

## ORDINANCE NO. 302

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE TOWN OF CANYON CITY, OREGON, INCLUDING, BUT NOT LIMITED TO, GRANTING EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT AND CONVEY SOLID WASTE OVER AND UPON THE STREETS OF THE CITY; TO DISPOSE OF, RECYCLE OR RECOVER MATERIALS OR ENERGY FROM SUCH SOLID WASTE; CREATING NEW PROVISIONS; REPEALING ORDINANCE NO. 294 AND ANY ORDINANCES IN CONFLICT WITH THIS ORDINANCE.

The Town of Canyon City ordains as follows:

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

Section 2. Purpose, Policy and Scope. City desires to regulate solid waste management to (a) insure safe, economical, and comprehensive solid waste service, (b) insure rates that are just, fair, reasonable, and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices, and (c) provide for technologically and economically feasible resource recovery.

Section 3. Definitions.

Bin. A receptacle provided by the Franchisee, to be used by their customers for the containment and disposal of recyclable material.

Can. A receptacle owned by a customer, to be used for the containment and disposal of solid waste. The customer's use of a can requires manual collection service.

Cart. A receptacle provided by Franchisee, to be used by its customers for the containment and disposal of solid waste or recyclable material. The customer's use of a cart requires mechanical collection service.

City. The Town of Canyon City, Oregon and the area within its incorporated boundaries, as extended in the future.

Compact and Compaction. The process of, or to engage in, the shredding of material, or the manual or mechanical compression of material.

Compensation. (a) Any type of consideration paid for service, including, but not limited to, rent, the proceeds from resource recovery and any direct or indirect provision for payment of money, goods, services or benefits by tenants, leases, occupants or similar persons. (b) The exchange of service between person; (c) The flow of consideration from the person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning or possessing the same.

Construction and Demolition Waste. Solid waste resulting from the construction, repair, or demolition of buildings, roads, and other structures.

Container. A receptacle provided by Franchisee that is often referred to as a “dumpster,” that is one to ten (10) yards in size, and that is used primarily by commercial customers for the containment and disposal of solid waste or recyclable material.

Council. The City Council of the Town of Canyon City.

Damages. Claims, actions, proceedings. Damages, liabilities, losses and expenses of every kind and nature whatsoever, including, but not limited to attorney fees.

Dispose or Disposal. The accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of solid waste.

Drop Box. A single container designed for storage and collection of large volumes of solid waste or recyclable materials, which is usually ten (10) cubic yards or larger in size, and provides for transportation of large volumes of solid waste or recyclable material to a disposal site for transfer, land filling, recycling materials recovery or utilization, and then emptied and returned to either its original location or some other location.

Environmental Laws. Any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, and/or the environment.

Franchise. The authorization to operate a solid waste management and recycling service, including all mutual rights, duties, and obligations of Franchisee and City contained in this Ordinance.

Franchisee. Clark’s Disposal, Inc. an Oregon corporation, who has been granted a franchise under this Ordinance.

Franchisee’s Representatives. Franchisee’s affiliates, officers, board members, shareholders, employees, agents, representatives, and/or contractors.

Generator. The person who produces solid waste or recyclable material to be placed, or that is placed, for collection; provided however, “generator” does not include any person who manages an intermediate function resulting in an alteration or compaction of the solid waste or recyclable material after it has been produced by the generator and placed for collection and disposal.

Hazardous Waste. Any hazardous waste as defined in ORS 466.055, or any amendments or subsequent revisions thereof.

Infectious Waste. Any infectious waste as defined in ORS 459.386, as amended.

Laws. Any and all applicable federal, state, and local restrictions declarations, statutes, orders, , laws, rules, regulations, codes, and ordinances, including, but not limited to, any City ordinances and regulations, the environmental laws, and any laws concerning or affecting the provision of solid waste management services, all as now in force and/or which may hereafter be amended, modified, enacted or promulgated.

Placed for Collection. To put solid waste, recyclable material, or yard debris out for collection by Franchisee, as provided in this Ordinance.

Persons. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.

Putrescible Material. Organic materials that can decompose, which may create foul-smelling, offensive odors or products.

Receptacle. A can, cart, bin, container, drop box, or other vessel used for the disposal of solid waste and recycling that has been approved by City, and into which solid waste, recyclable material, or yard debris may be placed for collection.

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 the cost of collection and disposal of the same material.

Recycling. Any process, including mixed recycling, by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Ordinance, "recycling" includes collection, transportation, and storage of solid waste done in order to place the solid waste in the stream of commerce for recycling or resource recovery.

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

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

Right-of-Ways. Not limited to streets, roads, highways, bridges, alleys, sidewalks, and other public ways or areas.

Service. The collection, storage, transportation, transfer, reuse, recycling, and/or other resource recovery from, or disposal of solid waste. The term "service" includes the provision of special services.

Solid Waste. All useless or discarded putricible and non-putricible materials, including, but not limited to garbage, rubbish, refuse, ashes, and/or swill; newsprint or wastepaper; corrugated or cardboard; residential, commercial, industrial, construction, demolition, governmental, and/or institutional wastes; discarded or abandoned vehicles or parts; discarded home or industrial appliances; equipment or furniture; manure, vegetable or animal solid and semi-solid wastes; dead animals; and infectious waste. "Solid waste" does not include (a) hazardous waste, (b) sewage sludge and septic tank and cesspool pumping or chemical toilet wastes, and/or (c) reusable "beverage containers" as defined under ORS 459A.700.

Solid Waste Management. The business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling, special service, and resource recovery of solid waste.

Special Service. The collection of bulky waste, including furniture, appliances, and large quantities of waste.

Transfer Station. Franchisee's transfer station located at 26431 Luce Creek, John Day, Oregon 97845.

Waste. Any material that is no longer wanted by or is not 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, such does not remove them from this definition. Source separated materials are "wastes" within definition.

#### Section 4. Grant of Franchise.

4.1 Franchise. Subject to the terms and conditions contained in this Ordinance, City grants Franchisee the right, privilege, and non-exclusive franchise to provide solid waste management for solid waste and recyclable materials generated within City. Notwithstanding anything contained in this Ordinance to the contrary, City reserves the right to determine the scope of this franchise and the services granted and/or authorized hereunder, and City may require Franchisee to renegotiate the terms of this franchise at any time by providing Franchisee thirty (30) days' prior written notice. Franchisee will perform its obligations under this franchise in compliance with the laws. The rights and privileges granted by City to Franchisee under this Ordinance extend only to the extent of City's right or authority to grant the franchise to Franchisee.

4.2 Franchise Non-Exclusive. The franchise granted by City under this Ordinance is and will be construed as a non-exclusive franchise. City reserves the right to grant franchises, licenses, permits, and/or other similar rights for similar or different purposes allowed under this Ordinance. Except as otherwise provided under this Ordinance and/or otherwise permitted by City in writing, no person will (a) provide any services for compensation or offer to provide or advertise for the performance of the services, and/or (b) perform services for compensation to any tenant, lessee, or occupant of real property of the person.

4.3 Enforcement. City will have the right to observe and inspect all aspects of Franchisee's collection operations, facilities, services, and records to ensure Franchisee's strict performance and compliance with this Ordinance. If, at any time, Franchisee fails to timely perform any Franchisee obligation under this Ordinance, City may elect to perform the obligation at the expense of Franchisee. Nothing in this Ordinance will prevent a person from hauling putrescible and/or nonputrescible waste created by the person doing the hauling.

4.4 Specific Exceptions. Notwithstanding anything contained in this Ordinance to the contrary, nothing contained in this Ordinance will operate to prohibit any of the following:

(a) Any person from transporting solid waste the person produces to an authorized disposal site or resource recovery facility. Solid waste produced by a tenant, licensee, occupant, or similar person is produced by such person and not the landlord, property owner, or agent of either.

(b) Any person from contracting with a state or federal agency to provide service to such agency; provided, however, such person will apply for a franchise for that service only and will comply with all applicable requirements imposed on Franchisee under this Ordinance with the exception of rates or terms of service set by written contract with such agency where they are in conflict.

(c) Any person from collecting, transporting, and conveying solid waste or waste over and upon the right-of-ways for the purpose of resource recovery, provided such person has obtained a license under Section 9 of this Ordinance.

(d) Any person from engaging in a charitable, civic, or benevolent activity; provided, however, merely operating as a nonprofit entity does not qualify under this exception. The Canyon City Council (the "City Council") will determine the application or non-application

of this exception and such determination will be final and binding upon all persons.

Section 5.      Solid Waste Management Services.

5.1      Waste Ownership. Except as otherwise provided in this Ordinance, (a) solid waste that is properly placed out for collection is the property of Franchisee, (b) Franchisee will not store, collect, transport, dispose of, or resource-recover infectious waste, and/or (c) Franchisee will not store, collect, transport, dispose of, or resource-recover hazardous waste.

5.2      General Collection Standards. General Collection Standards. Collection of solid waste will be performed in compliance with the laws. In addition, in connection with Franchisee's performance of its obligations under this Ordinance, Franchisee will pay and/or perform the following:

(a)      Provide solid waste collection service to any person living within or conducting business within City. Perform curbside collection of solid waste at least once per week in City (or as often as required by Oregon Revised Statutes ("ORS") Chapters 459 and 459A if more often). All collections will be made safely, efficiently, and quietly. Collect putrescible material at least once per week.

(b)      Provide collection of residential solid waste carts and cans on a weekly schedule that is the same day each week; offer monthly collection service.

(c)      Provide will-call service for container service for residential and commercial customers within forty-eight (48) hours of the initial request for service.

(d)      Use due care to prevent solid waste from being spilled and/or scattered during collection. If any solid waste is spilled and/or scattered during collection, Franchisee will promptly clean-up all spilled and/or scattered solid waste. All receptacle lids will be replaced after contents are emptied, and the receptacle will be returned to its original position so as to not jeopardize the safety of motorists, pedestrians, and/or bicyclists.

(e)      Use reasonable care in handling all collection receptacles and enclosures. Damage caused by the negligence of Franchisee and/or Franchisee's representatives to private property, including, but not limited to, landscaping, is the responsibility of Franchisee and will be promptly restored to its original condition or otherwise corrected to the owner's satisfaction.

(f)      Ensure that all solid waste collection operations are conducted as quietly as possible and in accordance with the laws, including, without limitation, any federal, state, county, and City noise mission standards. Unnecessarily noisy trucks or equipment are prohibited.

(g)      Provide notice to any customer whose receptacle is not collected because it is overweight. The notice will (a) identify Franchisee's name and telephone number, (b) provide a description of the problem, and (c) state that Franchisee will provide double the customer's subscribed service level at no additional charge on the customer's next scheduled collection day, if a special pick-up has not been requested. If a special pick-up has been requested, Franchisee may charge the normal will-call rate.

(h)      Notify all affected customers of changes to the collection schedule within seven calendar days of any change. Franchisee will not permit any customer to go more than eight calendar days without service in connection with a collection schedule change.

(i) Have the option to refuse collection service to a customer upon nonpayment of a billing (or portion of a billing) after an account becomes forty-five (45) days past due, or upon refusal to pay any reasonably required advance payments, delinquent charges, and/or charges associated with starting a new service. Franchisee may not withhold collection services unless at least ten (10) days' prior written notice is given to the customer.

(j) Franchisee will dispose of all solid waste collected under this Ordinance at the transfer station; ultimate disposal will be made by Franchisee at the Finely Butte Landfill.

(k) Franchisee will provide those recycling services City may request in writing from time to time.

5.3 Equipment and Facility Standards. Franchisee will perform and comply with the following equipment and facility standards:

(a) All equipment will be kept properly maintained and in good order, repair, and condition. Franchisee will provide and maintain equipment that meets and conforms with the laws.

(b) Vehicles and containers used to transport solid waste will be kept reasonably clean so as not to contaminate the environment and/or City's water system. Trucks will be equipped with metal bodies that are leak-proof to the greatest extent practicable, and will be of the compactor type, with front, rear, or automatic loading capabilities. Pick-up trucks, open bed trucks, and/or specially designed, motorized local collection vehicles used for transporting solid waste will have a metal body that is leak-proof to the greatest extent practicable, and an adequate cover over the container portion to prevent scattering of the load.

(c) All fuel oil or vehicle leaks or spills which result from Franchisee's vehicles will be cleaned-up immediately.

(d) All vehicles used by Franchisee in providing solid waste management services will be registered with the Oregon Department of Motor Vehicles and will meet or exceed all legal operating standards. In addition, on each vehicle, the name of Franchisee, Franchisee's local telephone number, and the vehicle's identification number will be prominently displayed.

(e) No collection vehicle will exceed the safe loading requirements or maximum load limits as determined by the Oregon Department of Transportation. Franchisee will endeavor to operate equipment that minimizes damage to City streets.

(f) All surface areas around Franchisee's site facilities, including, without limitation, vehicle and equipment storage areas, service shops, wash stations, transfer sites, collection centers, and administrative offices, will be kept clean to eliminate site run-off into City's water system.

5.4 Safety Standards. Franchisee will provide appropriate operational and safety training for all Franchisee employees who maintain, use, and/or operate vehicles, equipment, and/or facilities for collection of waste and/or who are otherwise directly involved in such collection. Employees involved in collection services will be trained to identify, and not to collect, hazardous waste and/or infectious waste. Employees who handle hazardous waste and/or infectious waste will be properly trained.

5.5 Right-of-Way Standards. Franchisee will ensure proper and safe use of the right-of-ways. Without otherwise limiting the generality of the immediately preceding sentence, Franchisee's use of the right-of-ways will be conducted (a) in a safe manner, taking into account all applicable traffic

control rules and procedures, (b) so as to minimize disruption and interference of the right-of-ways, and (c) in accordance with this Ordinance and the laws.

5.6 Customer Service Standards. Franchisee will pay and/or perform the following customer service related obligations:

(a) Provide sufficient collection vehicles, receptacles, facilities, personnel, and finances to provide the services and perform Franchisee's obligations under this Ordinance, as now set forth or as hereafter provided.

(b) Sufficiently staff, operate, and maintain solid waste management operations within City.

(c) Ensure a responsive, customer service oriented business. Franchisee will provide customers with a local telephone number listed in a directory of general circulation.

(d) Adequately staff operations and utilize an answering machine or voice mail to provide prompt response to customer service requests or inquiries, and respond promptly and effectively to any complaints regarding service. Calls for service will be returned within two days.

(e) Train collection personnel prior to their beginning solid waste collection. The scope of the training will include, without limitation, all legal and industry standards for safety practices and service to the public and the importance of courteous customer service.

(f) Require all employees (both those of Franchisee and those of persons under contract with Franchisee) to present a neat appearance and conduct themselves in a courteous and respectful manner.

5.7 Customer Service Reporting Standards. Franchisee will keep customer service records of oral and written complaints or service issues registered with Franchisee from customers within City. Franchisee will record the name and address of the complainant, date and time of issue, nature of issue, and nature and date of resolution. Franchisee will keep a record of all current and previous year customers within City. Customer records will be available to City within ten (10) days of City making a written request for such records.

5.8 Financial Reporting Standards. Franchisee will keep current, adequate records of account. City may inspect the records of account any time during business hours, and may review the records from time to time. If a review of the records is required, the reasonable cost of such independent review will be Franchisee's responsibility. Any costs incurred in a review due to Franchisee's failure to keep adequate business records will be Franchisee's responsibility.

5.9 Preferential Rates. Franchisee will not provide any rate preferences to any person, locality, and/or type of solid waste stored, collected, transported, disposed of, or resource recovered. This Section 3.9 will not (a) prohibit uniform classes of rates based upon length of haul, type or quantity of solid waste handled, and location of customers provided such rates are (i) reasonable based upon the costs of the particular service, and (ii) approved by the City Council in the same manner as other rates, and/or (b) prevent any person from volunteering service at a reduced cost for a charitable, community, civic, or benevolent purpose.

## Section 6. Franchise Rates and Charges.

6.1 Rate Structure. Subject to the terms and conditions contained in this Ordinance, commencing on the effective date of this Ordinance and ending on December 31, 2033, Franchisee will charge its customers not more than those service rates identified in the attached Schedule 4.1 (the "Rate Schedule"). On or before September 1, 2023, and on or before the same day of each calendar year thereafter, Franchisee will provide City for City's review and approval a proposed Rate Schedule identifying the rates Franchisee intends to charge its customers during the immediately following calendar year (i.e., January 1 through December 31). Franchisee will provide City the proposed Rate Schedule whether or not Franchisee intends to increase, decrease, or make no modifications to the Rate Schedule then in effect. In addition to the intended rates, Franchisee's proposed Rate Schedule will be supported by (a) documentation, information, and/or other evidence of actual or projected increases in operating costs within City which justify any proposed increases, and (b) any other documentation, information, and/or evidence City may reasonably request. City will not review or consider any proposed Rate Schedule unless and until Franchisee complies with the submittal requirements contained in this Section 4.1. Franchisee's rates must be reasonable in light of the services Franchisee provides to its customers. The term "reasonable" will be determined in City's sole discretion; provided, however, when determining what is reasonable, City may consider, among other things, rates for similar services under similar conditions in other areas, as affected by local conditions in the local area, and rates that will provide Franchisee a reasonable rate of return and operating margin.

6.2 Consideration of Rate Schedule. Franchisee's proposed Rate Schedule will be reviewed and considered by the City Council at a public meeting. If the City Council denies the proposed Rate Schedule, Franchisee may file additional information with the City Council to further justify the proposed Rate Schedule. The City Council will review and consider any additional information submitted by Franchisee in support of the proposed Rate Schedule. If, despite Franchisee's submittal of additional information or otherwise, the City Council decides to deny the proposed Rate Schedule, the Rate Schedule then in effect will remain in effect, subject to any adjustments requested by the City Council.

6.3 Establishment of Rate Schedule. Except as otherwise provided under this Section 4, all rates and services must receive the City Council's prior review and approval. Rates will be approved by resolution of the City Council. An approved Rate Schedule will be effective for a period of one calendar year, beginning January 1 and ending December 31 of the applicable calendar year; provided, however, the Rate Schedule identified in the attached Schedule 4.1 will be effective for the approximate seven-month period described in Section 4.1, except as identified in Schedule 4.1. The approved rates will be fixed rates and Franchisee will not charge more than the fixed rates unless approved by the City Council in accordance with this

6.4 One-time Service. If a one-time service is needed by a customer that is not listed on the Rate Schedule, Franchisee may charge a reasonable rate for such service, and will include that service on the immediately following proposed Rate Schedule submitted to the City Council in accordance with this Section 4. Subject to the immediately preceding sentence, rates for a given service must be established under the provisions of this Section 4 before such service may be provided to customers.

6.5 Interim or Emergency Rate Modifications. The Canyon City Recorder (the "City Recorder") may, with appropriate information, documentation, and/or evidence submitted by Franchisee, grant an interim or emergency rate for new, special, and/or different services for a period not to exceed six months. In addition, an application for a temporary rate adjustment may be made to the City Recorder when the cost of collection is significantly increased by governmental regulations or when there



is a single, significant increase in the costs of collection not anticipated at the time of the last rate adjustment. Applications for any temporary rate adjustment will be reviewed by the City Recorder and will be approved or denied in the City Recorder's sole discretion.

## 7. Franchise Fee.

6.1 Compensation to City. In consideration of the rights, privileges, and franchise granted to Franchisee under this Ordinance, Franchisee will pay City a franchise fee (the "Franchise Fee") equal to three percent (3%) of Franchisee's gross revenues derived directly or indirectly from Franchisee's provision of solid waste management for solid waste and recyclable materials within City, less net uncollectables (the "Gross Revenues"). Franchisee will pay the Franchise Fee in quarterly installments, which quarterly installments will be due on or before the last day of the month immediately following the end of the applicable calendar year quarter. The first quarterly payment of the Franchise Fee is due on or before January 1, 2023. Contemporaneously with each quarterly payment of the Franchise Fee, Franchisee will file with City a sworn statement describing the total Gross Revenues Franchisee received during the immediately preceding quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 5.1 will not constitute a waiver by City of any Franchisee breach under this Ordinance. City may increase or decrease the Franchise Fee upon ninety (90) days' prior written notice to Franchisee. If Franchisee fails to timely and fully pay the Franchise Fee (or any other amount) due to City under this Ordinance, Franchisee will pay a late fee equal to five percent (5%) of the unpaid amount or Two Hundred Dollars (\$200.00), whichever is greater (a "Late Fee"). City may levy and collect a Late Fee in addition to all other remedies available to City for Franchisee's failure to pay City the Franchise Fee (or any other amount).

7.2 Inspection of Books and Records. On ten (10) days' advance written notice to Franchisee, City may review Franchisee's books, records, documentation, and/or any other information City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain Franchisee's compliance with this Ordinance. Franchisee will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City's interest in a prompt and efficient manner. Franchisee will bear the cost of any audit. Franchisee will keep all its books, records, documentation, and/or information pertaining to Franchisee's performance of its obligations under this Ordinance.

## Section 8 Insurance and Indemnification.

8.1 Insurance. Franchisee, at its cost and expense, will obtain and maintain in full force and effect during the term of the franchise, the following insurance coverage and at least their respective minimum limits: (a) workers' compensation insurance as required by applicable Oregon law; (b) employer's liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) comprehensive general liability insurance with limits of not less than \$2,000,000 for bodily injury or death to each person, \$2,000,000 for property damage resulting from any one accident, and \$2,000,000 for all other types of liability (e.g., products liability and completed operations); and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Franchisee and its employees with a limit of \$1,000,000 for each person and \$3,000,000 for each accident. Each liability insurance policy Franchisee is required to obtain and maintain under this Section 6.1 will name City as an additional insured and will provide that no cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing City thirty (30) days' prior written notice. All insurance Franchisee is required to obtain and maintain under this Section 6.1 will be issued only by insurance companies licensed in Oregon. Prior to City's execution and acceptance of this Ordinance, and at any other time thereafter within thirty (30) days after City's written request, Franchisee will provide City with certificates of insurance and endorsements evidencing

Franchisee's compliance with this Section 6.1. Franchisee will be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. All such deductibles, retentions, and/or self-insurance must be declared to and approved by City.

8.2 Indemnification. Franchisee will defend, indemnify, and hold City, and each employee, officer, agent, contractor, and representative of City, harmless for, from, and against any and all damages resulting from or arising out of, whether directly or indirectly, the following: (a) any activities in connection with Franchisee's and/or Franchisee's representatives operation and/or maintenance of Franchisee's facilities and/or services, except those that arise out of City's sole negligence; (b) any litigation involving Franchisee and/or Franchisee's representatives actions or inactions in connection this franchise; (c) the negligence of Franchisee and/or Franchisee's representatives; (d) accident, injury, and/or damage whatsoever caused to any person (including, without limitation, Franchisee and/or Franchisee's representatives); (e) Franchisee's and/or Franchisee's representatives failure to obtain and/or comply with any necessary permits, licenses, and/or laws; (f) damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of Franchisee's and/or Franchisee's representatives exercise of this franchise and/or failure to exercise this franchise, whether or not the acts or omissions complained of is authorized, allowed, and/or prohibited by this franchise; (g) the acts or omissions of Franchisee and/or Franchisee's representatives in connection with Franchisee's and/or Franchisee's representatives use of the right-of-ways and/or in providing or offering solid waste management services, whether such acts or omissions are authorized, allowed, and/or prohibited by this Ordinance; and/or (h) Franchisee's breach and/or failure to perform any Franchisee representation, warranty, covenant, and/or obligation under this Ordinance.

6.3 Survival of Indemnification Obligations. Franchisee's indemnification obligations provided in Section 6.2 will survive the termination of the franchise. Franchisee's costs incurred in satisfying its indemnification obligations will not decrease the Franchise Fees and will not increase the total amounts paid by the ratepayers for which Franchisee serves under the authority of this franchise. All such expenses will be the sole responsibility and burden of Franchisee.

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## Section 9. Term and Termination.

9.1 Term of Franchise. Unless sooner terminated or extended as provided in this Ordinance, the franchise granted to Franchisee under this Ordinance will be in full force and effect for a period of ten (10) years, commencing from the effective date of this Ordinance.

9.2 Termination by Mutual Agreement and Prior Written Notice. The franchise may be terminated at any time by the mutual written agreement of City and Franchisee. City may terminate the franchise at any time for any reason by providing Franchisee ninety (90) days' prior written notice.

9.3 Termination for Cause. Notwithstanding anything contained in this Ordinance to the contrary, City may terminate the franchise immediately by notice to Franchisee upon the occurrence of any of the following events: (a) Franchisee fails to comply with any laws; and/or (b) Franchisee breaches and/or otherwise fails to perform any Franchisee representation, warranty, covenant, and/or obligation contained in this Ordinance.

9.4 Remedies. If Franchisee breaches or otherwise fails to perform any Franchisee representation, warranty, covenant, and/or obligation under this Ordinance, City may, in addition to any

other remedy provided to City under this Ordinance, pursue any and all remedies available to City at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

9.5 Continuity of Service. Upon the termination of the franchise, City may require Franchisee to continue to provide solid waste collection services for a reasonable period of time, not to exceed six months. Upon the termination of this franchise, City may take such actions City deems necessary or appropriate to ensure continued service to Franchisee's customers. Franchisee will pay any and all costs associated with such actions.

## Section 10. Dispute Resolution Process and Public Responsibility.

10.1 Customer Dispute. Any Franchisee customer who is aggrieved or adversely affected by any Franchisee policy or practice will first attempt to settle the dispute by notifying Franchisee of the nature of the dispute and affording Franchisee the opportunity to resolve the dispute. If the customer is unable to resolve the dispute with Franchisee, the customer may contact the City Recorder to discuss the dispute. The City Recorder may require a written description of the dispute from either party, and may attempt to mediate and resolve the grievance with the customer and Franchisee. If the dispute remains unresolved, the customer or Franchisee may appeal to the City Council for review and consideration of the dispute. The City Council may hear and decide the dispute. Subject to judicial review, any decision of the City Council will be final and binding.

10.2 Hazardous and Infectious Waste. No person will place hazardous waste or infectious waste at curbside for collection or disposal by Franchisee. Hazardous waste will only be disposed at collection events for that specific purpose.

10.3 Construction and Demolition Waste. Construction and demolition waste set out for collection by Franchisee will be separated from regular household and/or commercial solid waste. If it is a large quantity, special arrangements will be made with Franchisee for the collection of the construction and demolition waste.

10.4 Accumulation of Waste. No person will accumulate or store waste that is unsightly or in violation of City's nuisance ordinance, or in violation of regulations of the Oregon Environmental Quality Commission.

10.5 Safe Loading Requirements. No stationary compactor, drop box, or other receptacle, including a can, cart, or container for residential, commercial, or industrial use, will exceed the safe loading requirements designated by Franchisee.

10.6 Access to Receptacle. No receptacle will be located behind any locked or latched gate or inside any building or structure, unless authorized by Franchisee. No person will block the access to a receptacle. Each customer will provide safe access to the solid waste receptacle without hazard or risk to Franchisee. Generators or producers of waste will clean their receptacles and keep the area around those receptacles free of accumulated waste.

10.7 Can or Cart Placement. Placement of cans and carts must be within three feet of the curb, but will not restrict access to bicycle lanes or sidewalks and will not be blocked by vehicles or other items. Items not for collection must be at least three feet from cans and carts that are placed for collection. Placement of cans and carts are limited to a time period of twenty-four (24) hours prior to pick-up and twenty-four (24) hours after pick-up. Receptacles within alleys will be placed to accommodate collection vehicles.

10.8 Preparation of Solid Waste. Solid waste that is placed for collection will be drained of surplus liquid and placed in a sealed, leak-proof receptacle. Pet feces, sharp objects (e.g., broken glass and knives), and any other solid waste with potential for causing injury or disease will be securely wrapped in a manner to prevent exposure or injury to the public or employees of Franchisee. Ashes will be allowed to cool and will be securely wrapped or bagged before being deposited in any receptacle.

10.9 Solid Waste Receptacles. Receptacles for mechanical collection will be provided to the generator by Franchisee, unless otherwise authorized by Franchisee. The loaded weight of a receptacle will comply with the manufacturer's specifications. Except for drop boxes, receptacles will be (a) equipped with lids sufficient to keep out water and to prevent disturbance by animals and entrance of pests, (b) kept closed, except when being filled, emptied, or cleaned, and (c) kept in a clean, leak-proof, and sanitary condition by the generator of the solid waste. When materials or customer abuse, fire, or vandalism cause excessive wear, damage, or loss of a receptacle provided by Franchisee, the reasonable costs of repair or replacement may be charged to the customer.

10.10 Unauthorized Removal or Entry. No person will remove solid waste placed out for collection, except the person so placing the material or Franchisee. No person will enter into a receptacle for the purpose of compacting, disturbing, or scattering the contents of the receptacle. No person will use public litter receptacles for the disposal of household, commercial, or industrial waste.

10.11 Customer Penalties. Any violation of Sections 8.2, 8.4, 8.6, 8.7, 8.8, and 8.10 are punishable by a penalty of up to Five Hundred Dollars (\$500) per violation. Each day of continued violation is a separate offense and may be addressed in a separate action or may be joined in one action.

## Section 11 Resource Recovery License

11.1 License Requirements. A person may make application to City for the issuance of a license to engage in resource recovery activities. The application will be in writing and will contain such information and be in such form as City will require, including a particular description of the services for which a license is sought, the manner in which the applicant proposes to provide such services, the length of time it will be provided, and such other information as City may require.

11.2 Criteria for City Consideration. City will review any application submitted in accordance with Section 9.1 and determine whether there is a showing of need for such a license. City's determination of the need for the license may be based on, without limitation, the following: (a) whether Franchisee is providing the same or similar service; (b) whether Franchisee has been or is in the process of arranging to provide such service; (c) if Franchisee is not at the time providing, nor in the process of arranging to provide, such services, whether Franchisee has any objections to the granting of such license; and/or (d) whether the applicant for such license has the financial and other means to provide such services.

11.3 Grant or Denial of License. The City Council will consider the criteria described under Section 9.2 to assist in City's determination whether there is a showing of need for the applicable license and whether the applicant is qualified to provide such resource recovery service. If the license is granted, City may impose upon such approval and make the license subject to any reasonable requirements relating to the service under the license. To ensure continuity of the proposed service, the licensee may be required to, among other things, post a performance bond in a reasonable amount not exceeding Ten Thousand Dollars (\$10,000.00) guaranteeing that such service will be continued for such period of time as the City will determine. In addition to any other conditions City may impose, City may condition the issuance of any resource recovery license on the licensee's payment of a franchise fee to City.

## Section 12. Miscellaneous.

12.1 Assignment or Transfer of Franchise. Franchisee will not assign or transfer in any manner whatsoever any Franchisee obligations and/or interest in or to the franchise without City's prior written consent. Subject to the terms and conditions contained in this Section 10.1, this Ordinance will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

12.2 Severability and Preemption. If all or any portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by any county, Oregon, or federal legislation, rules, regulations, and/or decisions, the remainder of this Ordinance will not be affected but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining provision of this Ordinance will be valid and enforceable to the fullest extent permitted by law. If any laws preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision will be read to be preempted to the extent and the time required by law.

12.3 Governing Law; Venue. This Ordinance is made subject to the laws. Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Grant County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon.

12.4 No Waiver. No provision of this Ordinance may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Ordinance will be deemed a waiver of other provisions or conditions hereof.

12.5 Action by the Parties. In any action mandated or permitted by City or Franchisee under this Ordinance, including, without limitation, renegotiation of the franchise as provided in Section 2.1, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either City or Franchisee is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, or delayed.

12.6 Notices. All notices or other communications required or permitted by this Ordinance (a) must be in writing (and signed by the party to be bound), (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other parties, and (c) will be considered delivered (i) upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service (with confirmation of delivery), or (ii) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

To City:  
Town of Canyon City  
Attn: City Recorder  
PO Box 276  
Canyon City, OR 97820  
tocc1862@outlook.com

To Franchisee:  
Clark's Disposal, Inc.  
Attn: Farrell Clark  
355 Patterson Bridge Road  
John Day, Oregon 97845

12.7 Person and Interpretation. For purposes of this Ordinance, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine,

feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words "include," "includes," and "including" are not limiting. The word "or" is not exclusive. Reference to "days" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.

12.8 Effective Date. This Ordinance repeals, amends, restates, and supersedes Ordinance No. 294 in its entirety; provided, however, City may continue its prosecution of any violation of Ordinance No. 294 now in effect. Whereas passage of this Ordinance is deemed to be necessary for the immediate preservation of the peace, health, and safety of City's citizens, an emergency is hereby declared to exist, and this Ordinance will be in full force and effect upon its passage by the City Council and approval of the Mayor. Notwithstanding anything contained in this Ordinance to the contrary, the termination of the franchise, regardless of how it occurs, will not relieve a party of any obligations that have accrued before termination.

12.9 Expenses. Notwithstanding anything contained in this Ordinance to the contrary, Franchisee will bear any and all fees, costs, and expenses incurred or arising out of Franchisee's performance of its obligations under this Ordinance. Nothing contained in this Ordinance will give Franchisee any credit against any ad valorem property tax levied against real or personal property within City or against any local improvement assessment or any business tax imposed on Franchisee, or against any charge imposed upon Franchisee, including, without limitation, any permit and inspection fees or reimbursement or indemnity paid to City.

12.10 Acceptance by Franchisee. Within thirty (30) days after City's passage of this Ordinance, Franchisee will file with City the written acceptance attached hereto as Exhibit A (the "Acceptance"). If Franchisee fails to timely file the Acceptance with City, this franchise (and the rights granted to Franchisee herein) will be null and void and will be repealed by City in all respects.

12.11 Original Franchise. Franchisee and City acknowledge and agree that the term of the Original Franchise is extended from January 17, 2012 to the day immediately preceding the effective date of this Ordinance. The Original Franchise will be deemed terminated and of no further force and effect as of the day immediately preceding the effective date of this Ordinance; provided, however, the termination of the Original Franchise will not relieve a party of any obligations that have accrued before termination.

12.12 City Default. No City act or omission will be considered a default under this Ordinance unless and until City has received thirty (30) days' prior written notice from Franchisee specifying with reasonable particularity the nature of the default Franchisee believes exist (the "City Default Notice"). Commencing from City's receipt of the City Default Notice, City will have thirty (30) days to cure or remedy the alleged default (the "City Cure Period") before City will be deemed in default of this Ordinance. If City is unable to cure the default within the City Cure Period, City will not be deemed in default under this Ordinance if City begins correction of the default within the City Cure Period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

12.13 Attorney Fees -No Suit or Action Filed. If this Ordinance is placed in the hands of an attorney due to Franchisee's breach or failure to perform any term, condition, representation, warranty, and/or covenant contained in this Ordinance, Franchisee will pay, immediately upon demand, City's attorney fees, collection costs, and any other related associated costs, even though no suit or action in a court of law is filed thereon, and any other fees or expenses incurred by City.

12.14 Attorney Fees -General. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Ordinance, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in

addition to any other relief awarded, the prevailing party's reasonable attorney fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

12.15 City Enforcement. City will enforce the provisions of this Ordinance by administrative, civil, and/or criminal action as necessary to obtain compliance with this Ordinance. Any person violating any of the provisions of this Ordinance will, upon conviction, be punished in accordance with the provisions of Ordinance No. 222 in addition to any other rights or remedies provided to City under this Ordinance.

12.16 Entire Agreement. This Ordinance contains the entire agreement and understanding between City and Franchisee with respect to the subject matter of this Ordinance and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. Franchisee has not relied on any promises, statements, representations, or warranties made by City. All exhibits, schedules, instruments, and other documents referenced in this Ordinance are part of this Ordinance.

This Ordinance was PASSED by the City Council and APPROVED by the Mayor on December 20, 2022.

  
\_\_\_\_\_  
Steve Fischer, Mayor

Attest:

  
\_\_\_\_\_  
Tami Kowing, City Recorder