to written notice to the particular franchisee, authorize another person to temporarily provide service under this ordinance, or the City may elect to provide the service itself. Upon request from the franchisee, a public hearing shall be provided before the City Council. However, unless the Council decision to authorize another person to provide temporary service is rescinded, the temporary service may continue to be provided by another person or the City. The franchisee shall permit the use of franchisee's real property, facilities and/or equipment to provide such temporary service. The City Council shall cause the return of any such property of the franchisee upon abatement of the health or nuisance hazard. If the power under this section is exercised, the scheduled fees and charges for service shall prevail and the franchisee shall be entitled to collect those charges less any actual costs incurred by the City.

Section 11. Services to be Provided; When Such Service May Be Interrupted or Terminated.

(a) The franchisee shall collect solid waste and recyclable materials and provide other services more specifically described by the City by resolution at the various residences, business establishments, and other places within the City where such service is requested and required, promptly, and haul the solid waste and recyclable materials from the City upon the payment of the rates authorized by the rate schedule approved by the City Council by resolution.

(b) A franchisee shall not terminate service to any or all of its customers under this franchise except in accordance with this ordinance. Service may be interrupted or terminated when:

(c) The street or road access is unavoidably blocked through no fault of the franchisee if there is no reasonable alternative route or routes to serve all or a portion of its customers. In no event shall the City of Tualatin be liable for any such blocking of access; or

(d) Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

Section 12. Subcontracts.

A franchisee shall not subcontract with another person on a regular, periodic or long-term basis to provide service or solid waste management service under this contract without prior Council approval. Such subcontract shall not relieve a franchisee of responsibility for compliance with this ordinance.

Section 13. Rates.

The rates for service under this ordinance shall be those rates currently in effect upon the adoption of this ordinance unless modified by the Council. The rates shall remain in effect until a change in rates is approved by the Council. The Council shall establish changes in rates by resolution as it considers necessary from time to time. In determining the appropriate rate to be charged by the franchisee, the Council may consider the following:

(a) The cost of performing the service provided by the franchisee;

(b) The anticipated increase in the cost of providing this service;

(c) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state or local law or regulations; or technological change;

(d) The franchisee's investment, the value of the business and the necessity that the franchisee have a reasonable rate of return on revenue;

(e) The rates charged in other cities of similar size within the Portland-metropolitan area for similar service;

(f) The public interest in assuring reasonable rates to enable the

franchisee to provide efficient and beneficial service to the residents and other users of the service;

(g) The local wage scales, cost of management facilities, landfill and dumping fees or charges;

(h) Any profit or cost savings resulting from recycling, and any additional costs resulting from recycling;

(i) Any increase or decrease in the franchise fee charged by the City; or

(j) Any other information deemed necessary for a rate review.

Section 14. Public responsibility.

(a) The franchisee, the City and the public shall comply with state law, including but not limited to ORS Chapter 459 and 459A, ORS Chapter 654 (Employment Safety and Health,) and ORS Chapter 656 (Workers' Compensation), and regulations promulgated under those laws by the Department of Environmental Quality, the Workers' Compensation Department, the State Accident Insurance Fund and the Waste Reduction Plan for the Washington County Watershed approved by the City Council. The rules for the administration of the Oregon Safe Employment Act and Oregon Occupational Safety and Health Code shall be complied with. The following requirements shall pertain to service under this ordinance:

(1) No garbage receptacle that is not designed for machine automated lift for individual residence service shall exceed 32 gallons in size nor weigh more than 60 pounds gross loaded weight. Cans shall be tapered so they are larger at the bottom. Sunken refuse cans or containers shall not be installed. All receptacles to be lifted by mechanical means shall be provided by the franchisee.

(2) To protect against injury to employees of the franchisees and to protect against rodent and fire danger, cans shall be rigid and composed of materials that resist splitting or cracking from changes in weather conditions.

(3) The customer shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(4) No person, other than the generator of the materials placed in a container for collection or an employee of the franchisee shall interfere with or remove any solid waste or recycling container from

the location where it has been placed by the generator for collection, or remove, alter or compact, either manually or mechanically, the contents of the container.

(5) No person shall place chemicals, paint, corrosive materials, infectious waste or hot ashes into a container placed for collection service, with the exception that household quantities of chemicals, paint and corrosive materials may be placed by household residents into their own solid waste container when prepared in such a manner as to prevent spillage or leakage of the contents. When materials, customer abuse, fire or vandalism cause excessive wear or damage to a container provided by the franchisee, the cost of repair or replacement may be charged to the collection customer.

(b) To protect the privacy, safety, pets and security of the customers, and to prevent unnecessary physical and legal risk to the franchisee and its employees, a residential customer shall place the container to be emptied outside any locked or latched gate and outside any garage or other building. Nothing contained in this paragraph shall prevent or discourage the use of site obscuring waste receptacle screening for commercial or industrial containers or drop boxes.

(c) Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the franchisees. A person who wished services for a compactor shall, prior to acquisition of such compactor, inquire of the franchisee as to compatibility with franchisee's equipment or equipment that the franchisee is willing to acquire. No person shall place solid waste or recyclable materials in a Drop Box in an amount that exceeds the legal weight limits of state and local laws or that exceeds the weight limits of manufacturer's specifications for the franchised collector's equipment. Drop boxes shall not be filled beyond the top of the box in order that they may be securely covered.

(d) Putrescible solid waste shall be removed from the premises of a customer at regular intervals not to exceed seven days.

(e) Except as otherwise expressly provided in this ordinance, any person who receives service shall be responsible for payment of the service.

Section 15. Indemnity and Hold Harmless.

(a) Notwithstanding the provision of insurance by the franchisee, the franchisee shall defend, indemnify and save the City harmless from liability or loss because of injury, including death, to any person or damage to any property that may occur or may be alleged to have arisen out of, connected with, or related to

performance of service, solid waste management service or resource recovery as a result, directly or indirectly of franchisee's or its subcontractors' or their servants, agents or employee, acts or omission, and whether or not such injury or damage is jointly attributable to the City's fault or negligence. This obligation shall survive modification, termination or transfer of the franchise. In any and all claims against the City or its agents or employees, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors, workers' compensation acts, disability acts, or other employee benefits.

(b) The franchisee shall make payment promptly, as due to all persons supplying franchisee labor or material for the prosecution of the work provided in this ordinance. The franchisee shall pay all contributions or amounts due the Industrial Accident Fund from such franchisee incurred in the performance of services under this ordinance. The franchisee shall not permit any claim to be filed or prosecuted against the City on account of any service provided. The franchisee shall pay all sums withheld for employees to the Department of Revenue pursuant to ORS 316.167 and other tax laws.

(c) The franchisee shall provide workers' compensation insurance coverage for all persons employed by the franchisee to perform service under this ordinance and assure that all workers will receive the compensation for compensable injuries provided in ORS Chapter 656 either by:

(1) Contributing to the State Accident Insurance Fund as a contributing employer; or

(2) Qualifying as a direct responsibility employer under ORS 656.403 to 656.443. The franchisee shall hold harmless and indemnify the City for any claims, suits, or actions by the franchisee's and all subcontractors' employees including their dependents and including investigations, adjusting and litigation of said claims, valid or not, occasioned by any work and/or services furnished or carried on under the terms of this ordinance.

(d) The franchisee shall make payment promptly as due to any person furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injuries to employees, of all sums that have been agreed to be paid for such services and all monies and sums that may be collected or deducted from employees wages pursuant to ORS Chapter 656 or any negotiated labor-management agreement or policy.

Section 16. Franchisees' Service Requirements.

(a) Subject to review and revision by the City Council, the franchisee may

establish reasonable rules concerning the size, weight and location of containers or compactors, and concerning other matters directly affecting the safety of franchisees' employees and its ability to perform the service with available technology and equipment. The franchisee may also establish such reasonable rules as necessary to comply with weight limits, disposal site requirements, recycling requirements and general requirements of the Oregon Department of Environmental Quality.

(b) Upon the recommendation of the City Manager, if the City Council finds that an applicant for franchise or an existing franchisee under this ordinance cannot or is unwilling to provide service for the collection of solid waste or any required service as defined under this ordinance or resolutions adopted pursuant to this ordinance, the City Council may issue a franchise for joint service with another person who can or is willing to provide that service; provided that in all cases where the City Council finds that the applicant for or the existing franchisee is unable to provide adequate service for particular types or unusually large quantities of solid waste or waste or recyclable materials, the City Council may issue a temporary or permanent franchise to another person for the limited purpose of providing such service. Upon the recommendation of the City Manager, if the City Council finds that the need for service justifies action before a complete investigation and final determination can be made, the Council may issue a temporary franchise valid for a stated period not to exceed six months, entitling a person to serve a defined service area or customer or provide a particular service.

Section 17. City Enforcement and Penalties.

(a) The City, through its designated officers and employees, shall take appropriate steps to protect the rights of the franchisee in the performance of services or waste management service and cooperate with the franchisee in protecting such rights.

(b) Except as otherwise provided, a violation of this ordinance is a civil infraction punishable by a fine not to exceed $500. Each violation constitutes a separate offense, and each day that a violation is committed or permitted to continue, constitutes a separate offense.

(c) The rights and penalties provided in this ordinance are cumulative, not exclusive, and are in addition to other rights, remedies and penalties available to the City under law.

Section 18. Annexations.

Upon the annexation to the City of additional territory, the provisions of ORS 459.085(3) shall be followed.

Section 19. Violations.

(a) It is unlawful for a person to provide or offer to provide solid waste management service in the City of Tualatin except as provided under Section 4 of this ordinance.

(b) It is unlawful for a person:

(1) Without the permission of the owner or generator of recyclable material to take recyclable materials set out to be collected by a person authorized by the City to provide collection service for that recyclable material, except in accordance with this ordinance;

(2) To remove any recyclable material from a container box, collection vehicle, depot, or other receptacle for the accumulation or storage of recyclable material without permission of the owner or City;

(3) To mix source separated recyclable materials with solid waste in a vehicle, box, container, or receptacle used in solid waste collection or disposal;

(4) To remove solid waste placed for collection by franchisee without the permission of the City or the franchisee.

(c) The violations listed in this Section are subject to the penalties set forth in Section 17 of this ordinance.

INTRODUCED AND ADOPTED this 24th Day of January, 2011.

CITY OF TUALATIN, OREGON

BY_____
Mayor

ATTEST:

BY_____
City Recorder

APPROVED AS TO LEGAL FORM

Brenda L. Braden
CITY ATTORNEY