

CITY OF MADRAS PUBLIC NOTICE

ORDINANCE NO. 981

The City Council of the City of Madras, Oregon, will be considering approval of the following proposed ordinances during their regularly scheduled Council meeting on Tuesday, November 14, 2023 at approximately 5:30 p.m. in the Madras City Hall Council Chambers.

ORDINANCE NO. 981

AN ORDINANCE OF CITY OF MADRAS RELATING TO SOLID WASTE MANAGEMENT; GRANTING OWANJAY SERVICES, INC., AN OREGON CORPORATION D/B/A MADRAS SANITARY SERVICE, THE RIGHT, PRIVILEGE, AND FRANCHISE TO COLLECT, TRANSPORT, AND/OR TRANSFER SOLID WASTE ON, OVER, AND/OR ACROSS THE PUBLIC RIGHT-OF-WAYS WITHIN THE CITY AND TO RECOVER MATERIALS OR ENERGY FROM SOLID WASTE GENERATED OR PRODUCED IN THE CITY.

A copy of the proposed ordinances are available for review at Madras City Hall, located at 125 SW "E" Street, between 8:00 am and 5:00 pm, Monday through Friday. The proposed ordinances can also be found on the City's website at www.ci.madras.or.us on the Public Notices page.

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WHEREAS, City of Madras ("City"), an Oregon municipal corporation, granted Owanjay Services, Inc. ("Franchisee"), an Oregon corporation d/b/a Madras Sanitary Service, the right, privilege, and franchise to provide solid waste management services in City pursuant to the terms of that certain Solid Waste Franchise Agreement dated March 22, 1994 established under City Ordinance No. 532, as amended by City Ordinance No. 705, City Ordinance No. 840, and City Ordinance No. 841 (collectively, the "Original Franchise"); and

WHEREAS, City and Franchisee desire to enter into a new franchise pursuant to which Franchisee will provide solid waste management services in City; and

WHEREAS, subject to the terms and conditions contained in this Ordinance No. 981 (this "Ordinance"), City hereby grants Franchisee an exclusive franchise to provide solid waste management services within City.

NOW, THEREFORE, City of Madras ordains as follows:

1. Findings; Definitions; Purpose.

1.1 Findings; Short Title. The above-stated findings are hereby adopted. This Ordinance will be known as the "Solid Waste Management Ordinance" and will be cited herein as this "Ordinance."

1.2 Definitions. Unless the context requires otherwise, or where defined elsewhere in this Ordinance, terms identified in Appendix A have the meanings assigned to them in Appendix A.

1.3 Purpose. City hereby declares that the purposes of this Ordinance, includes, without limitation, the following: (a) insuring safe, efficient, economical, and comprehensive solid waste management service; (b) insuring rates that are just, fair, reasonable, and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices; (c) conserving energy and material resources, reducing solid wastes, and promoting material and energy recovery in all forms; (d) providing for technologically and economically feasible resource recovery by and through Franchisee on a first option basis; (e) protecting public health and the environment; (f) providing public service standards; (g) protecting against improper and dangerous handling of hazardous wastes; and (h) providing a basis and incentive for investment in solid waste equipment, facilities, sites, and technology.

2. Grant of Franchise.

2.1 Franchise. Subject to the terms and conditions contained in this Ordinance, City grants Franchisee the right, privilege, and exclusive franchise to provide solid waste management services and recycling services within City. Notwithstanding anything contained in this Ordinance to the contrary, City reserves the right to determine the scope of the franchise granted under this Ordinance and the services granted and/or authorized hereunder. Franchisee will perform its obligations under this Ordinance in compliance with the laws. The rights and privileges granted by City to Franchisee under this Ordinance extend only to the extent of City's right or authority to grant the franchise to Franchisee.

2.2 Exclusive Franchise. Subject to the terms and conditions contained in this Ordinance, the franchise granted by City under this Ordinance is and will be construed as an exclusive franchise.

2.3 Enforcement. City will have the right to observe and inspect all aspects of Franchisee’s collection operations, facilities, services, and records to ensure Franchisee’s strict performance and compliance with this Ordinance. If, at any time, Franchisee fails to timely perform any Franchisee obligation under this Ordinance, City may elect to perform the obligation at the expense of Franchisee.

2.4 Specific Exceptions. Nothing contained in this Ordinance will be construed to prohibit any of the following:

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

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

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

(d) The collection, transportation, and/or reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity, including, without limitation, Salvation Army, St. Vincent De Paul, Goodwill, and similar charitable organizations.

(e) The collection, transportation, reuse, and/or recycling of totally sourced separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent, or fraternal organization, which organization was not organized for any solid waste management purpose and which organization is using the activity for fundraising, including, without limitation, scouts, churches, Lions Club, Kiwanis, Elks, and Chamber of Commerce.

(f) The generator or producer who transports and/or disposes of waste created as an incidental part of regularly carrying on the business or services of any of the following: (i) auto wrecking, to the extent licensed by the State of Oregon; (ii) demolition land clearing or construction; (iii) janitorial service; (iv) gardening, park maintenance, and/or landscape service; (v) street sweeping; (vi) auto-body recovery; and/or (vii) septic tank pumping or sludge collection. “Janitorial service” does not include cleanup of accumulated stored waste.

(g) The purchase of totally source-separated solid waste for fair market value.

(h) Providing service for hazardous waste.

(i) Any other practice, business, or activity which is withdrawn by the City Council after a public hearing thereon and upon a resolution finding that withdrawal has no substantial impact on service, consumer rates, and/or the purposes stated in this Ordinance.

(j) The burning of clean combustible waste products (e.g., wood, paper, etc.) in a residential fireplace, wood stove, or furnace.

(k) The collection, transportation, or redemption of returnable beverage containers under Oregon Revised Statutes (“ORS”) chapter 459A and that portion thereof commonly known as the “Bottle Bill.”

3. Solid Waste Management Services.

3.1 Waste Ownership. Except as otherwise provided in this Ordinance, solid waste that is properly placed out for collection is the property of Franchisee.

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

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

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

(c) Use due care to prevent solid waste from being spilled and/or scattered during collection. If any solid waste is spilled and/or scattered during collection, Franchisee will promptly clean-up all spilled and/or scattered solid waste.

(d) Use reasonable care in handling all collection receptacles and enclosures. Damage caused by the negligence of Franchisee and/or Franchisee's representatives to private property, including, without limitation, landscaping, is the responsibility of Franchisee and will be promptly restored to its original condition or otherwise corrected to the owner's satisfaction.

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

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

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

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

(i) Franchisee will dispose of all solid waste collected under this Ordinance at the Box Canyon transfer station.

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

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

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

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

(c) All fuel oil or vehicle leaks or spills which result from Franchisee's vehicles will be cleaned-up immediately. Except as expressly provided in this Ordinance, Franchisee will not store, collect, transport, perform resource recovery, and/or dispose of hazardous waste.

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

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

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

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

3.5 Right-of-Way Standards. Franchisee will ensure proper and safe use of the right-of-ways. Without otherwise limiting the generality of the immediately preceding sentence, Franchisee's use of the right-of-ways will be conducted (a) in a safe manner, taking into account all applicable traffic control rules and procedures, (b) so as to minimize disruption and interference of the right-of-ways, and (c) in accordance with this Ordinance and the laws.

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

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

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

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

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

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

(f) Require all Franchisee employees, agents, representatives, and contractors to present a neat appearance and conduct themselves in a courteous and respectful manner.

3.7 Customer Service Reporting Standards. Franchisee will keep customer service records of oral and written complaints or service issues registered with Franchisee from customers within City. Franchisee will record the name and address of the complainant, date and time of issue, nature of issue, and nature and date of resolution. Franchisee will keep a record of all current and previous year customers within City. Within ten (10) days after written notice by City, Franchisee will provide and/or otherwise make available any requested customer records to City.

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

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

4. Franchise Rates and Charges.

4.1 Rate Structure. Subject to the terms and conditions contained in this Ordinance, commencing on the effective date Franchisee will charge its customers no more than those service rates identified in the attached Schedule 4.1 (the "rate schedule"). Franchisee's rates will be uniform within zones or classes of service.

4.2 Rate Adjustments. Subject to the terms and conditions contained in this Ordinance, Franchisee's rates (and the rate schedule) will be adjusted in accordance with the following:

4.2.1 Council resolution amending Schedule 4.1. In determining rates, the Council will give due consideration to the following: (a) current and projected revenue and expenses; (b) actual and overhead expenses; (c) the cost of acquiring and replacing equipment; (d) the services of owner, family, and management; (e) cost of providing for future, added, and/or different services; (f) a reasonable operating margin to Franchisee for doing business; (g) research and development; (h) rates charged by other persons performing the same or similar service in the same or similar areas; and (i) such other factors as the Council deems relevant.

4.2.2 Upon notice to the city administrator no later than April 1, Franchisee may automatically adjust rates effective July 1 of that year by the lesser of 2% or the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, West Region ("CPI"). Upon notice to the city administrator by April 1, Franchisee may elect to roll over to subsequent year(s) up to five years' rate increases. For avoidance of doubt, and by way of example, this means that with notice to the city administrator by April 1, 2024, Franchisee may elect to roll over the appropriate increase of the lesser of 2% or the CPI to the next year (2025) and with notice to the city administrator by April 1, 2025, may roll the lesser of an additional 2% or CPI increase from 2025 to 2026 so that the resulting increase in year 2026 is the lesser of a 4% increase or the CPI increase for the last two years applied in 2026. These elective increases, if rolled over, do not compound. If no notice is given to the city administrator by April 1, no

increase or roll-over will occur. An automatic rate adjustment will be effective on July 1 of the applicable fiscal year provided Franchisee has complied with this Section 4.2.2.

4.2.3 Franchisee providing no less than ninety (90) days' prior written notice of the proposed rate changes with accompanying justification (which justification must be based on those factors identified in Section 4.2.1 and any other factors Franchisee deems applicable). Unless a governmental unit has raised the cost of providing service or there has been a substantial increase in cost not covered in the preceding adjustment, the rate adjustments, if any, will be made on the following schedule:

(a) Application will be filed by Franchisee prior to April 1 of each year.

(b) Except in the case of an automatic adjustment under Section 4.2.1, unless there is good cause shown and recorded in the minutes of the Council, the Council will act upon any rate adjustment no later than June and the adjustment if any will take effect on July 1.

(c) An emergency or interim rate for a new or altered service may be adopted by written order of the city administrator, valid for a stated period not to exceed six months on an emergency or interim basis.

5. Franchise Fee.

5.1 Compensation to City. In consideration of the rights, privileges, and franchise granted to Franchisee under this Ordinance, during the term of this franchise Franchisee will pay City the following franchise fees (the "franchise fee(s)"): (a) five percent (5%) of Franchisee's gross revenues commencing on the effective date and ending June 30, 2024; and (b) seven percent (7%) of Franchisee's gross revenues commencing on July 1, 2024 and ending December 13, 2033. Franchisee will pay the franchise fee in monthly installments. Each monthly installment is due within sixty (60) days after the last day of the applicable month (i.e., the month for which the franchise fee is paid). The first monthly payment of the franchise fee is due on or before January 29, 2024 (which payment amount will represent the franchise fee payment for the month of November 2023). Contemporaneously with each monthly payment of the franchise fee, Franchisee will file with City a sworn statement describing the total gross revenues Franchisee received during the month for which the franchise fee is paid (the "accounting statement"). City's acceptance of any payments under this Section 5.1 will not constitute a waiver by City of any Franchisee breach under this Ordinance.

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

6. Insurance; Indemnification.

6.1 Insurance. Franchisee, at its cost and expense, will obtain and maintain in full force and effect during the term of the franchise, the following insurance coverage with their respective minimum limits: (a) workers' compensation insurance as required by applicable Oregon law; (b) employer's liability insurance with limits of no less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) comprehensive general liability insurance with limits of no less than \$1,000,000 for bodily injury or death to each person, \$1,000,000 for property damage resulting from any one accident, and \$1,000,000 for all other types of liability (e.g., products liability and completed operations); and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by Franchisee and its employees with a limit of no less than \$1,000,000 for each person and \$1,000,000 for each accident; provided, however, the minimum policy limits for the insurance policies required under Section 6.1(c)

and (d) will increase to \$3,000,000 as of July 1, 2024. Each liability insurance policy Franchisee is required to obtain and maintain under this Section 6.1 will name City and each City representative as an additional insured and will provide that no cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing City thirty (30) days' prior written notice. All insurance Franchisee is required to obtain and maintain under this Section 6.1 will be issued only by insurance companies licensed in Oregon. Prior to City's execution and acceptance of this Ordinance, and at any other time thereafter within thirty (30) days after City's written request, Franchisee will provide City with certificates of insurance and endorsements evidencing Franchisee's compliance with this Section 6.1. Franchisee will be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance. All such deductibles, retentions, and/or self-insurance must be declared to and approved by City. Notwithstanding anything contained in this Ordinance to the contrary, City may increase the minimum levels of insurance Franchisee is required to carry under this Ordinance as City determines necessary or appropriate to ensure Franchisee's coverage limits at least equal the applicable Oregon Tort Claims Act liability limits for state or local agencies by providing Franchisee ninety (90) days' prior written notice.

6.2 Indemnification. Franchisee releases and will defend, indemnify, and hold City and each City representative harmless for, from, and against all damages resulting from or arising out of, whether directly or indirectly, the following: (a) any activities in connection with Franchisee's and/or Franchisee's representatives operation and/or maintenance of Franchisee's facilities and/or services, except those that arise out of City's sole negligence; (b) any litigation involving Franchisee and/or Franchisee's representatives actions or inactions in connection this franchise; (c) the negligence of Franchisee and/or Franchisee's representatives; (d) accident, injury, and/or damage whatsoever caused to any person (including, without limitation, Franchisee and/or Franchisee's representatives); (e) Franchisee's and/or Franchisee's representatives failure to obtain and/or comply with any necessary permits, licenses, and/or laws; (f) damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of Franchisee's and/or Franchisee's representatives exercise of this franchise and/or failure to exercise this franchise, whether or not the acts or omissions complained of is authorized, allowed, and/or prohibited by this franchise; (g) the acts or omissions of Franchisee and/or Franchisee's representatives in connection with Franchisee's and/or Franchisee's representatives use of the right-of-ways and/or in providing or offering solid waste management services, whether such acts or omissions are authorized, allowed, and/or prohibited by this Ordinance; (h) Franchisee's enforcement actions taken under Section 11.2; and/or (i) Franchisee's breach and/or failure to perform any Franchisee representation, warranty, covenant, and/or obligation under this Ordinance.

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

7. Term and Termination.

7.1 Term; Termination. Unless sooner terminated or extended as provided in this Ordinance, the franchise granted to Franchisee under this Ordinance will be in full force and effect for a period of ten (10) years, commencing from the effective date of this Ordinance. The franchise may be terminated at any time by the mutual written agreement of City and Franchisee.

7.2 Termination for Cause. Notwithstanding anything contained in this Ordinance to the contrary, City may terminate the franchise immediately by notice to Franchisee upon the occurrence of any of the following events: (a) Franchisee fails to comply with any laws; and/or (b) Franchisee breaches and/or otherwise fails to perform any Franchisee representation, warranty, covenant, and/or obligation contained in this Ordinance. If Franchisee breaches and/or otherwise fails to perform any Franchisee representation, warranty, covenant, and/or obligation under this Ordinance, City may, in addition to any other remedy provided to City under this Ordinance, pursue all remedies available to City at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently. Upon the termination of this franchise, City may take such actions City deems necessary or

appropriate to ensure continued service to Franchisee's customers. Franchisee will pay all costs associated with such actions.

8. Dispute Resolution Process; Public Responsibility.

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

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

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

8.4 Safe Loading Requirements. No stationary compactor, drop box, or other receptacle, including, without limitation, a can, cart, or container for residential, commercial, or industrial use, will exceed the safe loading requirements designated by Franchisee.

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

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

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

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

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

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

9. Resource Recovery.

9.1 Resource Recovery Application. Except as expressly provided under this Ordinance, no person may engage in resource recovery services without first applying for and obtaining a resource recovery franchise under this Section 9.1; provided, however, Franchisee is approved to provide resource recovery services under this Ordinance. The application will be in writing (in form acceptable to City) and will contain such information and documentation City may require, including, without limitation, a description of the resource recovery collection services for which the license is sought, the manner in which the applicant proposes to provide the resource recovery services, the proposed length of time the services will be provided, and such other information as City may require.

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

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

10. Expanded Services.

10.1 Expanded Service Application. If a new service or substantial expansion of an existing service is proposed by City or another person other than Franchisee, City or the other person will submit application concerning the new service or expansion of the existing service in writing (in form acceptable to City). The application will contain such information and documentation City may require, including, without limitation, a description of the new or expanded service, the manner in which the applicant (other than City) proposes to provide the new or expanded service, the proposed length of time the service will be provided, and such other information as City may require. City will provide Franchisee written notice of an application received under this Section 10.1.

10.2 Consideration Criteria. No less than sixty (60) days after City's receipt of a completed application under Section 10.1, the Council will review the application and determine whether there is a showing of need for the new or expanded service. The Council's evaluation/determination will place primary emphasis on the following factors and objectives: (a) the public need for the proposed service; (b) importance of providing proper service to all properties; (c) cooperation with other governmental units to encourage the development of the highest quality and degree of solid waste management possible for the local and regional service areas; and/or (d) proper consideration

at all times to the public interests and considerations for the future, as well as for the present needs of the community.

10.3 Grant or Denial of Expanded Services. If the Council determines that there is a need for the proposed additional or expanded service, City will provide Franchisee written notice of the Council's determination. Upon issuance of the notice, Franchisee will have thirty (30) days within which to commit to providing the new or expanded service or reject the new or expanded service. If Franchisee commits to providing the new or expanded service, City and Franchisee will amend this Ordinance to include the new or expanded service. If Franchisee rejects the new or expanded service, the Council may issue a franchise to another person for the new or expanded service, place the new or expanded service under limited permit or license, or withdraw the new or expanded service under this Ordinance.

11. Enforcement; Penalties.

11.1 City Enforcement. In addition to all other rights and remedies available to City under this Ordinance and/or applicable law, City may enforce this Ordinance by administrative, civil, and/or criminal action or any combination as necessary to obtain compliance with this Ordinance. The Council may take such legislative action as necessary to support the Ordinance and the Franchise granted.

11.2 Franchisee Enforcement. Subject to the terms and conditions contained in this Ordinance, Franchisee will have a cause of action in Jefferson County Circuit Court against any person providing sanitary collection services in City's incorporated limits without first having obtained a franchise or other exemption under this Ordinance. The cause of action includes any appropriate relief, including injunctive relief. Before Franchisee may commence a civil action, Franchisee must provide thirty (30) days' prior written notice to the city administrator. The city administrator may elect either to enforce the provisions of this Ordinance or allow Franchisee to commence a civil action in Jefferson County Circuit Court against the person in violation of this Ordinance. If the city administrator fails to respond to the notice provided under this Section 11.2, Franchisee may proceed with the civil action. Franchisee will not commence a civil action if the city administrator is pursuing enforcement actions.

11.3 Penalties.

11.3.1 Warnings. The city administrator may issue warnings, citations, and/or orders to any person violating this Ordinance.

11.3.2 Violations. Violation of this Ordinance is an infraction and is punishable by a fine of no less than \$100.00 and no more than \$500.00, which sums may be amended by Council resolution from time to time. The second and subsequent violation of the same provision of this Ordinance in any one-year period is punishable by a fine of no less than \$250.00 and no more than \$1,000.00.

11.3.3 Separate Violations. Each violation will constitute a separate offense. Continuing violations of the same offense will not constitute a separate offense for each day the violation occurs. The rights and remedies imposed under this Ordinance are in addition to, and not in lieu of, any other rights and remedies available to City. If any provision of this Ordinance is violated by a firm, corporation, limited liability company, or any other legal entity, the directors, officers, shareholders, managers, members, partners, and similarly situated persons will be personally subject to the penalties imposed under this Ordinance. In addition to any other penalty provided by law, a person adjudged responsible for violation of any of the provisions of this Ordinance may be ordered by the city administrator or court to correct the violation.

12. Miscellaneous.

12.1 Assignment or Transfer of Franchise. Subject to the terms and conditions contained in this Ordinance, Franchisee will not Transfer all or any part of Franchisee's interest in or to this franchise and/or this Ordinance without City's prior written consent, which consent will not be unreasonably withheld, conditioned,

and/or delayed. If City consents to a Transfer, the following will apply: (a) the terms and conditions of this Ordinance (and the franchise) will in no way be deemed to have been waived or modified; (b) consent will not be deemed consent to any further Transfer; (c) acceptance of any franchise fees by City from any other person will not be deemed a waiver by City of any provision of this Ordinance; (d) Franchisee will pay all fees, costs, and expenses incurred by City in considering and/or consenting to a Transfer; and (e) no Transfer relating to this Ordinance, whether with or without City's consent, will modify, relieve, and/or eliminate any liabilities and/or obligations Franchisee may have under this Ordinance. City may consent to subsequent assignments, subletting, and/or amendments or modifications to this Ordinance with assignees of Franchisee without notifying Franchisee, or any successor of Franchisee, and without obtaining its or their consent thereto and such action will not relieve Franchisee of any liability under this Ordinance. Subject to the terms and conditions contained in this Section 12.1, this Ordinance will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

12.2 Severability; Governing Law; Venue. If all or any portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by any federal, state, and/or local legislation, rules, regulations, and/or decisions, the remainder of this Ordinance will not be affected but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining provision of this Ordinance will be valid and enforceable to the fullest extent permitted by law. If any federal, state, and/or local laws, rules, ordinances, and/or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision will be read to be preempted to the extent and the time required by law. This Ordinance is subject to all applicable laws. Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Jefferson County, Oregon, or the United States District Court for the District of Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon, or the United States District Court for the District of Oregon.

12.3 Attorney Fees; Action by the Parties. If a suit, action, arbitration, and/or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Ordinance, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. In any action mandated or permitted by City and/or Franchisee under this Ordinance, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either Franchisee or City is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, and/or delayed.

12.4 Compliance with Laws; Notices. Franchisee will comply with all applicable laws. The rights and privileges granted by City under this Ordinance extend only to the extent of City's right or authority to grant a franchise to occupy and use the right-of-ways for this franchise. All notices or other communications required or permitted by this Ordinance must be in writing, must be delivered to the parties at the addresses set forth in Appendix A, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax or email transmission (with electronic confirmation of delivery), or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

12.5 Person; Interpretation; Expenses. For purposes of this Ordinance, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words "include," "includes," and "including" are not limiting. The word "or" is not exclusive. Reference to "days" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day. Notwithstanding anything contained in this Ordinance to the contrary,

Franchisee will bear all fees, costs, and expenses incurred or arising out of Franchisee’s performance of its obligations under this Ordinance.

12.6 Entire Agreement; Corrections; Late Fees. This Ordinance contains the entire agreement and understanding between the parties with respect to the subject matter of this Ordinance and contains all the terms and conditions of the parties’ agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Franchisee has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and clerical errors. If any franchise fees and/or other payment due from Franchisee is not received by City within ten (10) days after it is due, Franchisee will pay a late fee equal to ten percent (10%) of the payment or Two Hundred Dollars (\$200.00), whichever is greater (a “late fee”). In addition, a charge of one and one-half percent (1.5%) per month on the amount past due (a “late charge”) will be charged from the due date for such payment until the past due amount is paid in full. City may levy and collect a late fee and/or late charge in addition to all other remedies available for Franchisee’s failure to timely pay any franchise fees and/or other payment due from Franchisee.

12.7 Original Franchise; Franchisee Acceptance. City and Franchisee acknowledge and agree that the term of the Original Franchise is extended to the day immediately preceding the effective date. The Original Franchise will be deemed expired and of no further force and effect on the day immediately preceding the effective date; provided, however, the expiration of the Original Franchise will not relieve and/or constitute a waiver and/or release of any party’s obligations that have accrued prior to the expiration. Franchisee represents, warrants, and covenants the following to City: (a) Franchisee is a duly organized corporation, validly existing under the laws of the State of Oregon; (b) Franchisee has full power and authority to sign and deliver the acceptance and to perform all Franchisee’s obligations under this Ordinance; and (c) Franchisee’s obligations under this Ordinance are legal, valid, and binding obligations of Franchisee, enforceable against Franchisee in accordance with their terms. Within thirty (30) days after City’s passage of this Ordinance, Franchisee will file with City the written acceptance attached hereto as Exhibit A (the “acceptance”). If Franchisee fails to timely file the acceptance with City, this Ordinance (and the Franchise granted hereunder) will be deemed null, void, and repealed by City in all respects without further act by City.

This Ordinance was PASSED and ADOPTED by the Madras City Council by a vote of ___ for and ___ against and APPROVED by the mayor on this 14th day of November, 2023.

Mike Lepin, Mayor

ATTEST:

Keli Pollock, City Recorder

Appendix A
Definitions

For purposes of this Ordinance, the following terms have the following meanings:

“Acceptance” has the meaning assigned to such term in Section 12.7.

“Accounting statement” has the meaning assigned to such term in Section 5.1.

“Bin” means a receptacle provided by Franchisee to be used by Franchisee’s customers for the containment and disposal of recyclable material.

“Can” means a receptacle owned by a customer to be used for the containment and disposal of solid waste. A customer’s use of a can requires manual collection service.

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

“City” has the meaning assigned to such term in the preamble, whose address is 125 SW E Street, Madras, Oregon 97741.

“City Council” or “Council” means City’s then-elected or appointed Madras City Council.

“City administrator” means City’s then-appointed city administrator (or his or her designee).

“Compacting” or “compaction” refers to engaging in, or the process of, shredding material or the manual or mechanical compression of material.

“Compensation” means (a) any type of consideration paid for service including, without limitation, rent and the proceeds from resource recovery and any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants, or similar persons as part of rent, (b) the exchange of service between persons, and (c) the flow of consideration from the person owning or possessing the solid waste to the person providing service, or from the person providing service to the person owning or possessing the same.

“Construction and demolition waste” means solid waste resulting from the construction, repair, and/or demolition of buildings, roads, and other structures.

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

“CPI” has the meaning assigned to such term in Section 4.2.2.

“Damage(s)” means any and all costs, claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind and nature whatsoever, including, without limitation, attorney fees.

“Dispose” and/or “disposal” means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of solid waste.

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

“Effective Date” means December 13, 2023, subject to the terms and conditions contained in this Ordinance.

“Environmental law(s)” means any federal, state, and/or local statute, regulation, and/or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, and/or the environment.

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

“Franchisee” has the meaning assigned to such term in the recitals, whose address is 1778 NW Mill Street, Madras, Oregon 97741.

“Franchise fee(s)” has the meaning assigned to such term in Section 5.1.

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

“Gross revenue(s)” means all revenues derived from Franchisee’s provision of solid waste management for solid waste and/or recyclable materials within City, less net uncollectables.

“Hazardous waste” means any hazardous waste as defined in ORS 466.005, as amended.

“Infectious waste” means any infectious waste as defined in ORS 459.386, as amended.

“Late charge” has the meaning assigned to such term in Section 12.6.

“Late fee” has the meaning assigned to such term in Section 12.6.

“Law(s)” means all applicable federal, state, and local restrictions, declarations, statutes, orders, laws, rules, regulations, codes, and ordinances, including, without limitation, any City ordinances and regulations, environmental laws, and any laws concerning or affecting the provision of solid waste management services, all as now in force and/or which may hereafter be amended, modified, enacted, and/or promulgated.

“Ordinance” has the meaning assigned to such term in the recitals.

“Original franchise” has the meaning assigned to such term in the recitals.

“ORS” has the meaning assigned to such term in Section 2.4(k).

“Placed for collection” means to put solid waste, recyclable material, and/or yard debris out for collection by Franchisee, as provided in this Ordinance.

“Putrescible material(s)” means organic materials that can decompose, which may create foul-smelling and/or offensive odors and/or products.

“Rate schedule” has the meaning assigned to such term in Section 4.1.

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

“Recyclable material(s)” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“Recycling” means any process, including, without limitation, mixed recycling, by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity. As used in this Ordinance, “recycling” includes the collection, transportation, and storage of solid waste done to place the solid waste in the stream of commerce for recycling or resource recovery.

“Representative(s)” means the affiliates, directors, officers, shareholders, managers, members, employees, contractors, agents, representatives, and/or volunteers of the identified person.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste, including, without limitation, reuse, recycling, and other material recovery or energy recovery of or from solid waste.

“Reuse” means the return of waste into the economic stream, to the same or similar use or application without change in the waste’s identity.

“Right-of-way(s)” means the public streets, alleys, avenues, thoroughfares, highways, places, and grounds located within City which are owned and controlled by City.

“Solid waste(s)” means all useless or discarded putrescible and non-putrescible materials, including, without limitation, the following: (a) garbage, rubbish, refuse, ashes, and/or swill; (b) newsprint or wastepaper; (c) corrugated or cardboard; (d) residential, commercial, industrial, construction, demolition, governmental, and/or institutional wastes; (e) discarded or abandoned vehicles or parts; (f) discarded home or industrial appliances; (g) equipment or furniture; (h) manure, vegetable, or animal solid and semi-solid wastes; (i) dead animals; and (j) infectious waste. “Solid waste” does not include (x) hazardous waste, (y) sewage sludge and septic tank and cesspool pumpings or chemical toilet wastes, and/or (z) reusable “beverage containers” as defined under ORS 459A.700.

“Solid waste management” means the collection, transportation, transfer, storage, treatment, utilization, processing, reuse, recycling, special service, disposal of, and/or resource recovery from solid waste (including services necessary to provide solid waste management).

“Solid waste management service(s)” or “services” means the provision of solid waste management.

“Source separated” means the segregation or separation, by the waste generator, of materials into different containers for the purpose of additional sorting or processing those materials for recycling, recovery, or reuse in order to return them to economic markets.

“Source separated recyclables” means recyclables that have been separated from the solid waste stream at the source of generation for recycling purposes and that are not mixed with solid waste other than residual solid waste.

“Transfer” means any transfer and/or conveyance, including, without limitation, any sale, assignment, mortgage, lease, sublease, lien, license, conveyance, and/or encumbrance, whether directly, indirectly, voluntarily, involuntarily, or by operation of law. The term “Transfer” includes the sale, assignment, encumbrance, or transfer – or series of related sales, assignments, encumbrances, and/or transfers – of fifty percent (50%) or more of the shares, membership units, and/or other ownership interest of Franchisee, regardless of whether the sale, assignment, encumbrance, and/or transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence.

“Transfer station” means any area designated by Jefferson County as a solid waste transfer station.

“Waste(s)” means any material that is no longer wanted by or is no longer usable by the generator, producer, or source of the material, which material is to be disposed of or to be resource-recovered by another

person. Even though materials which would otherwise come within the definition of “waste” may, from time to time, have value and, thus, be resource-recovered, does not remove them from this definition. Source-separated materials are “waste” within this definition.

Exhibit A
Franchisee Acceptance

The forgoing Ordinance No. 981 adopted by City of Madras on November 14, 2023, consisting of 18 pages, which includes this acceptance, schedules, and other attachments, is approved, accepted, and agreed upon by Owanjay Services, Inc., an Oregon corporation d/b/a Madras Sanitary Service.

Owanjay Services, Inc.,
an Oregon corporation d/b/a Madras Sanitary Service

By: Melanie Widmer, President

Schedule 4.1
Rate Schedule

Franchisee will not charge more than the following identified rates for its provision of the franchised services under this Ordinance:

[attached]

Current Monthly Madras Rates (as of November, 2023. Last revised October, 2018)

32 gallon cart

Weekly	\$22.36
Every other week	\$12.30
Monthly	\$9.63
When Out	\$10.11 per pick up

64 gallon cart

Weekly	\$37.48
Every other week	\$21.44
Monthly	\$11.56
When Out	\$11.56 per pick up

95 gallon cart

Weekly	\$50.81
Every other week	\$28.55
Monthly	\$14.45
When Out	\$15.17 per pick up

{For carry-out service: additional \$4.30 for 32 gal.; \$7.50 for 64 gal.; \$8.30 for 95 gal. Per month}

1 yard container

1 X Week	\$108.18
2 X Week	\$216.36
3 X Week	\$324.54
4 X Week	\$432.72
5 X Week	\$540.90
1 X Month	\$27.05
On Call or Every Other Week	\$27.05 per dump

{Rent is 8.50 per month or double if it isn't dumped that month}

1.5 yard container

1 X Week	\$153.99
2 X Week	\$307.97

3 X Week	\$461.96
4 X Week	\$615.94
5 X Week	\$769.93
1 X Month	\$38.50
On Call or Every Other Week	\$38.50 per dump

{Rent is 10.50 per month or double if it isn't dumped that month}

2 yard container

1 X Week	\$197.10
2 X Week	\$394.20
3 X Week	\$591.30
4 X Week	\$788.40
5 X Week	\$985.50
1 X Month	\$49.28
On Call or Every Other Week	\$49.28 per dump

{Rent is 12.50 per month or double if it isn't dumped that month}

20 yard & 30 yard drop box

Set out	\$30.00
Haul fee	\$90.00 (20yd.) \$100.00 (30yd.)
Disposal	\$85.00 per ton
Rent	\$7.00 per day after first 48 hours, or over the weekend.

(Reduced rent on permanent boxes: \$180 per month or \$55.00 per month if two or more dumps per month)