

ORDINANCE NO. 95-O-510

AN ORDINANCE GRANTING CURRY TRANSFER AND RECYCLING, INC. A FRANCHISE TO PROVIDE ALL SOLID WASTE, INFECTIOUS WASTE AND RECYCLABLE MATERIALS SERVICES WITHIN THE CITY OF BROOKINGS; AND REPEALING ORDINANCE NO. 86-0-402.

Sections:

Section 1:	Definitions
Section 2:	Grant of Franchise
Section 3:	Franchise Fee
Section 4:	Use of Service
Section 5:	Term
Section 6:	Rates
Section 7:	Rate Review and Adjustment
Section 8:	General Franchise Terms and Conditions
Section 9:	Recycling
Section 10:	Disposal Facility
Section 11:	Insurance
Section 12:	Indemnification
Section 13:	Assignment
Section 14:	Abandonment; Performance Bond
Section 15:	Binding Arbitration
Section 16:	Default
Section 17:	Effect of Ordinance
Section 18:	Landfill Closure/Post Closure
Section 19:	Entire Agreement
Section 20:	Enforcement
Section 21:	Effect of Partial Invalidity
Section 22:	Modification of Franchisee's Services
Section 23:	Force Majeure
Section 24:	Repealing Clause

The City of Brookings (City), mindful of its duties and responsibilities to protect and maintain the public health, safety and welfare of its citizens, finds as follows:

A. It is necessary to regulate and control the collection, transportation and disposal of Solid Waste and Infectious Waste and the recycling, processing, transportation, marketing and sale of Recyclable Materials within the Franchise Area as defined below;

B. It is in the public interest to grant an exclusive Solid Waste and Infectious Waste collection and disposal and Recyclable Materials franchise within the Franchise Area;

C. The City is authorized to carry out the governmental functions and operations contemplated herein and the City has the power, authority and legal right to enter into and perform its obligations herein; and

D. Curry Transfer and Recycling, Inc., an Oregon corporation (Franchisee) has agreed to provide Solid Waste and Infectious Waste collection, transportation and disposal services, and recycling, processing, transportation and marketing of Recyclable Materials, and Franchisee has been in the businesses of providing such services, and has the capacity, personnel and technical qualifications required to perform such services.

NOW, THEREFORE, THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:

SECTION 1: DEFINITIONS. For the purposes of this Ordinance, the following terms shall have the following meanings:

A. "Approval of the City", unless otherwise indicated, shall mean approval of a majority of the Council Members of the City .

B. "Basic Solid Waste Collection Service Component" shall mean the monthly Solid Waste collection and disposal rates, as set forth on the rate sheets, less closure/post-closure charges, surcharges and container rental charges.

C. "Commercial" shall mean any activity conducted for business purposes including non-profit businesses.

D. "Disposal Facility" shall mean a Solid Waste facility which has all applicable permits and authorizations needed to accept Solid Waste for transformation, recovery, recycling, transfer or disposal.

E. "Franchise Area" shall mean the incorporated limits of the City of Brookings, Oregon, including any areas annexed to the City during the term of this Ordinance. To the extent permitted by law, all state and federal agencies having facilities within, or doing business within the City limits shall be deemed to be within the Franchise Area, and shall be subject to this Franchise Ordinance.

F. "Generators" shall mean all individuals, businesses and other entities, including federal, state, county and local agencies as well as the City, located within the Franchise Area, or that generate Solid Waste or Recyclable Materials within the Franchise Area.

G. "Hazardous Waste" shall mean all Solid Waste defined or characterized as Hazardous Waste by the federal Solid Waste Disposal Act, all future amendments thereto, or regulations promulgated thereunder; all Solid Waste defined or characterized as Hazardous Waste by the principal agencies of the state having jurisdiction over such Hazardous Waste and those substances and items which are not normally disposed of by generally accepted sanitary landfill disposal methods.

H. "Infectious Waste" shall have the definition set forth in ORS 459.386 (2).

I. "Recyclable Materials" shall have the definition set forth in ORS 459.005 (19). The initial list of Recyclable Materials is set forth with particularity in Section 9 of this Ordinance.

J. "Residential" shall mean premises consisting of two dwelling units or less, under the same ownership.

K. "Self Hauler" shall mean any Residential Generator who chooses to deliver all or any part of his or her Solid Waste or Recyclable Materials to the appropriate in-county Transfer Station.

L. "Solid Waste" shall mean all putrescible and nonputrescible solid and semisolid wastes, including without limitation: garbage; trash; refuse; paper; cardboard; rubbish; ashes; industrial wastes; demolition and construction wastes; wood wastes; grass clippings; yard wastes; compost; tires; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid Wastes; and other discarded solid and semisolid waste. Solid Waste excludes Hazardous Waste and Infectious Waste. Solid waste does not include:

(1) Environmentally hazardous waste as defined in ORS 466.055.

(2) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

(3) Reusable beverage containers as defined in ORS 459.005(18)(b).

This section shall not be construed to prohibit Oregon licensed contractors from collecting and transporting demolition and construction waste, wood waste, concrete rubble, manure, contaminated soils, and fill dirt incidental to such person's business or occupation; or to prohibit yard maintenance persons from collecting and transporting grass clippings and yard debris produced as part of that person's business or occupation.

M. "Transfer Station" shall mean any of the in-county facilities operated by Franchisee, where Solid Waste or Recyclable Materials are disposed of, recycled, or transferred for disposal or recycling.

SECTION 2: GRANT OF FRANCHISE. The City hereby grants to Franchisee the following rights, privileges, and franchise, subject to the terms, obligations and responsibilities on the part of Franchisee as set forth in this ordinance:

A. SOLID WASTE AND INFECTIOUS WASTE COLLECTION. The exclusive right to provide all Solid Waste and Infectious Waste collection services within the Franchise Area, and the exclusive right to use the streets of the City for that purpose. For that purpose Franchisee shall provide curbside collection of Solid Waste to all Generators, including residences and business establishments, within the Franchise Area. Franchisee shall also provide Infectious Waste collection to all Infectious Waste Generators within the Franchise Area. Except as otherwise provided in this Ordinance, no other person or entity shall collect Solid Waste or Infectious Waste collection within the Franchise Area.

B. CURBSIDE RECYCLING COLLECTION. The exclusive right to establish curbside Recyclable Materials collection routes within the Franchise Area, including the exclusive right to use the streets of the City for that purpose, and to collect all Recyclable Materials within the Franchise Area for compensation from the Generator. However, this Subsection shall not limit Franchisee's right to collect Recyclable Materials for no compensation, nor shall it prohibit Franchisee from purchasing Recyclable Materials. Except as otherwise provided in this Ordinance, no other person or entity shall collect or recycle Recyclable Materials within the Franchise Area.

C. TRANSPORTATION AND DISPOSAL OF COLLECTED MATERIALS. Within Franchisee's sole and exclusive rights and obligations to collect Solid Waste, Infectious Waste and Recyclable Materials, shall be Franchisee's sole and exclusive right and obligation to transport all Solid Waste from the point of collection to any appropriate Transfer Station or to any Disposal Facility. Franchisee shall also have the sole and exclusive right and obligation to transport all collected Infectious Waste to an approved Infectious Waste disposal or treatment facility. Additionally, Franchisee shall have the sole and exclusive right and obligation to transport all Recyclable Materials collected by Franchisee to a Transfer Station, or to a storage, sorting, processing or buy back facility. Subject to the existing contract between Franchisee and Douglas County, Franchisee shall have the sole and exclusive right to determine which Disposal Facility to which it shall transport Solid Waste and Recyclable Materials. Except as otherwise provided in this Ordinance, no other person or entity shall transport or dispose of Solid Waste or Recyclable Materials within the Franchise Area.

1. Franchisee shall have available for loading, a sufficient number of top-loading trailers as may be needed to handle the throughput at the Brookings Transfer Station. Such trailers shall be of a size and design to accommodate the physical facilities of the Brookings Transfer Station and will meet all requirements of federal, state and local law with respect to weight, length, dimensions and other characteristics. Franchisee shall assure that the trailers have on-board scales or some other method of independently determining proper load/trailer weight.

2. Franchisee shall provide adequate storage of all trucks, trailers and appurtenant equipment utilized in performing the services required under this Section.

3. Franchisee shall determine and record the tonnage of Solid Waste, departure times and destination of each trailer leaving the Brookings Transfer Station. Such records shall be available to the City for inspection at all reasonable times.

D. ADDITIONAL SERVICES. Franchisee shall have the right of first refusal to provide any other exclusive services concerning Solid Waste, Recyclable Materials, Infectious or any other classification of wastes or Recyclable/reusable materials not granted under this Ordinance. Any request for provision of new services shall be made subject to the terms of Section 22 of this Ordinance.

E. COLLECTION AND HAULING. The Franchisee shall collect Solid Waste at the various residences, business establishments and other places within the Franchise Area where such service is requested promptly and with dispatch, and haul such Solid Waste from the Franchise Area upon the payment of not more than the maximum rates authorized by the most recent rate schedule and approved by the City Council.

SECTION 3: FRANCHISE FEE. Franchisee shall pay the City an annual fee of one-half of one percent of the Basic Solid Waste Collection Service Component, as compensation for the rights granted to Franchisee under the terms of this Ordinance.

SECTION 4: USE OF SERVICE.

A. Each Generator, including but not limited to property owners, Commercial or Residential lessees, households and businesses in the Franchise Area, shall comply with all reasonable policies and programs with regard to Solid Waste, Infectious Waste and recycling. Franchisee shall serve each customer in the Franchise Area subject to the terms and conditions set forth in this Ordinance.

B. Residential Generators shall have the right to self haul the Solid Waste and Recyclable Materials generated themselves to the appropriate in-county Transfer Station. Solid Waste and Recyclable Materials produced by a tenant, lessee, licensee, occupant or person other than the owner of the premises are considered to be generated by such person and not by the Landlord or the owner of the premises.

C. Except as otherwise provided herein, the City shall direct all Solid Waste and Recyclable Materials generated or disposed of within the Franchise Area to the appropriate in-county Transfer Station for long-haul transportation by Franchisee to a Disposal Facility, or recycling facility, as the case may be.

SECTION 5: TERM. The term of this Ordinance shall be a continuing year to year term, subject to termination as follows:

Beginning on January 1 of each year, this Ordinance shall be considered renewed for an additional year unless at least thirty (30) days prior to January 1 of any year the City notifies Franchisee, in writing, by certified mail, return receipt requested, of its intent to terminate this Ordinance. Upon giving notice of termination, this Ordinance shall terminate ten (10) years from the date of notice, so that Franchisee may finance, amortize and depreciate its investment in the equipment it has or will use for providing services under this Ordinance. The City may then later extend the term of this Ordinance or reinstate the continuing term upon mutual agreement with Franchisee. Termination under this section may be with or without cause.

SECTION 6: RATES.

A. As compensation for performing the services required under this Ordinance, Franchisee shall be authorized to collect from Generators reasonable fees set by the City, as required by this Ordinance, and levied upon Generators in accordance with rates duly enacted by the City. The rates established under this Agreement shall not be less than the base rate established at the commencement of this Ordinance, except in the following circumstances:

1. When the closure and post-closure components set forth in Section 18 of this Ordinance are no longer required, Franchisee shall no longer be entitled to collect such component.

2. In the event that the City modifies Franchisee's service requirements pursuant to Section 22 hereof, and such modification results in reduced operational costs to Franchisee, such savings shall be passed on to Generators in the form of reduced rates.

The initial rate sheets (base rates) are attached hereto as Exhibit "A", and by reference are fully incorporated herein.

B. All revenues received by Franchisee from the sale of Recyclable Materials collected by the Franchisee and all fees received by Franchisee from rate payers for services hereunder shall become the property of Franchisee as consideration for the performance of services hereunder.

C. City shall not be responsible for the payment of any federal, state or local taxes due as a result of compensation under this Ordinance.

SECTION 7: RATE REVIEW AND ADJUSTMENT.

A. WHEN RATE ADJUSTMENTS MAY BE SOUGHT. Requests for rate adjustments may be made once each year, at Franchisee's or City's discretion. Rate applications shall be timely filed by the Franchisee to give reasonably adequate time for consideration by the City staff and the City Council at a regular meeting, after giving notices required by law in order to go into effect at the date requested by Franchisee. Rate adjustments may be sought for all reasonable reasons, including but not limited to additional costs incurred or to be incurred by Franchisee, or a loss of revenues due to:

1. A new service or a change in service ordered or authorized by the City or a modification or renegotiation of any material term or condition of this Ordinance. Such adjustment shall be based upon Franchisee's costs and revenues incurred in providing the service, plus a rate of return of eight percent of such additional costs. The proposed cost adjustment shall be reviewed after the first year of providing such new or changed service, and the proposed costs shall be adjusted to reflect the actual costs of providing such new or changed service;

2. A change in the requirements for collection, treatment, disposal or processing of Solid Waste, or a change in requirements for collection, transfer, disposal or processing of Recyclable Materials, or any surcharges, either by action of the City or of any federal, state, or local governmental agency or other unanticipated charges or expenses incurred by Franchisee as a result of actions outside of Franchisee's control;

3. Failure of Franchisee to earn a rate of return of not less than six and one-half percent of all reasonable costs incurred by Franchisee in its provision of the services required under this Ordinance; or

4. Any portion of this Ordinance being later declared invalid.

B. BURDEN OF PROOF. The Franchisee shall bear the burden of justifying to the City by a preponderance of the evidence any rate increase. If the City determines that the Franchisee has not met its burden, the Franchisee may, within 60 days of City's determination, and before seeking arbitration, request another hearing to produce additional evidence. Upon request, the City shall permit said additional hearing.

C. COST OF LIVING ADJUSTMENT (COLA). In addition to the rate adjustments described above, the portion of the rates for recycling, collection, transportation and disposal represented by specific dollar amounts listed on the rate sheets (Exhibit "A") shall be further adjusted upon written request of the Franchisee if Franchisee can demonstrate by a preponderance of the evidence, an increase in the CPI over the preceding calendar year. The adjustment shall be based upon the change in the CPI from December 31 of the current year, compared to the CPI as of December 31 of the prior year. The rates shall be subject to adjustment on or about the 1st day of April of each year thereafter (the "adjustment date") as follows:

1. The base for computing the adjustment is the CPI (U) National published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the month nearest the date of the commencement of the term of this Ordinance ("Beginning Index"). If the index published for the most recent month prior to the rate application ("Extension Index") has increased over the Beginning Index, the rates for the following year (until the next adjustment) shall be set by multiplying the rates by a fraction, the numerator which is the Extension Index and the denominator of which is the Beginning Index. After request for adjustment as provided herein, the parties shall act with all diligence to adjust the rates as set forth hereunder.

2. If the CPI is changed so that the base year differs from that used as of the month immediately preceding the month in which the term commences, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

3. The COLA adjustment provided for herein shall not be granted to Franchisee in any rate hearing where Franchisee is requesting a rate adjustment pursuant to Section 7 A 3 of this Agreement.

D. RATE DISPUTES. If the City rejects a rate adjustment requested by the Franchisee, grants an increase less than what was requested by Franchisee, or fails to act timely upon all or any part of the Franchisee's rate adjustment application, then the Franchisee may request binding arbitration of the matter as provided in Section 15 of this Ordinance.

E. ALTERNATE DISPOSAL FACILITY COSTS. Subject to existing disposal contracts, Franchisee shall dispose of Solid Waste at the lowest cost Disposal Facility. If Franchisee does not use the lowest cost Disposal Facility, then Franchisee may not recover, through any rate adjustment, its disposal costs which exceed the disposal costs at the lowest cost Disposal Facility.

F. AUDITS. If Franchisee seeks a rate adjustment pursuant to Section 7 A. 3 hereof, then City may require Franchisee to provide a financial audit for the previous year of operations. The audit shall be completed according to generally accepted accounting procedures, and shall be at no cost to City. The auditor shall be chosen by City with the concurrence of the Franchisee. Franchisee shall be entitled to recover the reasonable costs of the audit through Franchisee's rates.

G. UNREASONABLE COSTS. For the purposes of Section 7 A. 3 of this Agreement, the following shall not be included within the meaning of "reasonable costs":

- 1. Contributions;**
- 2. Fines and penalties;**
- 3. Affiliated party transaction costs to the extent they exceed the fair market rate for such goods or services;**
- 4. Costs associated with future purchase of other companies including ESOP payments, goodwill, amortization of goodwill, premiums on key-person life insurance policies;**
- 5. Principal or interest payments on acquisitions of residential Solid Waste or recycling collection routes, or the purchase of equipment and facilities at a price, that would be construed to include goodwill or a premium in excess of fair market value at the time of acquisition;**
- 6. State, federal and local income taxes;**
- 7. Accruals for future unknown regulatory changes.**

SECTION 8: GENERAL FRANCHISE TERMS AND CONDITIONS.
The following terms and conditions shall apply:

A. Unless otherwise set forth in this Ordinance, Franchisee shall collect Solid Waste from each Generator throughout the Franchise Area at least once weekly. No collections need be made on legal holidays.

B. Subject to the conditions herein, Franchisee need not provide service to any Generator who has been billed for service and who is more than 45 days in arrears of any outstanding balance. In that event the Franchisee may terminate service to such Generator. Additionally, Franchisee need not provide service to non-owners of property, where the owner does not request and pay the charges therefor, unless payment for said service has been guaranteed in advance by the property owner, or a satisfactory cash deposit or advance payment has been made by such non-owner requesting service.

C. For accounts more than 90 consecutive days in arrears, or which, within the last 24 months have been more than 90 consecutive days in arrears, Franchisee shall have the authority to require a deposit from such Generators, equal to two months charges for such Generator, and shall have the authority to require the Generator to maintain such deposit, for the services performed hereunder. This requirement shall not apply to Generators in arrears as of the effective date of this Ordinance.

D. For Generators who terminate service, and within 60 days of such termination, resume service, Franchisee may charge each such Generator a service termination fee, and a service start up fee.

E. Accounts not paid in full within 30 days from payment due date may accrue interest from and after the date due at the legal rate of interest. In addition to said interest, accounts not paid in full within 60 days from payment due date may accrue a reasonable handling fee of \$25.

F. In the event service has been terminated for non-payment, Franchisee shall charge such Generator a \$25 fee for re-instituting service.

G. Franchisee shall provide the services required to be performed herein in compliance with all federal, state and local laws, statutes, ordinances and regulations, including ORS Chapters 459 and 459 A, and the regulations of the Department of Environmental Quality, the Worker's Compensation Board and the State Accident Insurance Fund. Additionally, Franchisee shall provide the services required to be performed herein in a good and workmanlike manner.

H. Each vehicle used by Franchisee for the collection and transportation of Solid Waste and Recyclable Materials:

- 1. Shall be maintained in a safe and legal operating condition at all times.**
- 2. Shall be kept clean and sanitary, in good repair and well and uniformly painted.**
- 3. Shall have the Franchisee's name, telephone number and vehicle identification number printed or painted in letters not less than 4 inches in height on both sides of the vehicle.**
- 4. Shall be maintained at all times in a manner to prevent unnecessary noise during its operation.**
- 5. Shall not be operated in a manner that results in undue interference with normal traffic flows.**
- 6. Shall not be parked, or left unattended on the public streets when loaded.**

I. Franchisee may temporarily suspend any service required under the terms of this Ordinance if:

- 1. The street or road access is unavoidably blocked or otherwise impassable through no fault of the Franchisee and there is no reasonable alternate route available, or the street or road access is otherwise inaccessible to Franchisee's vehicles and equipment;**
- 2. Adverse weather conditions render providing service unduly hazardous.**

J. Service to a Generator may be terminated if Franchisee, its officers, employees, agents or contractors, jointly or individually are placed at risk with regard to their physical health or welfare.

K. Unless otherwise specifically approved by Franchisee, no Solid Waste container shall exceed the standard size of 32 gallons in capacity or 55 pounds in weight. No Solid Waste container shall be located greater than five feet from curbside or greater than eight feet from the edge of the public roadway. Franchisee reserves the right to determine the type and style of container which any Generator shall use.

L. All containers shall be placed in a location readily accessible to Franchisee, outside of garages and other buildings, and outside of all fences, gates and other obstructions, unless the Generator pays the appropriate additional fee, as set forth on the rate sheets.

M. Once a Generator's service requirements exceed the equivalent of three 32 gallon cans per week, the Generator shall be required to utilize appropriate sized bins, carts or containers provided by Franchisee.

N. Any Generator utilizing a trash compactor shall insure that said compactor is reasonably compatible with the equipment owned by the Franchisee, at the time the Generator signs up for collection service, or the equipment that the Franchisee is willing to acquire. The City shall establish separate collection and disposal rates for compacted and uncompacted Solid Waste, which rates shall not be more than three times the rate of the same volume of non-compacted Solid Waste.

O. In the event that a Generator has an occasional item or items of Solid Waste which do not fit into said Generator's Solid Waste container, the Generator shall place the additional item or items adjacent to the Generator's container at regular collection time and the item or items shall be collected on the same route day by the Franchisee. Franchisee shall charge the Generator according to the rate sheets (Exhibit "A") for such additional collection.

P. Franchisee shall provide free collection and disposal service to the City in the quantities, and on the terms set forth in Exhibit "B".

Q. Title to Recyclable Materials shall pass to Franchisee either when placed in Franchisee's collection bins, or when delivered to Franchisee at designated locations for collection by Franchisee, whichever is applicable. Title to all other materials, including Solid Waste and Infectious Waste, shall remain with the Generator until disposal, where title shall pass to the facility owner or operator.

R. Service provided under the terms of this Ordinance shall be subject to the supervision of the City. The Franchisee shall, at all reasonable times, permit inspection of its facilities, equipment, personnel and records as they relate to the services to be provided under this Ordinance.

S. Franchisee shall comply with all federal Occupational Safety and Health Administration (OSHA) and applicable State of Oregon, Curry County and City requirements. Franchisee shall also comply with all Worker's Compensation Department requirements and all other state and local code requirements.

T. Franchisee shall fully comply with all requirements of ORS Chapter 279, including without limitation ORS 279.316 and ORS 279.334. Additionally, the hourly rate of wage paid by Franchisee to its workers under the terms of this Ordinance shall not be less than the minimum wage as established by the State of Oregon, unless Franchisee is exempt from such law.

U. Franchisee shall comply with all equal opportunity laws, orders, rules and regulations promulgated by any federal, state, county or local governmental agency.

V. Franchisee shall provide industrial accident insurance for all persons employed on work to be done under this Ordinance.

W. Franchisee shall comply with ORS 279.320 relating to liability for monies due to State Commissions.

X. Infectious Waste Generators shall comply with all federal, state and local laws, regulations or orders pertaining to Infectious Waste.

Y. In the event that Franchisee shall desire to terminate service under the terms of this Ordinance, then it shall give the City not less than 24 months notice of its intent to terminate service and the obligations of the Franchisee. In the event of such voluntary termination of service by Franchisee, the City shall have the right of first refusal to purchase all or any part of the equipment of the Franchisee at the price to be agreed upon between the parties. If the parties cannot agree upon a price, then such dispute shall be submitted to binding arbitration pursuant to Section 15 of this Ordinance.

Z. The Franchisee shall respond to any written complaint on service within 10 days of Franchisee's receipt of such written complaint.

AA. The Franchisee shall provide the opportunity to recycle in accordance with ORS Chapter 459 A.

BB. The Franchisee shall not give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of solid waste handled and location of customers, so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates.

SECTION 9: RECYCLING.

A. The Franchisee shall have the following rights and obligations:

1. The sole and exclusive right and obligation to operate curbside Recyclable Materials collection routes as stated in Section 2 B of this Ordinance;

2. The sole and exclusive right and obligation to place all Recyclable Materials collection bins located within the Franchise Area;

3. The sole and exclusive right and obligation to collect, recycle, process, transport, market and sell all Recyclable Materials which have been deposited in Franchisee's collection bins; and

4. The sole and exclusive right and obligation to collect, recycle, process, transport, market and sell all Recyclable Materials collected for compensation from the Generator.

B. Franchisee shall provide for recycling of the following properly prepared materials: newspaper, magazines, office paper, cardboard, glass containers, tin cans, aluminum, and certain plastics. The foregoing list of Recyclable Materials may be amended from time to time upon mutual agreement of the parties. Such amendment shall be deemed a New or Changed Service.

C. Curbside Recyclable Materials collection shall be made not less than weekly. The charge for residential recycling services shall be included in the rates as set forth on the rate sheet.

D. All Recyclable Materials collected by Franchisee shall become the property of Franchisee.

E. Franchisee shall have the exclusive right to remove Recyclable Materials or other salvageable materials from the Solid Waste generated within the Franchise Area.

F. Nothing contained in this Ordinance shall prohibit any third person or any business entity from collecting Recyclable Materials within the Franchise area, so long as said third person or other business entity either:

- 1. Purchases said Recyclable Materials from Generators; or**
- 2. Receives said Recyclable Materials from Generators for no compensation.**

G. This Subsection shall not permit any third person or any business entity to:

1. Rent or lease containers to any Generator, and to act as a recycling or Solid Waste consultant, if in conjunction with said rental, lease, or consulting agreement, such person or entity agrees to collect, recycle, process, transport, market, and/or sell Recyclable Materials for no compensation;

2. Adversely impact the City's recycling rate mandated by the state legislature and administered by the state Department of Environmental Quality; or

3. Adversely impact Franchisee's recycling revenues to a material extent.

H. Franchisee shall comply with all reasonable reporting requirements from the City regarding data concerning Solid Waste and Recyclable Materials collection, transportation and sale.

I. In addition to the rights and obligations set forth in this Section 8, Franchisee shall have those rights and obligations as set forth in Section 2 of this Ordinance.

J. Recycling revenues received by the Franchisee for the sale of Recyclable Materials subject to this Agreement, shall be considered revenues for the purposes of rate adjustments hereunder.

K. Nothing herein shall prohibit non-profit groups located within the Franchise Area from collecting, for compensation from the Generator, cans and bottles subject to the Oregon deposit law, in effect as of the date of adoption of this Ordinance.

SECTION 10: DISPOSAL FACILITY. Subject to the existing contract between Franchisee and Douglas County, Franchisee shall dispose of all collected Solid Waste and Infectious Waste at permitted Disposal Facilities, selected at Franchisee's sole option.

SECTION 11: INSURANCE. Franchisee agrees to carry and maintain in effect at all times, at its own expense, the following:

A. Workers' Compensation Insurance.

B. General liability insurance against injury or damage to person or property naming the City, its officers, employees, council members and agents as additional insureds and giving the City notice of cancellation, in an amount not less than \$2,000,000 per occurrence. Such insurance shall be primary and not excess, and shall be procured from an insurer authorized to do business in this state.

C. Motor vehicle liability insurance on each vehicle owned or used by Franchisee for the services required under this Ordinance insuring against injury or damage to persons or property, naming the City as an additional insured and giving the City notice of cancellation, in an amount equal to that required under Subparagraph B above.

D. All insurance premiums shall be paid by the Franchisee and shall be without cost to the City.

E. The terms of each policy shall provide that 30 days written notice of cancellation, material change in terms or of Franchisee's intent to not renew be given to the City.

F. The Franchisee shall provide proof of insurance coverage on the terms indicated in this Section.

SECTION 12: INDEMNIFICATION. Franchisee agrees to defend, indemnify and hold free and harmless City, and its elected and appointed officials, officers, employees and agents, from any liability arising from the subject of this Ordinance, including but not limited to any and all claims, demands, losses, expenses, damages, fees, penalties, environmental contamination, personal injury, property damage, and all expenses relating to any claim or cause of action of any nature, including clean-up or remedial action sought by private or governmental bodies, arising out of Franchisee's negligence.

SECTION 13: ASSIGNMENT. Franchisee shall not sell, assign or otherwise transfer any rights and obligations granted under this Ordinance without first obtaining the written consent of the City by resolution. The City may attach reasonable terms and conditions to the consent as it deems necessary to maintain and guaranty the quality service under the Franchise. Consent by City will not be unreasonably withheld, provided however that City may require proof of the proposed assignee's financial responsibility, experience in providing Solid Waste disposal services and ability to perform all requirements of the franchise during the franchise term. The City shall not unreasonably withhold its consent if the Franchisee can demonstrate to the reasonable satisfaction of the City that the proposed assignee possesses good character, adequate financial capability and operational expertise, including personnel experienced in Solid Waste management systems of similar size and scope, to provide a level of service to City equal to or better than the level provided by Franchisee.

SECTION 14: ABANDONMENT; PERFORMANCE BOND. Franchisee shall not abandon or terminate its services within the Franchise Area during the term of this Ordinance without having first obtained the written approval of the City. Additionally, Franchisee shall, at its own cost, post a performance bond with the City, and at all times during the existence of this Franchise Ordinance shall maintain said bond in full force and effect. The bond shall be in the amount of \$100,000, shall be purchased through a reliable company licensed to do business in this state and shall guarantee Franchisee's faithful performance of its obligations under this Ordinance. If Franchisee fails to perform any of its material obligations under this Ordinance, the City may recover from the principal and surety of the bond all foreseeable damages or losses suffered.

SECTION 15: BINDING ARBITRATION. Except as set forth in Section 16, in the event of any dispute arising under this Ordinance, City and Franchisee shall continue performance of their respective obligations and shall attempt to resolve such dispute in a cooperative manner, including negotiating in good faith, prior to initiation of arbitration. Any unresolved dispute or claim which arises out of or relates to this Ordinance, or to the interpretation thereof, shall be resolved by binding arbitration. Arbitration shall be by a single, neutral arbitrator. If the parties are unable to agree upon an arbitrator, then either party may apply to the Circuit Court of Curry County for appointment of an arbitrator. The arbitration hearing shall be held in Brookings, Oregon unless the parties otherwise agree. The arbitrator shall have the powers described in ORS 36.335 and shall follow applicable law in reaching a decision on the controversy submitted. The arbitrator's fees and expenses shall be divided equally between the parties. Each party shall pay its own arbitration related fees and costs. Franchisees portion of the arbitrator's fees, and its portion of the arbitration related fees and costs may only be recovered through the rates in the event that Franchisee is entitled to a rate adjustment pursuant to Section 7 A 3 of this agreement. City and Franchisee shall attempt to conclude all arbitration proceedings within 30 days of the appointment of the arbitrator. Except as otherwise set forth herein, the parties shall follow the arbitration procedures set forth in ORS 36.300 et seq. The decision of the arbitrator shall be final and binding on the parties, and any judgment on the arbitration award may be entered in any court of competent jurisdiction.

SECTION 16: DEFAULT.

A. In the event that a party substantially fails to perform its obligations as set forth in this Ordinance, then such party shall be in default hereof. In such case, the non-defaulting party shall provide the defaulting party with written notice of default detailing the nature of the default with reasonable particularity, and the steps required to cure the default. The non-defaulting party may terminate this Ordinance, upon written notice, if the defaulting party fails to cure such default or to commence and diligently pursue a cure to completion within 30 days after receiving the default notice.

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

SECTION 17: EFFECT OF ORDINANCE. This ordinance shall apply to all third parties within the Franchise Area. Violation of the provisions of this Ordinance shall be deemed to be a civil violation subject to jurisdiction of the municipal court of the City. Each event or each day's violation shall constitute a separate offense. The maximum penalty is and shall be a fine of \$500 for each such offense.

SECTION 18: LANDFILL CLOSURE/POST CLOSURE. Notwithstanding any other provision of this Ordinance, Franchisee and City agree:

A. Franchisee shall be responsible for completing the closure and post-closure of the Wridge Creek Landfill to the satisfaction of the Department of Environmental Quality (DEQ). With respect to the City's portion of such closure/post-closure costs, Franchisee shall be entitled to recover its actual costs incurred in accomplishing satisfactory closure and post-closure at the Wridge Creek Landfill, from Franchise revenues under this Ordinance. However, Franchisee shall not be entitled to recover any "profit" on those costs. The closure and post-closure costs shall be segregated from Franchisee's other costs.

B. Franchisee agrees to collect a surcharge for closure and post-closure for the Port Orford Landfill, in a manner and in an amount to be determined by the City, and to deposit those funds in a trust account as directed by Curry County and the DEQ. Franchisee shall not be entitled to recover any profit on such funds.

SECTION 19: ENTIRE AGREEMENT. This Ordinance is the entire agreement between the parties and supersedes any and all other agreements between the parties, whether written or oral.

SECTION 20: ENFORCEMENT. The City shall take reasonable actions to enforce compliance with the terms and conditions of this Ordinance as it may apply to any third party. To the extent permitted by law, the Franchisee may enforce any and all of its rights and privileges granted hereunder or granted by operation of law against any third party if the City fails or refuses to do so.

SECTION 21: EFFECT OF PARTIAL INVALIDITY. The invalidity of any portion of this Ordinance shall not be deemed to affect the validity of any other portion. In the event that any provision of this Ordinance is held to be invalid, the remaining provisions shall be deemed to be in full force and effect.

SECTION 22: MODIFICATION OF FRANCHISEE'S SERVICES. The City shall have the right to make reasonable modifications to the services to be provided by the Franchisee to Generators. However, this Section shall not permit the City to substantially reduce the services provided by the Franchisee to Generators. Modifications shall only be made after:

A. The City provides a written, proposed change order to Franchisee setting forth the nature of the modification with reasonable particularity, not less than 60 days prior to the proposed effective date of the modification. The proposed change order shall include any proposed change in compensation to Franchisee.

B. Upon receipt of the proposal, the Franchisee shall have 30 days in which to accept the proposed change order or submit a written response to the proposed change order with suggested modifications.

C. Following receipt of Franchisee's written response, the City shall have up to 30 days in which to accept or reject the Franchisee's suggestions and issue a final change order that may be the same as originally proposed or it may be modified to address some or all issues raised by the Franchisee. If the final change order issued by the City is not acceptable to the Franchisee, the Franchisee will be obligated to perform the work, but the Franchisee may seek relief under the rate adjustment provisions herein, or, if justified, under the arbitration provisions herein.

SECTION 23: FORCE MAJEURE. If the performance by either party of their respective obligations under this Ordinance is delayed or prevented in whole or in part by any legal requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged and released from performance to the extent such performance or obligation is so limited or prevented by such occurrence without liability of any kind.

SECTION 24: REPEALING CLAUSE. Ordinance No. 86-0-402 is repealed in its entirety and is of no further force or effect.

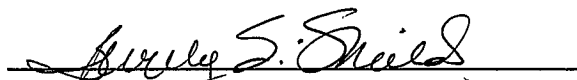
FIRST READING:	September 25, 1995
SECOND READING:	September 25, 1995
PASSAGE:	September 25, 1995
EFFECTIVE DATE:	October 24, 1995

Signed by me in authentication of its passage this 26th day of September, 1995.



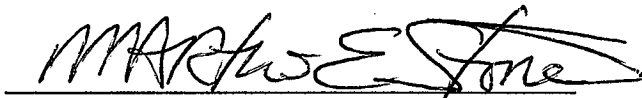
Tom Davis
Mayor

ATTEST:



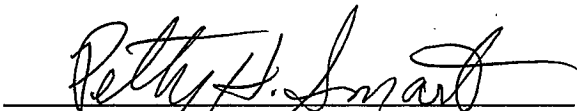
Beverly S. Shields
Finance Director/Recorder

Approved as to form:



Martin E. Stone
Brookings, Oregon City Attorney

ACCEPTANCE OF FRANCHISE BY FRANCHISEE:



By Petty H. Smart, President

10/10, 1995

franchis.bk8

EXHIBIT "A"

EFFECTIVE JULY 1, 1995
RATE SCHEDULE 95/96 - CITY OF BROOKINGS

CANS /CARTS: SET OUT (CURB SIDE) SERVICE:

\$15.54 per month - one thirty (30) gallon can each week.
\$31.09 per month - one sixty (60) gallon cart each week.
\$46.63 per month - one ninety (90) gallon cart each week.
\$11.62 per month - one twenty (20) gallon When Available-
Recycle Only.

Residential Compactor-In Excess Of 2 Bags-1.5 Times Can Rate.

CANS/CARTS: OTHER THAN SET OUT SERVICE:

\$.88 per trip plus \$.88 for each additional twenty five feet from truck access. Long driveways, \$.88 for first 100 yards, over 100 yards \$.88 for each additional 200 yards or portion thereof, Per Trip. An additional \$.88 for each gate, fence, hallway and/or stairs per trip and overweight limits of cans (30 gallon - 55 lbs, 20 gallon - 37 lbs, 15 gallon - 28 lbs, 10 gallon- 18 lbs).

COMMERCIAL/RENTAL SERVICES (Container/Carts/Cans)

30 Gallon Cart (Including Rentals Five and up.	17.48
Container Service - Per Loose Yard - Per Pick-Up.	19.13
Container Service - Per Loose Yard - Wood (Roll Off).	9.50
Container Service - Per Loose Yard - Metal (Roll Off).	9.50
Container Service - Gate Fee (Each Gate) - Extra .	4.93
Container Rental - One-Eight Yards - Per Month.	11.01
Customer Requested - Other Than Wkly-Each Trip Minimum.	13.93
Customer Requested - Customized Pick Up (Times)-Minimum.	13.93
Container Service - Roll Out Service - Extra.	10%
Container Service - Ramp Roll Out Service - Extra.	20%
Customer Requested After Hour, Saturday or Sunday - Extra.	50%
Mechanically Compacted Waste 2.75 Times Yard Or Can Rate.	

RECYCLING CREDITS (When Service Available):

Container Service - Newsprint (Properly Prepared).	50%
Container Service - Waste Paper/Office Paper/Cans/Bottles/Plastics/ Glass (Properly Prepared).	25%

OTHER RESIDENTIAL a COMMERCIAL CHARGES:

(1) Occasional Extra In Route Pickup - Each.	4.08
(2) Customer Requested Special Pickup-Minimum.	6.16
(3) Initial One Time Set Up Charge.	4.95
(4) Monitored inactive Status - Each Time.	4.95
(5) Rental Property Owners Responsible For Sanitation Charges.	
(6) Extra Heavy Roofing/Demolition 2.75 Time Yd. Rate.	
(7) Waste in Excess Of 280 LBS Subject To The Approved Tonnage Rate.	
(8) Household Hazardous Waste.	

(As Approved)

EXHIBIT

"B"

Free Services for the City of Brookines (Once a week Pick-up)

City Hall	2.5 Yards
Sewer Plant	3 Yards
City Yard	4 Yards
City Yard	1.5 Yards