

**EXHIBIT A**  
**SOLID WASTE FRANCHISE AGREEMENT**

**SECTION 1. SHORT TITLE.** This Ordinance shall be known as the “Solid Waste Franchise Agreement” and may be so cited and pleaded and shall be referred to herein as “this Agreement or this Ordinance.”

**SECTION 2. PURPOSE, POLICY, AND SCOPE.**

**2.1** In order to protect the health, safety, welfare, and environment and to conserve energy and natural resources within the City; in order to provide for the Recycling Opportunity, and to otherwise provide for Solid Waste Management, it is declared to be the public policy of the City to regulate Solid Waste Management to:

- 2.1.1** Carry out policies in ORS 459 and ORS 459A and to provide for the Recycling Opportunity, taking advantage of a coordinated areawide Recycling Collection Service and promotion, education, and marketing program.
- 2.1.2** Ensure safe, economical, and comprehensive Solid Waste Management Service, including the efficient accumulation, storage, collection, transportation and Disposal or Resource Recovery of Solid Waste.
- 2.1.3** Ensure rates that are just, fair, reasonable, and adequate to provide necessary Service to users.
- 2.1.4** Prohibit rate preference and other discriminatory practices which benefit one or a few users at an expense to other users of the Service or the public.

**2.2** To achieve the purposes of this section, the City Council finds that it is necessary to have an exclusive collection of Service Franchise for the City. On the basis of adequate public service, a voluntary level of Recycling Service in excess of City and State requirements; and meeting all requirements of this Ordinance, the existing collector, Republic Services of Albany-Lebanon, an assumed business name of Albany-Lebanon Sanitation, Inc., an Oregon domestic business corporation~~Albany-Lebanon Sanitation Company, Inc., a division of Allied Waste in North America~~, is recognized and franchised.

**2.3** No Person shall accumulate, store, collect, transport, Dispose of, or Resource Recover Solid Waste or provide Service, except in compliance with this Ordinance and with ORS Chapters 459 and 459A dealing with Solid Waste and with regulations of the Environmental Quality Commission promulgated thereunder.

**2.4** Except as otherwise provided in Section 4 of this Ordinance, no Person other than the Franchisee shall provide Service or offer to provide or advertise for the performance of Service.

### SECTION 3. DEFINITION AND EXPLANATION.

#### 3.1 Specific Definitions

- (1) “City” means the City of Millersburg, an Oregon municipal corporation, and the area within its boundaries, including its boundaries as extended in the future.
- (2) “Collection Vehicle” is any vehicle used to collect, transport or Dispose of Solid Waste and Recyclable Materials.
- (3) “Compaction” means the process by which material is shredded, manually compacted, or mechanically compacted.
- (4) “Compensation” includes:
  - a. Any type of consideration paid for Service including, but not limited to, rent, the proceeds from Resource Recovery, any direct or indirect provisions for the payment of money, goods, services or benefits by tenants, lessees, occupants, members, cooperatives, or similarly situated Persons.
  - b. The exchange of Service between Persons; and
  - c. The flow of consideration from a Person owning, possessing, or generating Solid Waste to another Person who provides Services or from a Person providing Services to another Person owning, possessing, or generating Solid Waste.
- (5) “Council” means the legislative body of the City.
- (6) “DEQ” means the Oregon State Department of Environmental Quality or any successor to such agency’s functions or responsibilities.
- (7) “Dispose or Disposal” includes accumulation, storage, collection, transportation, and Disposal of Solid Waste.
- (8) “Force Majeure” means acts of God including, but not limited to, man-made or natural landslides, lightning, forest fires, storms, floods, freezing, earthquakes; civil disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, materials shortage (but not Solid Waste materials), or damage to or destruction of the Franchisee’s property as a result of events described herein or other similar causes which are not reasonably within the control of the Party whose ability to perform under this Agreement is impaired or prevented by the Force Majeure event. However, a Force Majeure event shall not (a) include pandemics unless state or federal regulation completely prohibits performance or (b) include damage to or destruction of the Franchisee’s property to the extent that the damage or destruction is caused by any of the following events: operational negligence or recklessness or lack of reasonable preventative maintenance by Franchisee.
- (9) “Franchisee” means the Person granted the Franchise by Section 4 of this Ordinance, or a subcontractor of such Person. The particular Franchisee referred to in this Ordinance is Albany-Lebanon Sanitation Company, Inc., an Oregon domestic corporation.
- (10) “Generator” means the Person who produces the Solid Waste and Recyclable Material and places it for collection and Disposal or Processing. The term does not include a Person who manages an intermediate function that results in alteration or Compaction

of the material after it has been produced by the Generator and Placed for Collection and Disposal or recovery.

- (11) "Party" means either the City of Millersburg or Albany-Lebanon Sanitation, Inc., individually.
- (12) "Parties" means the City of Millersburg and Albany-Lebanon Sanitation, Inc., collectively.
- (13) "Person" means an individual, corporation, association, firm, partnership, cooperative, trust, estate, joint partnership, or other private legal entity.
- (14) "Placed for Collection" means Solid Waste, Recyclable Material, or Yard Debris that has been placed by the Generator for collection by the Franchisee in accordance with the terms of this Ordinance.
- (15) "Processing" means an operation where collected materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.
- (16) "Recycling Opportunity" means Recycling done in accordance with Chapter 459A of Oregon Revised Statutes, together with the regulations promulgated thereunder.
- (17) "Resource Recovery" is the process of obtaining useful material or energy resources from Solid Waste, including Energy Recovery, Material Recovery, Recycling and Reuse of Solid Waste.
- (18) "Rules" are rules promulgated by state agencies pursuant to ORS Chapter 459 and Chapter 459A.
- (19) "Service" means Collection Service as defined by ORS 459.005(3) and which Service includes the collection, transportation, Disposal, Reuse, Recycling, or other Resource Recovery of or from Solid Waste or Recyclable Material or both, by Franchisee for Compensation.
- (20) "Service Area" is the geographical area in which Service, other than operation of a Disposal Site, is provided by Franchisee, and includes all area within the city limits of the City.
- (21) "Solid Waste" {See General Definitions}
- (22) "Solid Waste Management" is the management of Service.
- (23) "Waste" is material that is no longer wanted or usable by the source, the source Generator or producer of the material, which material is to be disposed of or Resource Recovered by another Person, and it includes both Source Separated material and non-Source Separated materials.
- (24) "Yard Debris" includes food Waste, grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but it does not include stumps or similar bulky wood materials.

### **3.2 General Definitions**

The following terms shall have the meanings as they are defined in ORS 459.005 and 459A.005: "Collection Service," "Commercial," "Disposal Site," "Energy Recovery," "Franchise," "Hazardous Waste," "Material Recovery," "Recyclable Material," "Recycling," "Reuse," "Solid Waste," "Source Separate."

## SECTION 4. RIGHTS GRANTED BY EXCLUSIVE FRANCHISE.

### 4.1 Grant and Acceptance of Franchise

The City grants Republic Services of Albany-Lebanon, an assumed business name of Albany-Lebanon Sanitation, Inc., an Oregon domestic business corporation (“*Franchisee*”), and the Franchisee hereby accepts the Franchise on the terms and conditions set forth in this Agreement, and all such ordinances adopted by the City that are not inconsistent with or which otherwise conflict with the Agreement and proper amendments hereto. The grant of Franchise shall include the exclusive right, privilege, and franchise to provide Service to residents and Persons located within the City of Millersburg, and to use the City streets within the City of Millersburg for said purpose, and to charge Compensation from the residents and Persons within the City for whom Service is provided. The Franchisee shall have all other rights, privileges, and franchises necessary or incidental to the business of providing such Service.

### 4.2 Scope of Authorization

The scope of the Franchisee’s authorization shall be to the extent set forth in this Agreement and any proper amendment thereto.

### 4.3 Termination of Prior Franchise Agreement

Immediately upon the full execution of this Agreement, Ordinance No. 98 and the prior franchise agreement shall be terminated and replaced and superseded in all respects by this Agreement.

### 4.4 Ownership of Waste

**4.4.1 General:** Unless otherwise stated, Solid Waste properly placed out for collection is the property of the Franchisee.

**4.4.2 Hazardous Waste:** Under no circumstances shall Hazardous Waste collected by Franchisee become the property or responsibility of Franchisee. Except as otherwise provided in the Agreement, the Franchisee is not required to store, collect, transport, Dispose of or Resource Recover Hazardous Waste.

### 4.5 Geographic Limitations

Franchisee is authorized under this Agreement to accept Solid Waste generated in the City, including any area that may be annexed by the City.

### 4.6 Franchise Exclusions

This Ordinance does not prohibit any of the following activities:

- 4.6.1** Prohibit any Person from engaging in the collection of Source Separated materials for Resource Recovery or Recycling for the purpose of raising funds for a charitable, civic or benevolent activity after notice to the Franchisee and permission from the Franchisee or the City, providing said Person or organization is not organized or operated for any Solid Waste Management purpose;
- 4.6.2** Prohibit any Person from transporting Solid Waste produced by themselves (if the loading and operation of the vehicle containing the Solid Waste prevents the contents from dropping, sifting, leaking or otherwise escaping onto public rights-of way or property adjacent thereto, and if such material will be Disposed of or Resource Recovered pursuant to all applicable laws, ordinances and regulations of federal, state or local government units having jurisdiction). Solid Waste produced by a tenant, lessee, member, occupant or Person other than the owner of the occupied, leased, or licensed premises shall be considered to be produced by such tenant, licensee, member, occupant, or Person and not by the landlord or property owner, and shall not be collected or transported by the owner or manager or landlord of the facility being rented, leased or for which a membership benefit may accrue;
- 4.6.3** Prohibit any Person from contracting with the state or a federal agency to provide Service to such agency under a written contract with such agency;
- 4.6.4** Prohibit any Person from providing Service for Hazardous Waste, as defined herein, if they comply with all Rules and regulations related to the collection, transportation and Disposal of Hazardous Waste;
- ~~**4.6.5** Prohibit any Person from collecting or transporting clean-out materials as part of a one-time removal service provided to a property owner. For purposes of this exception, "clean-out materials" are Solid Waste that are removed by a contracted Person. Examples include, without limitation, used couches, furniture, mattresses, or the contents of a deceased Person's home and garage. Clean-out materials do not include Solid Waste that is generated through the daily consumption of food and goods;~~
- 4.6.6** A contractor, subcontractor, employee, or agent collecting or transporting Waste created in connection with demolition, construction, or remodeling of a building or structure, including, but not limited to, land clearing operations and construction Waste;
- 4.6.7** Landscapers, gardeners, tree service contractors, janitors or renderers when collecting or transporting Waste created in connection with such employment;
- 4.6.8** Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340; and
- 4.6.9** Persons collecting deposit containers as defined in ORS 459A.700-744.

## **4.7 Prohibited Waste**

The Franchisee must not knowingly receive, process, reload or Dispose of any Solid Waste not authorized by this Agreement or ORS Chapter 459. The Franchisee must not knowingly accept or retain any material amounts of the following types of Waste: radioactive Waste; explosives; or any Waste prohibited by the DEQ for which the Franchisee does not have a permit.

## **SECTION 5. TERM.**

### **5.1 Term of Agreement**

**5.1.1 *Effective Date and Commencement Date:*** The effective date of this Agreement shall be the date first set forth above.

**5.1.2 *Term of Agreement:*** This Agreement and the rights and privileges granted herein shall take effect on the effective date of this Agreement and remain in effect for five (5) years. This Agreement shall be renewable for two (2) additional terms of five (5) years each, provided Franchisee is not in default under the terms of this Agreement. Franchisee shall provide written notice to the City of its intent to exercise each option no less than one (1) year prior to the end of the term then in effect.

**5.1.3 *Termination of Agreement:*** A Party may terminate this Agreement by providing written notice to the other Party no less than one (1) year prior to the proposed termination date.

### **5.2 Scope of Term and Authorization**

**5.2.1 *Scope:*** Consistent with the policy established by ORS chapters 459 and 459A, among other applicable policy benefits, the term and scope of authorization is intended to be just and reasonable and adequate to provide necessary Services and shall allow the Franchisee to recover any additional allowable costs of providing the Services at an appropriate level of Service under the terms of this Agreement.

**5.2.2 *Exclusivity:*** Notwithstanding any other existing franchise agreements, this Agreement grants Franchisee the exclusive right to collect Solid Waste and recyclables within the City's jurisdictional boundary under the terms of this Agreement subject to the exclusions provided in Section 4.6.

## **SECTION 6. OPERATING CONDITIONS.**

### **6.1 The Franchisee shall:**

**6.1.1** Dispose of Solid Waste not Reused, Recycled or Resource Recovered at a site approved by the City in compliance with Chapter 459 of the Oregon Revised Statutes and regulations promulgated thereunder. Franchisee shall provide at least once-a-week collection of Solid Waste for all Commercial, industrial, institutional, governmental, and multi-family residential sources and all single-family residential

dwelling units within the City in accordance with cart or dumpster types and size options to be approved by the City.

- 6.1.2** Provide and keep in force liability insurance as described in Section 11.
- 6.1.3** Provide sufficient Collection Vehicles, containers, facilities, personnel, and finances to provide all types of necessary Service or subcontract with others to provide such Service pursuant to Section 4.
- 6.1.4** Respond to any written complaint about Service.
- 6.1.5** The Franchisee shall provide the level of Recycling and Reuse Service required by ORS 459A.005 through ORS 459A.085 together with applicable existing or future ordinances, laws, regulations, standards, or guidelines promulgated thereunder.
- 6.1.6** Provide at least once-a-week collection of Recyclable Materials for all single-family residential dwelling units within the City in accordance with cart size options to be approved by the City.
- 6.1.7** Provide collection of Recyclable Materials for all Commercial, industrial, institutional, governmental, and multi-family residential sources and all single-family residential dwelling units within the City in accordance with cart or dumpster types and size options to be approved by the City.
- 6.1.8** Provide notice to potential and actual Recycling and Reuse sources and sponsor at least one educational activity per year to increase public participation in Recycling. Franchisee may satisfy the educational activity requirement by producing and distributing printed media explaining what can and cannot be collected in the various containers.
- 6.1.9** Provide any additional Recycling or Reuse Service as directed by the City if the City finds that Franchisee is now or hereafter required by state laws or regulations or by Recycling or Reuse plans adopted by the City to provide the additional Service.
- 6.1.10** Provide two (2) community Waste events per year allowing the Disposal of Yard Debris, organic materials not constituting Yard Debris, or construction debris.
- 6.1.11** Provide at least once-a-week collection of Yard Debris for all Commercial, industrial, institutional, governmental, and multi-family residential sources and all single-family residential dwelling units within the City in accordance with cart or dumpster types and size options to be approved by the City.
- 6.1.12** Provide Service information regarding a City-specific location on the Franchisee's website, which shall include the following: service map, available cart and dumpster sizes, an event calendar identifying when holidays will delay services, and copies of the educational materials required under Section 6.1.8 including, but not limited to, identifying dates and locations for Millersburg Recycle Round Up,

Hazardous Waste events, holiday light collection, Christmas tree collection, and any other dates and locations provided to the Franchisee by the City. Franchisee shall further identify that the City does not provide leaf pick up and residents are to place leaves in Yard Debris carts for pick up.

**6.2** The City and the Franchisee mutually agree that:

- 6.2.1** Pursuant to ORS 459A.085, the net cost of required or permitted Recycling and Reuse together with any notice, educational or promotional Service on Recycling and Reuse shall be considered as a cost of doing business and shall be repaid to the Franchisee as part of the rate base and shall be considered in all future rate adjustments.
- 6.2.2** The Franchisee may subcontract all or a portion of the Services required by this Agreement with permission of the City.
- 6.2.3** Service provided under this Agreement shall be under the supervision of the City. The Franchisee shall, at reasonable times, permit inspection of its facilities, equipment and personnel providing Service.

**6.3** The Franchisee shall not:

- 6.3.1** Transfer or assign this Franchise or any portion thereof to other Persons or entities without the prior written approval of the City, which consent shall not be unreasonably withheld. The City shall approve the transfer if the transferee meets all applicable requirements met by the original Franchisee. A pledge of this Franchise as financial security shall be considered as a transfer for the purposes of this subsection. The City may attach whatever conditions it deems appropriate to guarantee maintenance of Service and compliance with this Agreement and all applicable Rules and regulations. Without limiting the foregoing, this Agreement shall bind any successor or assignee of Franchisee.

**6.4 General Performance Standards**

The Franchisee must operate in a manner that meets the following general performance standards:

- 6.4.1 *Environment:*** The Franchisee must operate in a manner that avoids undue threats to the environment including, but not limited to, stormwater or groundwater contamination, air pollution, and improper acceptance and management of Hazardous Waste, asbestos and other prohibited Waste.
- 6.4.2 *Health and Safety:*** The Franchisee must operate in a manner that mitigates the risk of creating conditions that may degrade public health and safety including, but not limited to, fires, vectors, and airborne debris.
- 6.4.3 *Interruptions or Termination of Service:*** The Franchisee shall not terminate Service to all or a portion of its customers unless: (a) the street or road access is



unavoidably blocked through no fault of the Franchisee and there is no reasonable alternate route or routes to serve all or a portion of its customers; but in either event, the City shall not be liable for any such blocking of access; or (b) adverse weather conditions or other access conditions render providing Service unduly hazardous to Persons or equipment providing such service, or if such interruption or termination is caused by a Force Majeure; or (c) a customer has not paid for Services rendered within 60 days of the mailing of the bill.

## 6.5 Qualified Operator

**6.5.1** Franchisee must, during all hours of operation, provide an operating staff that is qualified and competent to carry out the functions required by this Agreement.

## SECTION 7. LIMITATIONS.

**7.1** Nothing in this Agreement requires a Franchise or permit for the following:

**7.1.1** The collection transportation and Reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such activity.

**7.1.2** The transportation of Solid Waste by an individual, produced by such individual or the individual's household, to a Disposal Site or Recycling site.

## SECTION 8. FRANCHISE FEE AND OTHER SURCHARGES.

### 8.1 Franchise Fee

The Franchisee shall pay franchise fee consistent with the following terms:

**8.1.1 *Franchise Fee Amount:*** In consideration of the exclusive Franchise provided in Section 4 of this Agreement, the Franchisee shall pay to City an amount equal to FIVE PERCENT (5%) per year of the gross revenue from Collection Service provided to residents and Persons, including, but not limited to, all industrial, commercial, and multifamily users, within the City (the "**Franchise Fee**"). For the purpose of determining the Franchise Fee, uncollectible debts shall be deducted in computing gross revenue. In the event of any permitted subcontract, the gross revenue shall include such gross revenue of the subcontractee.

**8.1.2 *Payment:*** The Franchise Fee required by this section shall be due for each calendar year on a quarterly basis, and payments are to be made within thirty (30) days of the end of each calendar quarter.

**8.1.3 *Notification of City:*** The Franchisee shall furnish to the City with each payment of the Franchise Fee required by this section, a written statement, under oath, and executed by an officer of Franchisee, showing the amount of gross revenue of the Franchisee within the City for the period covered by the payment, computed on the basis set out in Subsection 8.1.1. of this section. If the Franchisee fails to pay the entire amount of compensation due to the City through error or otherwise, the

difference due the City shall be paid by the Franchisee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City, through error or otherwise, shall be offset against the next payment due from the Franchisee. The City shall review the Franchisee's Franchise Fee statement and may request in writing, and the Franchisee shall provide additional supporting documents related to the statement provided. If the City identifies adjustments to the statement or calculations, the City shall notify Franchisee no later than sixty (60) calendar days after receipt of the Franchise Fee payment and shall seek an explanation for any apparent differences.

**8.1.4 Acceptance of Payment No Waiver:** Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this Franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

**8.1.5 Adjustment to Franchise Fee:** City may adjust the amount of the Franchise Fee with one (1) year's notice, on an annual basis, by action of the City Council following ninety (90) days' advance written notice and a collaborative meeting with the Franchisee.

Such adjustments shall be reflected in the rates that Franchisee is allowed to charge and collect from customers in accordance with Section 9.1 below, and any such adjustments shall occur on the first (1st) day of any rate period affected by the change in fees.

## SECTION 9. RATES.

### 9.1 Rates

The City and Franchisee agree to the rate schedule attached hereto as *Exhibit B*, which is incorporated herein by this reference (herein the "*Rate Schedule*"). The Rate Schedule shall be modified annually on January 1st utilizing the Refuse Rate Index (RRI) identified below. The Rate Schedule review shall occur every third (3rd) year, unless discretionary review is initiated by a Party as described in Section 9.3 below.

Annual rate changes to the identified base rate shall be established utilizing the RRI. The RRI shall be based on the June 30th Consumer Price Index -W, annual changes each year, as identified below.

- CPI -West Size Class B/C All Urban Consumers – with a weight of 65%.
- CPI - West Coast Ultra Low Sulfur Diesel – with a weight of 10%.
- Coffin Butte Disposal Rate Changes over the previous year (4.0 % cap) – with a weight of 25%.

## 9.2 Financial Statements

Every third year the Franchisee shall provide, at a minimum, to the City a financial statement (prepared in accordance with Generally Accepted Accounting Principles (GAAP)) for the previous three years of operations within the City of Millersburg Service Area no later than September 1 preceding any non-index based rate increase. The statement of income shall include, but not be limited to, the following information for each year:

- Total revenue with percentage of change;
- Total cost of operations with percentage of change;
- Gross profits;
- Net income; and
- Net income as a percent of sales.

Note the City may request a further breakdown of the revenues and/or cost of operations for the Millersburg Service Area during said review.

## 9.3 Discretionary Review Procedures

To ensure that the rate schedule (“*Current Rate Schedule*”) conforms with the established rate setting criteria, the rates will be subject to review every three (3) years or earlier if initiated by a Party under Section 9.3.

**9.3.1 *City Discretionary Review:*** The City may initiate a rate review if the City manager has reasonable cause to believe that the Current Rate Schedule does not reflect the Services provided.

**9.3.2 *Franchisee-Initiated Review:*** Franchisee may initiate a rate review in addition to any annual review if there are exigent circumstances, such as unforeseen increases in taxes, Disposal fees, Environmental Protection Agency (EPA) actions, or other unforeseen changes outside of the reasonable control of the Franchisee. Any requested rate review must be submitted to the City no later than ninety (90) days prior to calendar year end.

**9.3.3 *Mutual Review:*** At any time if both Parties mutually request review.

## 9.4 Miscellaneous Rate Provisions

**9.4.1 *No Rate Preferences:*** The Franchisee shall not give any rate preference to any Person, locality, or type of Solid Waste stored, collected, Disposed of or Resource Recovered. This section shall not prohibit uniform classes of rates based upon the type or quality of Solid Waste handled and the location of customers so long as such

rates are reasonably based upon cost of the particular Service and are approved by the City, nor shall this section prevent the Franchisee from volunteering Service at a reduced cost for a charitable, community, civic or benevolent purpose.

**9.4.2 *Criteria for Rate Adjustment:*** In determining the appropriate rate or rate adjustment to be charged by the Franchisee, the City or designee may consider any or all of the following:

**9.4.2.1** The cost of performing the Service provided by the Franchisee together with the actual Service received by the City and its residents.

**9.4.2.2** The anticipated increase in the cost of providing this Service.

**9.4.2.3** The need for compliance with federal, state, and local law, ordinances and regulations, or technical change.

**9.4.2.4** The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial Service to the residents and other users of the Service.

**9.4.2.5** The local wage scale, cost of management facilities and Disposal fee or charges.

## **SECTION 10. RECORD KEEPING AND REPORTING.**

### **10.1 General**

Franchisee shall maintain service maps showing the places of collection and routes together with accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste, Recyclable Materials, and Yard Debris program management needs of the City. To this extent, such requirements set out in this section and other sections in this Agreement shall not be considered limiting or necessarily complete. Further, with the written direction or approval of City, the records, and reports to be maintained and provided by Franchisee and in accordance with this and other sections of the Agreement shall be adjusted in number, format, or frequency.

## **SECTION 11. INSURANCE REQUIREMENTS.**

### **11.1 General Liability**

Franchisee must carry the most recently approved Insurance Services Office (ISO) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$3,000,000 per occurrence. The policy will include coverage for bodily injury, property damage, personal injury, death, contractual liability, premises, and products/completed operations.

## 11.2 Automobile

Franchisee must carry automobile insurance with coverage for bodily injury and property damage, and with limits not less than a minimum of \$3,000,000 per accident or combined single limit.

## 11.3 Additional Insureds

The City, its elected officials, departments, employees, volunteers and agents must be included named as additional insureds on all insurance policies required under this Section 11. Franchisee must include the additional insured endorsement along with the certificate of insurance.

## 11.4 Workers' Compensation Insurance

*11.4.1* The Franchisee, its subcontractors, if any, and all employers working under this Franchise, are subject employers under the Oregon Workers' Compensation Law, and must comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

*11.4.2* The Workers' Compensation insurance must meet Oregon statutory requirements including employer's liability with limits not less than \$3,000,000 per accident or disease.

*11.4.3* The Franchisee must provide City with certification of Workers' Compensation insurance including employer's liability. If the Franchisee has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached in lieu of the certificate showing current Workers' Compensation coverage.

## 11.5 Certificate of Insurance

*11.5.1* The Franchisee must provide City with a certificate of insurance complying with this Section 11.

*11.5.2* The Franchisee must list City as the certificate holder.

*11.5.3* Upon insurance renewal, the Franchisee must submit an updated certificate of insurance and the additional insured endorsement to City.

## 11.6 Notification

Franchisee must give at least thirty (30) days' written notice to City of any lapse of insurance coverage.

**SECTION 12. ENFORCEMENT.** The power and right to regulate, in the public interest, the exercise of the privileges granted by this Franchise is at all times vested in City. City reserves the right to

establish or amend Rules, regulations, or standards regarding matters within City's authority, and to enforce all such requirements against the Franchisee. Failure to comply with a written notice to provide necessary Service or otherwise comply with the provisions of this Agreement after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation, or suspension of the Franchise.

## **SECTION 13. AMENDMENT, SUSPENSION, AND REVOCATION.**

### **13.1 Amendment by City Council**

The provisions of this Franchise will remain in effect unless the City Council adopts an ordinance or resolution amending this Franchise. The City may at any time before the expiration date amend, suspend, to revoke this Franchise in whole or in part for reasons including to not limited to:

- 13.1.1** Material and repeated violation of the terms or conditions of this Franchise, City code or any applicable statute, rule or standard, without a good-faith diligent effort to cure after notice from the City.
- 13.1.2** Changes in local, regional, state, or federal laws or regulations that should be specifically incorporated into this Franchise.
- 13.1.3** Failure to disclose fully all relevant facts that materially impact the operation of Services for more than a continuous thirty (30) days, without an effort to cure by Franchisee in good faith.

## **SECTION 14. GENERAL PROVISIONS.**

### **14.1 Compliance with Law**

In providing the Services required under this Agreement, Franchisee shall at all times comply in good-faith partnership with the City to operate within all applicable laws and regulations of the United States, the State of Oregon, and local agencies. City shall in good-faith partnership comply with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term.

### **14.2 Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon.

### **14.3 Jurisdiction**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the Linn County Circuit Court of the State of Oregon, which shall have exclusive jurisdiction over such lawsuits.

#### **14.4 Entire Agreement**

This Agreement represents the full and entire agreement between the Parties with respect to the matters covered herein.

#### **14.5 Section Headings**

The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

#### **14.6 References to Laws and Other Agreements**

All references in this Agreement to laws shall be understood to include such laws as may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the Parties.

#### **14.7 Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in the drafting.

#### **14.8 Notice and Delivery**

Notice under this Agreement shall be given at the following addresses for the Parties, which may be updated from time to time through written notice:

**City of Millersburg:** City of Millersburg  
Attn: City Manager  
4222 NE Old Salem Road  
Millersburg, OR 97321

With copy to: Saalfeld Griggs PC  
Attn: Alan Sorem  
250 Church St SE, Suite 200  
Salem, OR 97301

**Franchisee:** Republic Services of Albany-Lebanon  
Attn: Lauren McKeon  
18500 N Allied Way  
Phoenix AZ 85054

Notice may be delivered as set forth in this Section 14.8 and shall be deemed delivered as set forth herein at the addresses set forth below, or such other address as either Party may hereafter specify by notice to the other:

<b>Method of delivery</b>	<b>When notice deemed delivered</b>
In person  (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Fax	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or fax shall be deemed sent the following business day)
US Mail  (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt
Courier delivery  (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline set forth herein for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

#### **14.9 Severability**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

#### **14.10 Recitals and Exhibits**

The Recitals set forth above and the Exhibits listed below and attached to this Agreement are incorporated into and made a part of this Agreement by this reference.

#### **14.11 Waiver**

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

Failure of either Party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or subsequent failures to perform, whether determined to be a breach, excused performance or unexcused default by the other Party.



## 14.12 Indemnification

The Franchisee shall indemnify, defend, and hold harmless the City and its officers, agents and employees from any and all loss, cost, and expense arising from damage to property and/or injury to or death of Persons due to any wrongful or negligent act or omission of the Franchisee, its agents or employees or due to exercising the rights, privileges and Franchise hereby granted. Counsel for such defense may be ~~chosen~~ approved by the City in its ~~sole~~ reasonable discretion.

## 14.13 Remedies

All remedies and penalties under this Agreement, including termination of the Franchise, are cumulative and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such penalty or remedy. The remedies and penalties contained in this Agreement, including termination of the Franchise, are not exclusive and the City reserves the right to enforce the penal provisions of the Agreement or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by or pursuant to this Agreement shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation, or a waiver of the term, condition, or obligation itself.

## 14.14 Attorney Fees

~~If City places this Agreement in the hands of an attorney due to failure to make any timely payment or any other default by Franchisee, then the attorneys' fees and any experts charges so incurred by City plus reasonable costs including lien searches shall be added to and become a part of the unpaid balance owing on this Agreement as of the date such expenses are paid by City. Franchisee shall reimburse City for such costs and fees within ten (10) days after receipt of notice from City specifying the amounts and demanding such reimbursement.~~

~~In the event City obtains the services of an attorney, accountant, and/or consultant to review any proposed assignment, transfer, modification, or other transaction pertaining to this Agreement proposed by Franchisee, then Franchisee shall reimburse City for City's reasonable expenses occasioned thereby.~~

~~In addition, in~~ In the event proceeding is instituted in any court, including any arbitration proceedings, arising out of this Agreement, or if City appears in or takes action in any bankruptcy proceeding to collect, defend or enforce the terms of this Agreement, the losing Party shall pay the prevailing Party's reasonable attorneys' fees, together with all expenses which may reasonably be incurred in taking such action, including, but not limited to, costs incurred in searching records, the costs of title reports, court reporting services and the cost of transcripts, expert witness fees, and anticipated post judgment collection services. If an appeal is taken from any decision or judgment, the losing Party shall pay the prevailing Party in the appeal its reasonable attorneys' fees and costs in such appeal.

**14.15. Repeal**

City of Millersburg Ordinance No. 98 and all amendments thereto are hereby repealed.

**14.16. Acceptance**

The Franchisee shall, within thirty (30) days from the date this Ordinance takes effect, file with the City its written, unconditional acceptance of this Franchise and, if the Franchisee fails to do so, this Ordinance shall be void.

IN WITNESS WHEREOF, City and Franchisee have executed this Agreement as of the day and year first above written.

**FRANCHISEE:**

REPUBLIC SERVICES OF ALBANY-LEBANON,  
AN ASSUMED BUSINESS NAME OF ALBANY-  
LEBANON SANITATION, INC., AN OREGON  
DOMESTIC BUSINESS  
CORPORATION~~ALBANY-LEBANON~~  
~~SANITATION, INC.~~

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2024, by \_\_\_\_\_ as \_\_\_\_\_ of Republic Services of Albany-Lebanon, an assumed business name of Albany-Lebanon Sanitation, Inc., an Oregon domestic business corporation~~Albany-Lebanon Sanitation, Inc., an Oregon corporation.~~

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

[Additional Signature Page Follows]

**CITY OF MILLERSBURG:**

By: \_\_\_\_\_  
Kevin Kreitman, City Manager

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on \_\_\_\_\_, 2024, by Kevin Kreitman, City Manager of the City of Millersburg, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT B**  
**RATE SCHEDULE**