

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING A TRANSFER OF APPROPRIATIONS WITHIN THE GENERAL FUND DURING THE FISCAL YEAR BEGINNING JULY 1, 2021.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA CITY, OREGON.

WHEREAS, additional appropriations are needed for Building Improvements within the Administration Department due to planned projects utilizing ARPA 2021 funds.

NOW, THEREFORE, BE IT RESOLVED that in accordance with ORS 294.450 the City Council of the City of Columbia City authorizes a transfer of budget appropriations during the fiscal year beginning July 1, 2021, for the reasons described above. The appropriation transfers are as follows:

GENERAL FUND

Administration Department:

Capital Construction:

01-01-00-7430 Building Improvements \$ 14,426

Non-Departmental:

01-00-00-3330 ARPA 2021 Revenue (14,426)

NET: \$ 0

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE EXECUTION OF A FRANCHISE AGREEMENT WITH WASTE CONNECTIONS OF OREGON, INC., DBA ENVIRONMENTAL WASTE SYSTEMS/HUDSON GARBAGE SERVICE, AND RESCINDING RESOLUTION NO. 12-1054-R.

WHEREAS, the City of Columbia City desires to enter into a franchise agreement Waste Connections of Oregon, Inc., DBA Environmental Waste Systems/Hudson Garbage Service.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Columbia City that the City of Columbia City enter into a franchise agreement with Waste Connections of Oregon, Inc., DBA Environmental Waste Systems/Hudson Garbage Service, to render the service of collection and disposal of solid waste and recyclable materials within the City of Columbia City upon the terms and conditions set forth in the copy of said Solid Waste Franchise Agreement, attached hereto, and by this reference made a part hereof; and,

BE IT FURTHER RESOLVED that the Mayor and City Administrator/Recorder of said City execute said franchise agreement on behalf of the City of Columbia City; and

BE IT FURTHER RESOLVED that Resolution No. 12-1054-R, passed by the City Council on June 12, 2012, is hereby rescinded.

SOLID WASTE FRANCHISE AGREEMENT

THIS AGREEMENT, is made and entered into as of the ____
, 2022 (the "Effective Date"), by and between the City of Columbia City, a municipal corporation
in Columbia County, Oregon (the "City"), and Waste Connections of Oregon, Inc. d/b/a
Environmental Waste Systems / Hudson Garbage Service (the "Franchise Holder")

RECITALS

WHEREAS, the City, through its Council, has determined that the protection and
maintenance of the public health, peace, safety and welfare can best be accomplished by the
continuation of garbage service under the grant of a franchise; and

WHEREAS, the Franchise Holder is willing to render the service of collection and
disposal of solid waste and recyclable materials within the City upon the terms and conditions
hereafter set forth.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and
agreements herein contained, the parties hereto agree as follows:

Section 1. There is hereby granted by the City to the Franchise Holder the
exclusive right, privilege and franchise to collect, convey and transport solid waste upon the
streets of said City, subject to the restrictions hereinafter set forth, and the provisions of the
ordinances of the City as now existing or as hereafter amended or adopted. The collection,
conveyance and transportation of drop boxes are not included within the exclusive rights granted
herein.

Section 2. The Franchise Holder hereby agrees to collect and dispose of, in a
good, competent manner, all types of Solid Waste, which is defined as:

"Solid Waste" means all useless or discarded putrescible and non-putrescible materials,
including, but not limited to, garbage, rubbish, refuse, ashes, paper and cardboard, useless or
discarded commercial, industrial, demolition and construction materials. "Solid waste" does
not include:

- a. Hazardous waste as defined in ORS 466.005.
- b. Materials used for fertilizer or for other productive purposes or which are
salvageable as such materials are used on land in agricultural operations
and the growing or harvesting of crops and the raising of animals.

The Franchise Holder further agrees to collect and dispose of, in a good, competent manner, all types of Recyclable Materials. Recycling and Recyclable Materials are defined as:

"Recycling" means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

"Recyclable Materials" means any material or group of materials that can be collected and recycled at a net cost equal to or less than the cost of collection and disposal of the same materials. In the case of this Agreement, Recyclable Materials are limited to the following:

- Milk cartons and drink boxes
- Plastic bottles #1 - #1 and film plastic (plastic grocery bags)
- Junk mail and mixed paper
- Cardboard
- Magazines
- Newspaper
- Aluminum cans
- Tin cans and small pieces of metal (12 inches or less and less than 5 pounds)

New materials may be added to and deleted from the list of Recyclable Materials upon mutual agreement of both parties; provided, however, all glass materials will not be collected curbside and will only be collected at depots.

Additionally, the Franchise Holder agrees to collect and dispose of, in a good, competent manner, all Yard Debris materials. Customers may subscribe to this every-other-week curbside Yard Debris disposal service for a minimum service period of one (1) year at a time. Further, each year for the month of November, the Franchise Holder agrees to collect and dispose of all Yard Debris through a weekly curbside collection. "Yard Debris" is defined as:

- Lawn clippings
- Leaves
- Brush
- Trimnings / Prunings
- Sawdust
- Wood scraps (unpainted)

Yard Debris collection service shall be provided on the same weekday as the customer's regular garbage collection service. The Franchise Holder shall also provide yard debris carts to be used by the customer for the disposition of Yard Debris.

It is specifically understood and agreed that where the customer fails to timely or properly place a Container as directed in this Agreement, or is otherwise in violation of the City's ordinances and {00102475.DOCX.}

regulations, the Franchise Holder's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume, or weight of Solid Waste, Recyclables and Yard Waste to be removed, the Franchise Holder may refrain from collecting all or a portion of such Solid Waste, Recyclables and Yard Waste.

Title to and liability for Solid Waste, Recyclables and Yard debris shall pass to the Franchise Holder upon loading of such materials into the Franchise Holder's trucks. All Customers shall not deposit in the Franchise Holder's equipment or place for collection by the Franchise Holder any Excluded Waste. "Excluded Waste" shall mean any Hazardous Waste and any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, or toxic material as defined by applicable federal, state or local laws or regulations. Notwithstanding any other term contained herein, the Franchise Holder shall have no obligation to collect any material which is, or which the Franchise Holder reasonably believes to be, Excluded Waste. Title to and liability for any Excluded Waste shall remain with the Customer, even if the Franchise Holder inadvertently collects and disposes of such Excluded Waste. If the Franchise Holder finds what reasonably appears to be discarded Excluded Waste, Franchise Holder shall notify the Customer and the City.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, containers or debris carts, provided by the Franchise Holder in connection with the services, shall at all times remain the property of the Franchise Holder. However, each Customer shall have care, custody and control of the equipment while at the respective service locations. Customers shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customers must provide unobstructed access to the equipment on the scheduled collection days. The word "equipment" as used in this Agreement shall mean all Containers or other equipment provided by the Service Provider in relation to the services, if applicable. In the event a Container becomes lost, unsightly, unsanitary, broken, or unserviceable because of the acts or omissions of a Customer (excluding normal wear and tear), the Customer will be charged for the resulting repairs or replacement and such amounts must be paid to Franchise Holder upon demand.

The acceptance of Solid Waste, Recyclables and Yard debris is subject to the rules and regulations of the approved disposal site such that Franchise Holder is not required to accept waste not accepted at the approved disposal site.

Section 3. The rights, privileges and franchise herein granted shall continue and be in force for a period of ten (10) years, commencing on the Effective Date and terminating on the tenth (10th) anniversary of the Effective Date.

Section 4. In consideration of the rights, privileges and franchise herein granted, the Franchise Holder shall pay to the City a franchise fee of five percent (5%) of the gross revenue actually collected by the Franchise Holder from its customers within the City for Solid Waste, Recycling and Yard Debris services within the City. Gross revenue shall not include uncollectible accounts. The payment of such fees shall be on a quarterly basis, and will begin on October 1, 2012. Payment is to be made within thirty (30) days after the end of a quarter.

Section 5. The rates to be charged for collecting and disposing of Solid Waste, Recyclables and Yard Debris shall be set by resolution adopted by the City.

Section 6. All customers served by the Franchise Holder shall be served in an impartial manner, except that the Franchise Holder is not required to serve any person, firm or corporation who has made default in payment for any prior service rendered under this Agreement.

Section 7. The Franchise Holder shall deposit all Solid Waste, Recyclables and Yard Debris in a suitable place for dumping and disposing of such Solid Waste, Recyclables and Yard Debris, which disposal site shall be approved by the City and all other state or federal agencies which regulate such disposal areas.

Section 8. Nothing contained in this Agreement shall prevent the City from employing men and using vehicles for the purpose of collecting and removing garbage for the city-wide cleanup sponsored by the City or other public agency.

Section 9. The hauling of Solid Waste, Recyclables and Yard Debris shall be under the supervision of the City Council (the "Council"), and, upon reasonable prior written notice, the Council may make, during regular business hours, inspections of the Franchise Hauler's hauling equipment and the Franchise Holder's operations in servicing the needs of the City pursuant to this Agreement.

Section 10. The Franchise Holder shall remove all Solid Waste from the City Hall, Community Hall, and the City Shop produced in the normal course of business without charge to the City. The City shall pay for all of its other garbage service in like manner and at the same rates as any other commercial business.

Section 11. The City reserves the right to vacate any street at any time for any reason, or to close any street or streets used by the Franchise Holder during the course of construction or during the course of necessary repairs thereto or in the event that any street becomes dangerous to the operation of automobiles. In the event of a vacation or closure of a street, Franchise Holder shall not be required to collect solid waste from properties abutting the vacated or closed street unless other reasonable access is available.

The City warrants that the City's pavement, curbing or other driving surface or any right of way reasonably necessary for the Franchise Holder to provide the services described herein are sufficient to bear the weight of all of the Franchise Holder's equipment and vehicles reasonably required to perform such services. The Franchise Holder will not be responsible for damage to any such pavement, curbing, driving surface or right of way, except to the extent resulting from the Franchise Holder's negligence or willful misconduct.

Section 12. The Franchise Holder agrees that it will comply with all laws and regulations pertaining to its activities as provided by any agency or department of the United States, State of Oregon, County of Columbia, or the City. The Franchise Holder agrees it will not discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color or national origin, or otherwise in any manner prohibited by law. Services shall be furnished in a fair, equal and not unjustly or unlawful discriminatory basis to all persons and prices charged shall be fair, reasonable and not unjustly discriminatory; provided, however, this shall not be construed to restrict or limit the right of the Franchise Holder to make reasonable and nondiscriminatory discounts, rebates or other types of deductions to volume purchasers.

For all claims, demands, suits, actions and proceedings against the City, of every kind and nature, including without limitation, those sounding in contract or tort or for the breaching of warranty, the laws of the state of Oregon shall be, without exception or limitation, binding and controlling law, and damages shall not exceed the amounts set forth in the Oregon Tort Claims Act. Any and all suits, actions and proceedings, of every kind and nature whatsoever, against the City shall be filed and maintained exclusively in the Circuit Court, as appropriate, of the State of Oregon for the County of Columbia.

This Agreement may be changed, altered or amended only by mutual written consent of the parties. This Agreement constitutes the entire agreement between the parties and no oral statement, representation or agreement not herein expressed shall be binding upon any party. This Agreement waives and supersedes any other agreements, understandings, negotiations or representations of the parties, whether oral or in writing.

If any provision hereof shall be determined to be unlawful or in conflict with any governmental rule or regulation, such provision shall be deemed severable from this Agreement and the other terms, provisions and agreements herein contained shall continue in full force and effect; provided, however, that if any provision so invalidated shall be such that it would substantially frustrate the material purposes of this Agreement and it would be unconscionable to hold either party bound by the terms hereof, such party may, at its option, terminate this Agreement by notice in writing

at any time within thirty (30) days of finding or determining such invalidity or conflict. If the other party shall dispute whether the same shall constitute grounds for termination under this provision, this Agreement shall remain in full force and effect until the matter may be finally adjudicated.

Section 13. The Franchise Holder agrees to hold harmless, indemnify and defend the City from and against all claims, demands, suits, and actions of every name and description brought against the City for or on account of any such injuries to real or personal property, to the extent arising out of the Franchise Holder's negligence or willful misconduct in its performance of the services provided pursuant to this Agreement.

Section 14. The Franchise Holder agrees to carry, at its own expense, the following:

a. Worker's compensation insurance;

b. General liability insurance

1. Personal injury with limits of not less than \$1,000,000

2. Property damage with limits of not less than \$250,000

c. Auto liability insurance

1. Personal injury with limits of not less than \$200,000/\$500,000

2. Property damage with limits of not less than \$100,000

The City may, by written notice to the Franchise Holder, demand that the limits of such insurance be raised to conform to ORS 30.270, and the Franchise Holder shall have the option either to increase the limits of insurance within thirty (30) days of the date of the notice or terminate this Agreement.

All insurance premiums shall be paid by the Franchise Holder and shall be without cost to the City. All policies of insurance, which the Franchise Holder is required by the City to carry shall:

a. Be issued by a responsible insurance company, which is licensed to practice in the State of Oregon.

c. Be primary policies.

d. Be evidenced by certificates furnished to the City bearing endorsements requiring written notice to the City prior to any cancellation of the policies, in accordance with the provisions of such policies.

e. Name the City as an additional insured.

Section 15. If the Franchise Holder shall fail from any cause within its control to gather the Solid Waste, Recyclables or Yard Debris within the City of Columbia City as provided for herein, and such failure shall continue for a period of fifteen (15) days, or should the Franchise Holder for any reason fail to perform the conditions, agreements, provisions, acts, or things herein mentioned within fifteen (15) days after having been given notice of default, {00102475.DOCX.}

then the rights herein granted shall terminate, and the Franchise Holder shall surrender and forfeit any right and privilege granted pursuant to this Agreement; provided, however, that the Franchise Holder shall not be liable for suspension of operation caused from excessive storms, accidents, or casualties caused by an act of God, or the public enemy.

Section 16.

- a. Should the Franchise Holder, except by reason of a strike, act of God, or disaster, fall further than one (1) week behind in its collection schedule, the City may, at its option, cause such Solid Waste, Recyclables and/or Yard Waste to be collected and disposed of by a third-party.
- b. The Franchise Holder shall maintain a telephone, for the receipt of service calls or complaints, and shall be available for such calls during normal business hours on all working days. Any complaints must be given prompt and courteous attention, and, in case of missed scheduled collections, the Franchise Holder shall investigate and, if verified, shall arrange for pickup of said refuse within the next business day after the complaint is received.

Section 17. It is expressly understood that this franchise is granted subject to all the terms and provisions of the charter and ordinances of the City of Columbia City, now or hereafter to be enacted, relating to the granting of franchises and the collecting, transporting, and conveying of Solid Waste, Recyclables and Yard Debris and the exercise of the police powers of the City of Columbia City, with the same effect as though the same were expressly incorporated herein. The City is not a partner, nor a joint venturer with the Franchise Holder in connection with the business carried on under this Agreement and shall have no obligation with respect to the Franchise Holder's debts or other liabilities.

It is understood that the City, as a municipal corporation created under the laws of the State of Oregon, has certain legislative control and authority over activities and properties within its geographical boundaries. None of such legislative authority is hereby ceded, delegated or diminished. It is expressly recognized by the parties that the City shall have authority to determine rules regulating such activities, the use and conduct upon such properties, penalties therefore and other matters not involving the direct management and operation of the Franchise Holder's business.

Nothing herein contained shall be deemed to constitute the Franchise Holder an agent, employee or other representative of the City. The status of the Franchise Holder with respect to the City is strictly that of independent contractor and the City reserves no power to control or direct the Franchiser Holder in the manner of performance of its duties and obligations, other than through its legislative authority and its right to enforce the provisions of this Agreement.

Section 18. The City reserves the right to prohibit or regulate the operation of trucks under this franchise on any street or streets within the City of Columbia City when traffic conditions or the public welfare or public convenience shall, in the judgment of the City Council, so require.

Section 19. Neither the Franchise Holder, nor any assignee or other successor of the Franchise Holder shall in any manner, directly or indirectly, by operation of law or otherwise, subcontract, assign, transfer, mortgage or encumber any of the Franchise Holder's rights in and to this Agreement or any interest therein, nor license or permit the use of the rights herein granted in whole or in part without the prior written consent of the City, which shall not be unreasonably withheld. The Franchise Holder shall not assign or transfer any part of its rights and interests under this Agreement to any successor to its business through merger, consolidation, or voluntary sale or transfer of substantially all of its assets, without prior written approval of the City, which shall not be unreasonably withheld. The Franchise Holder's interests, in whole or in part, cannot be taken by operation of law, nor under or by virtue of any execution or legal process, attachment, or proceeding instituted against the Franchise Holder, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to the Franchise Holder, or in any other manner except as above mentioned.

Any such transfer or assignment, or attempted assignment, subcontract or attempted subcontracting without such consent, shall be absolutely null and void and shall, at the option of the City, terminate all rights of the Franchise Holder under or by virtue of this Agreement. The City may, in its discretion, consent to an assignment or transfer provided the following conditions are satisfied:

- a. A fee of \$300.00 is prepaid to cover administrative costs; and
- b. The Franchise Holder has satisfied all conditions of this Agreement precedent to assignment or transfer; and
- c. The Franchise Holder and its assignee have completed a standard assignment form provided by the City and assured the City that the assignee has the capability to perform pursuant to this Agreement.

Any request for such transfer shall not be unreasonably denied.

Section 20. In the event of suit or action to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover, as part of his costs, reasonable attorneys' fee in both the trial and appellate courts.

Section 21. Neither party shall be deemed to have waived the performance of or observance by the other party of any of the terms, conditions, or provisions hereof, unless and except such waiver be by resolution or other appropriate action of such party, and of which

action a record is made. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to acquire strict performance of the same provision in the future or of any other provision.

All notices required under this Agreement shall be deemed to be properly served if sent by registered or certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to:

The City:

City of Columbia City
Attn: _____
P.O. Box 189
Columbia City, Oregon 97018

The Franchise Holder:

Waste Connections of Oregon, Inc.
Attn: _____

Date of service of such notice *is* the date such notice is deposited in a post office of the United States Postal Services, postage prepaid.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 2022.

THE CITY:

CITY OF COLUMBIA CITY

By: _____

Its: Mayor

Name: _____

THE FRANCHISE HOLDER:

WASTE CONNECTIONS OF OREGON, INC.
d/b/a Environmental Waste Systems / Hudson
Garbage Service

By: _____

Its: _____

Name: _____

By: _____

Its: City Administrator/Recorder

Name: _____