

ORDINANCE NO. 21-03

AN ORDINANCE GRANTING TO RECOLOGY WESTERN OREGON INC., A NONEXCLUSIVE FRANCHISE TO COLLECT AND DISPOSE OF SOLID WASTE WITHIN THE CITY OF MANZANITA, OREGON; AND REPEALING ALL PREVIOUS ORDINANCES ADOPTING OR AMENDING SOLID WASTE FRANCHISES.

THE CITY OF MANZANITA DOES ORDAIN AS FOLLOWS:

**FRANCHISE AGREEMENT
BETWEEN CITY OF MANZANITA
AND
RECOLOGY WESTERN OREGON INC.**

This Solid Waste Franchise Agreement (“Franchise Agreement” or “Agreement”) is entered into as of the Effective Date, as defined below, by and between City (“Franchisor”) and Recology Western Oregon Inc. (“Franchisee”), for the collection, transportation, and disposal of solid waste. Franchisor and Franchisee may be referred to herein collectively as the “Parties” or individually as a “Party.”

SECTION 1: DEFINITIONS

For purposes of this Ordinance and the administration thereof, the following list of terms shall have the designated meanings as set forth herein:

“**Bulky Goods**” means discarded large items of Solid Waste such as appliances, furniture, large auto parts, and other similar waste materials with weights and volumes greater than those allowed in waste collection bins, carts or other containers.

“**City**” shall mean the City of Manzanita, its City Council or other authorized or designated representative.

“**City Council**” shall mean the City Council of the City of Manzanita in which the City’s legislative powers are vested.

“**Collection**” or “**Collection Service**” shall mean all or any part of the activities involved in the collection of solid waste, or other material specified in this Agreement and its transportation to an appropriate Solid Waste Management Facility.

“**Disposal**” shall mean the final disposition of solid waste collected by the Franchisee at a permitted Solid Waste Management Facility selected by the Franchisee and approved by Franchisor.

“**Effective Date**” means thirty-one days after adoption of this Agreement by City Council.

“**Force Majeure**” means acts of God, landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, or public riots, epidemics/pandemics, governmental prohibition, temporary unavailability of a Disposal Site and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.

“**Franchise**” shall mean the rights granted to the Franchisee under the terms and conditions of this Agreement.

“**Franchise area**” shall mean: (1) the entire territory included within the City limits as of the Effective Date of this Agreement; and (ii) such additional area as may thereafter become

included with the City limits from time to time due to annexation, incorporation or other means but only from and after the time as the Franchisee is able to provide collection services in such additional area.

“Green Waste” means grass clippings, leaves, hedge trimmings, small branches and similar vegetative waste generated from residential property or landscaping activities but does not include stumps or similar bulky wood materials.

“Gross Revenue” shall mean the gross receipts derived by the Franchisee from fees collected from customers for services provided under this Agreement.

“Hazardous Waste” means (1) all waste defined or characterized as hazardous by the federal Solid Waste Disposal Act (42 U.S.C. §§ 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) and all future amendments thereto, or regulations promulgated there under and (ii) all waste defined or characterized as hazardous by the principal agencies of the State of Oregon having jurisdiction. Hazardous Waste shall not include incidental Household Hazardous Waste or Small Quantity Generator Waste which is commingled with Solid Waste.

“Point of Collection” for cart service means the time at which the cart is emptied of its contents into Franchisee’s collection vehicle. Point of Collection for commercial containers and drop boxes shall mean the time at which materials are placed into the container or drop box.

“Recycling” means any process by which Solid Waste materials are transformed into new products of commercial value in such manner that the original products may lose their identity. This process includes collection, transportation, storage and transfer of Solid Waste and placing the Solid Waste in the stream of commerce for resource recovery.

“Solid Waste” means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid Waste" does not include: (a) Hazardous waste as defined in this section. (b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals. If the Parties agree, the term Solid Waste may include waste or other materials which may require special handling at a Solid Waste Management Facility, including but not be limited to, clean soil, non-hazardous contaminated soil, construction, demolition and land-clearing debris, and non-friable asbestos provided that Franchisee, either itself or through a subcontractor, has the capability of handling such special waste or materials.

“Solid Waste Management Facility” shall mean any permitted facility designed to manage Solid Waste including but not limited to a solid waste transfer station, recyclable materials recovery or processing facility, composting facility, waste-to-energy facility, and landfill facilities.

The definitions set forth in ORS Chapter 459 are incorporated into this Agreement. To the extent these definitions vary, the current statutory definitions shall apply.

SECTION 2: GRANT OF FRANCHISE

Pursuant to the authority of ORS 459A.085 and any related City Ordinance, the City grants to Franchisee, this non-exclusive Franchise for the right and privilege to collect and dispose or otherwise handle all Solid Waste, Bulky Goods, Green Waste, food waste and recyclable materials as specifically approved by the City, and construction, demolition and land-clearing debris, in each case whether source-separated or not, that are generated, deposited, accumulated or otherwise coming to exist in the Franchise Area, provided that the Franchise granted hereunder shall not be deemed to restrict the right of any party to self-haul their own waste or to purchase recyclables with commercial value. It is expressly understood that all Solid Waste set out for collection and disposal shall become the property of the Franchisee at the Point of Collection.

SECTION 3: TERMS OF AGREEMENT

The initial term of this Agreement shall be ten (10) years, commencing on the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement. Franchisee shall give the City one hundred-twenty (120) days written notice at the end of the Franchise Term. This Franchise will stay in full effect until a new Franchise is negotiated or City provides notice to Franchisee that it does not intend to negotiate a new Franchise. In the event Franchisee fails to notify City, the Franchise shall remain in full effect until either party gives notice to the other of their intention not to negotiate a new agreement. Nothing in this section restricts the City from suspending, modifying or revoking the Franchise Agreement in the event of gross misconduct, negligence or non-performance on the part of the Franchisee.

SECTION 4: FRANCHISE FEES

As consideration for the granting of this Franchise and to reimburse the City of the administration thereof, the franchisee shall pay to the City during the term of this agreement a franchise fee of five (5) percent of the gross revenue received for services. Payments shall be made on at least a quarterly basis, for three (3) month periods ending March 31, June 30, September 30 and December 31 of each calendar year. The payment for a quarter shall be due within forty-five (45) days of the end of the quarter.

SECTION 5: FRANCHISE SERVICES

The Franchisee shall provide for the collection and transportation of Solid Waste from customers to a Solid Waste Management Facility approved by the Franchisor. In providing these services, the Franchisee agrees to the following:

1. **Collection Equipment:** The Franchisee shall provide, maintain, and use adequate equipment and personnel to timely handle, collect, and transport Solid Waste. The equipment shall meet the following standards:
 - a. Collection equipment shall be constructed, loaded and operated so as to prevent dripping, leaking, blowing, sifting or escaping of Solid Waste from the vehicle while in service. Franchisee shall be responsible for cleaning up any spillage from vehicles.
 - b. All open body collection vehicles shall have a cover which shall be used while in transit, except when making collection stops and when transporting bulky items, such as brush, metals, tires, or appliances, where spillage is not likely to occur.

2. **Collection Exclusions:** It is understood that the Franchisee is not authorized and is not required hereunder to collect and transport Hazardous Waste or restricted or other waste that is not acceptable or permitted for disposal at a Solid Waste Management Facility. In addition, Franchisee shall not be required to collect containers that are not set out or filled in accordance with its published guidelines and OSHA regulations. Regardless of the reason, when any Solid Waste or other material is not collected by Franchisee, Franchisee shall leave a tag on the Solid Waste or other material stating the reasons for Franchisee's refusal to collect the same. In the alternative, Franchisee may elect to contact the customer via telephone, email, fax or other suitable means. Adequate records of customer contacts shall be maintained by Franchisee and shall be available to the Franchisor for inspection upon reasonable notice during business hours.
3. **Recycling Services:** Franchisee must receive approval from the City Council prior to providing any recycling services within the City. Services shall be provided in accordance with City Ordinances, ORS 459A, and rules promulgated under said ordinances and statutes.
4. **Level of Service:** Franchisee shall maintain a regular schedule of pickup within the service area at the frequency specified in the Schedule of Services and Rates/Charges, as adopted by Resolution of the City and extend service to all persons in the area who order and pay for such services and comply with Franchisee's reasonable requirements concerning adequacy and location of containers.
 - a. The level of services are contained in the Schedule of Services and Rates/Charges and shall be amended from time to time as required by the City or as requested by the Franchisee and approved by the City by Resolution.
 - b. The Franchisee shall work in cooperation with Tillamook County and/or the City to plan and implement special events or other services deemed necessary in order to collect and properly dispose of Solid Waste, small quantities of Household Hazardous Waste, Bulky Goods, or other waste materials.
5. **Service Requirements:** The Franchisee shall be required to provide services to all customers who set waste containers at locations identified in accordance with the Schedule of Services and Rates/Charges
 - a. Sideyard service shall not be provided to any customer whose driveway does not provide safe and adequate access.
 - b. The Franchisee may refuse service if such service poses a risk of injury to personnel, damage to equipment, or the location has limited access that is steep or excessive slope, or the access road is impaired or insufficient space exists to make turns, or where backing the vehicle in excess of 75 feet.
 - c. The Franchisee shall not be obligated to go into closed areas, through gates, lift containers out of enclosures, lift containers out of in-ground or sunken locations, go up or down stairs, or place themselves in a situation which would jeopardize their health or safety.
 - d. The Franchisee may refuse to provide service on private streets or roads if said road does not meet state standards regarding clearance, composition, grade and condition, or if there are unresolved safety issues that present an undue risk to Franchisee's equipment or personnel. If Franchisee elects to provide service on a private street or road, Franchisee shall not be liable to the City for damage attributable to normal wear and tear.

- e. **Container Access Standards.** All container locations shall provide for direct and unobstructed access by Franchisee's equipment and personnel. Any enclosure, pad, or prepared surface to be used for solid waste container placement must meet Franchisee's minimum requirements. Franchisee shall make these standards available to customers upon request and shall deliver a current copy of such standards to the City for review and to ensure that such standards do not conflict with any regulation, Ordinance or Resolution of the City.
 - f. The Franchisee shall respond to customer service complaints where pickup of garbage or clean up is required within 24 hours or the next business day.
 - g. The Franchisee shall not terminate service without fourteen (14) days written notice to the customer. If termination is based on conditions other than failure to pay for service, notice must also be made to the City Manager stating reason for the termination. Where service has been refused due to refusal of a customer to pay for service, the Franchisee may require a deposit equal to two billing periods to guarantee payment for future service before reinstating such service.
 - h. **Changes in Collection Operations/Administration or Schedule.** In the event of changes to the Collection schedule the Franchisee must notify all affected customers in writing at least fourteen (14) days prior to any change in the day on which Solid Waste or Recycling Collection occurs. The Franchisee will not permit any customer subscribing to weekly service to go more than eight (8) days without service in connection with a Collection schedule change. This notification does not extend to the Franchisee's holiday service schedule, or changes in service due to weather, equipment breakdown, construction or other temporary conditions.
6. **Office:** The Franchisee shall maintain an office and telephone where service may be applied for and complaints may be made. The telephone number shall be toll free from Manzanita for customers. The office shall have a responsible person in charge during collection hours and shall be open during normal business hours. A message service shall be available during lunch periods and after normal business hours.
 7. **Non-Discrimination:** Franchisee shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on the basis of race, religion, color, national origin, disability, marital status, age or sex of such persons or as otherwise prohibited by law.
 8. **Permits and Licenses:** The Franchisee shall obtain at the Franchisee's expense all permits and licenses required by law or ordinance and maintain same in full force and effect during the term of this Agreement.

SECTION 6: RATES & SERVICE CHARGES

All charges made by the Franchisee shall conform to the Schedule of Services and Rates/Charges adopted by Resolution of the City. The City Council is hereby authorized and empowered to

hereafter modify this Schedule of Services and Rates/Charges by Resolution. However, except in the case of a change in tip fees at the transfer station, not more than one rate adjustment may be imposed in any twelve (12) month period. Requests for modification of the Schedule of Services and Rates/Charges, if any, shall be requested by Franchisee no later than April 1st of any year, with the effective date of such adjustments being the day the Resolution is adopted by the City, unless otherwise agreed to by Franchisee and the City. Provided that the Franchisee's request for modification is complete and no additional information is requested, the City shall act to approve or deny the adjustment request within 90 days.

1. **No Rate Preferences:** 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 section shall not prohibit uniform classes of rates based upon type or quality of Solid Waste handled and location of customers so long as such rates are reasonably based upon cost of the particular service and are approved by the City Council, nor shall this section prevent the Franchisee from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.
2. **Services to City:** Franchisee will provide service at no direct charge for pickup and disposal of Solid Waste generated in the ordinary course of the City's business. Franchisee will work with City to provide an annual community clean-up event. Franchisee will provide containers and hauling services at no direct charge and will bill City only for disposal fees for material collected at the event. City will arrange for use of the event site and provide staff to verify eligibility and supervise activities of attendees. Franchisee will communicate all applicable rules and restrictions regarding each material stream. This event may be replaced by a voucher program or other alternative by mutual agreement. Expenses related to services provided under this section shall be allowable expenses for the purposes of rate review.
3. **Basis of rates:** Rates for residential and multifamily service shall be based on the cost of providing once per week single cart service, then adjusted for services other than once per week pickup. Rates for container service shall be based on the cost of providing once per week pickup of a one-yard container, and then adjusted for other than once per week pickup and or container size.
4. **Criteria for rate adjustment:** In determining the appropriate rate or rate adjustment to be charged by the Franchisee, the City Council may consider any or all of the following:
 - a. The cost of performing the service provided by the Franchisee.
 - b. The anticipated increase in the cost of providing this service.
 - c. The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state, local law, ordinances and regulations or technical change.
 - d. The investment of the Franchisee to have a reasonable rate of return of not less than eight (8) percent, and not more than twelve (12) percent.
 - e. The rates charged in other cities of similar size for similar service.
 - f. The public interest in assuring reasonable rates to enable the Franchisee to provide efficient and beneficial service to the residents and other users of the service.
 - g. The local wage scale, cost of management facilities and disposal fee or charges.

- h. Other factors which may, in the opinion of the City Council, necessarily affect the rates to be charged.

Notwithstanding any other provision, the City will not unreasonably withhold approval of a request by Franchisee to modify the rates to cover Franchisee's reasonable costs of performing this Agreement plus a reasonable rate of return as described in Section 6.4.d.

5. **Billing cycles:** The Franchisee may establish billing cycles that provide, one month in advance and one month in arrears according to the Franchisee's billing cycle.

SECTION 7: RECORDS & REPORTS

1. The Franchisee shall maintain books and records disclosing the number and type of customers served and the gross receipts collected in the Franchise area. These books and records shall be open at reasonable times and places for audit by authorized personnel of the City.
2. The Franchisee shall submit an annual report to the City which contains sufficient business information to show revenue and operating costs, franchise fees paid, general vehicle inventory, customer count, and amount of material in tons collected, transferred and/or disposed.
3. **Confidentiality:** Franchisor shall treat all information disclosed or made available for inspection by Franchisee hereunder (including pursuant to any rate review) that affects the competitive position of Franchisee as confidential information to the extent permitted by law. Franchisor shall not use such confidential information for any reason or in any manner other than as contemplated under the rate review provisions of this Agreement. Franchisor shall not disclose such confidential information to any third party except on a "need-to-know" basis and then only after receiving the prior written approval of the Franchisee and a confidentiality agreement from the third party similar hereto. Notwithstanding the foregoing, in the event Franchisor receives any requests for disclosure of Franchisee's information under Oregon Public Records Law, Oregon Revised Statutes 192.410 to 192.505, Franchisor shall notify Franchisee in writing of such request after consideration of the public interest in disclosure of the requested information. The Franchisee shall respond in writing within ten (10) days of the Franchisor's notice whether the requested information should be released or defended as exempt from disclosure under such law. If Franchisee elects to defend the exemption of the requested information from public disclosure, Franchisor shall not release or disclose such information and Franchisee shall assume all responsibilities and costs for such defense.

SECTION 8: LIABILITY INSURANCE:

The Franchisee shall provide and maintain during the life of this agreement Public Liability insurance in the per occurrence amount of \$2,000,000 to protect the Franchisee, its agents, and its employees from claims for damages for personal injury, including wrongful and accidental death and property damage which may arise from operations under this agreement, whether such operations be performed by the Franchisee or its employees. The policy or policies shall contain a clause showing the City, its elected officials, officers and employees as additional insured and

with an endorsement that such insurance may not be cancelled or the coverage reduced without first giving the City thirty (30) days notice in writing.

SECTION 9: WORKERS' COMPENSATION INSURANCE

The Franchisee shall provide and maintain during the life of this agreement Workers Compensation Insurance in accordance with the laws of the State of Oregon for all of its employees. A certificate shall be filed with the City by the insurance carrier showing such insurance to be in force at all times.

SECTION 10: INDEMNITY

1. **Franchisee Indemnity:** Franchisee shall defend, indemnify and hold harmless Franchisor and its employees, agents, appointed and elected officials (collectively, "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees, (collectively, "Damages") which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out with respect to claims by third parties for personal injury, property damage or other loss to the extent caused by, or arising from or in connection with a violation of this Agreement or the negligent actions or omissions or willful misconduct of Franchisee, its employees or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to the extent that they are caused by, arise from or in connection with any negligent actions or omissions or willful misconduct of Franchisor or its employees, agents, subcontractors or appointed or elected officials, including in connection with the use of Franchisee's property or equipment during an emergency as provided in Section 13. The extent of Franchisee's liability under this Section shall not exceed the amount of Franchisee's proportionate share of fault.
2. **Procedure:** Franchisee shall have no obligation to indemnify or defend hereunder unless the Indemnitees provide written notice to Franchisee of the occurrence of events giving rise to Franchisee's obligation to indemnify hereunder within thirty (30) days after the Indemnitees know or should have known of such events. The Indemnitees shall cooperate in the defense of suit if requested by Franchisee and shall have the right to approve counsel chosen by Franchisee to litigate such suit, which approval shall not be unreasonably withheld. Franchisee shall have the sole right to contest, defend, litigate and settle claims tendered by the Indemnitees hereunder provided that a least ten (10) business days prior to any such settlement, written notice of Franchisee's intention to settle is given to the Indemnitees. In the event a dispute exists over whether an Indemnitee is entitled to indemnification, the Indemnitee shall defend itself until the dispute is resolved. Upon resolution of the indemnification dispute, the prevailing party shall be entitled to indemnification for its defense costs incurred prior to resolution.
3. **Insurance:** If any claims indemnified against under this Section have the potential for coverage under any insurance, then the indemnity set forth in this Section shall be limited as provided in this Section 10(3). Before pursuing recovery under this indemnity, the Indemnitees shall exhaust all recovery available for such claim from insurance. Once the Indemnitees have exhausted all recovery under all available insurance, the Franchisee shall

pay only the amount of the loss, if any, that exceeds the total amount that all insurance has paid for the loss. Nothing in this Agreement shall constitute a waiver or relinquishment of any claims which the parties may have against insurers, nor shall any provision of this Agreement waive or relinquish any subrogation or contribution rights that the parties or their insurers may have against another insurer or other potentially liable party. Notwithstanding anything in this Agreement to the contrary, the Franchisee shall not be obligated to pay for the defense of any claim or suit that any insurer has a duty to defend. If no insurer defends, however, then the Franchisee shall, to the extent obligated to do so by this Agreement, pay for the defense, but shall be entitled to the insured's rights against all insurers with a potential for coverage of such claim.

SECTION 11: TRANSFER OF FRANCHISE

1. The Franchisee shall provide ninety (90) days written notice of any proposed sale, transfer or assignment. Sale of an amount of Franchisee's stock sufficient to change the majority ownership of Franchisee shall constitute a transfer for purposes of this Section. Except as provided in this Section, the Franchisee shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person or corporate entity without prior written consent of the City Council, which consent shall not be unreasonably withheld. Any such assignment without the consent of the City Council shall be void and the attempted assignment shall constitute a default of this Agreement.
2. If the Franchisee requests the City's consideration of and consent to a transfer or assignment, the City shall act on such request within sixty (60) days of the receipt of the Franchisee's notice and shall not unreasonably refuse to approve an assignment of this franchise to an assignee with sufficient knowledge, experience and financial resources so as to be able to meet the obligations of the Franchisee hereunder.

SECTION 12: DEFAULT, TERMINATION

1. **Default:** In the event of any material failure or refusal of Franchisee to comply with any obligation or duty imposed on Franchisee under this Agreement, the Franchisor and Franchisee shall meet and confer in good faith in an effort to agree on a resolution and cure of the breach. If the Parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the Franchisor shall have the right to terminate this Agreement if:
 - a. Following the ten-day meeting period above, the Franchisor shall have given written notice to Franchisee specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of Franchisee, and
 - b. Franchisee fails to correct such default or fails to take reasonable steps to commence to correct the same within thirty (30) days from the date of the notice given by Franchisor under Section 12 (1.a.) and/or Franchisee thereafter fails to diligently continue to take reasonable steps to correct such default.
2. **Termination:** Upon the occurrence of a material breach, failure to cure and the declaration of termination of this Agreement by the Franchisor as provided above, this Agreement shall

be of no further force and effect unless the Franchisor elects to terminate only a portion of the services set forth herein and maintain the remainder of the Agreement.

3. **Force Majeure:** The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by Force Majeure.

SECTION 13: EMERGENCY SERVICES

In the event that Franchisee, for any reason whatsoever except the occurrence or existence of a Force Majeure event, fails, refuses or is unable to perform the collection, transportation and disposal requirements of this Agreement for a period of more than three (3) consecutive business days, and if as a result thereof, Solid Waste accumulates in the Franchise Area to such an extent, in such a manner, or for such a time that Franchisor reasonably finds that such accumulation endangers or menaces the public health, safety and welfare, then Franchisor shall have the right to take any means necessary to ensure the public safety and welfare, including but not limited to picking up Solid Waste utilizing City equipment and personnel and/or contracting out to a third party. If Franchisor must carry out those services and duties performed by the Franchisee as contained herein, then Franchisee shall reimburse Franchisor for all expenses directly related to the Franchisor's carrying out the duties and services of Franchisee under this Franchise.

SECTION 14: NOTICE

Whenever required for any purpose in this Agreement, notice by either party shall be deemed sufficient if it is in the form of a letter sent by certified mail, return receipt requested (or nationally recognized overnight courier, with written confirmation of delivery), to the business address specified below, or such other address as a party may designate by written notice in accordance with this section:

Franchisee

Recology Western Oregon Inc.
Attn: Legal Department
50 California Street, 24th Floor
San Francisco, CA 94111

Franchisor

City of Manzanita
543 Laneda Ave.
PO Box 129
Manzanita, OR 97130

SECTION 15: CHANGE IN LAW

In the event that new or amended local, state or federal laws, rulings or regulations are enacted after the Effective Date of this Agreement and have the effect of preventing or precluding

compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such new or amended local, state or federal laws or regulations, and the Franchisor and the Franchisee shall enter into an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended. Notwithstanding the foregoing, should Franchisee, by force of any such law, ruling or regulation, at any time during the term hereof, be ordered or required to do any act relative to this Agreement which substantially impairs or materially changes the Franchisee's ability to perform under this Agreement, then the Franchisee may notify the Franchisor in writing of this condition and may terminate this Agreement upon providing at least sixty (60) days' advance written notice of termination to the Franchisor. Nothing in this Agreement shall prohibit Franchisee from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict Franchisee's right to legally contest the validity of such law, ruling or regulation. Franchisee shall not be considered in breach of this Agreement during such time as Franchisee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.

SECTION 16: INDEPENDENT CONTRACTOR

Franchisee is an independent contractor and shall not be deemed an employee of the Franchisor.

SECTION 17: CAPTIONS

Titles or captions of articles and sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision of it.

SECTION 18: WAIVER

No waiver of any right or obligation of either Party hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by either Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

SECTION 19: COUNTERPARTS

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute the same instrument.

SECTION 20: GOVERNING LAW

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

SECTION 21: AMENDMENT

This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the Parties hereto.

SECTION 22: COMPLETE AGREEMENT

This writing constitutes the full and complete Agreement and understanding between the Franchisee and the Franchisor. All previous agreements are hereby superseded.

SECTION 23: SEVERABILITY

If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the remainder of this Agreement to be invalid or unenforceable, unless this Agreement without the severed provision would frustrate a material purpose of either Party in entering into this Agreement.

IN WITNESS WHEREOF, this Solid Waste Franchise Agreement is effective as of the Effective Date.

**Franchisor:
CITY OF MANZANITA**

By: _____

Its: _____

Date: _____

ATTEST:

**Franchisee:
RECOLOGY WESTERN OREGON INC.**

By: _____

Its: President & CEO

Date: _____

ATTEST:

Ordinance No. 10-05 adopted by the City Council on August 4, 2010-, is hereby repealed.

PASSED FIRST READING by the Council this ___ day of _____, _____.

PASSED SECOND READING by the Council this ___ day of _____, _____.

APPROVED by the Mayor this ___ day of _____, _____.

Mike Scott, Mayor

ATTEST:

John Kunkel, City Manager