

ORDINANCE NO. 743

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, GRANTING A FRANCHISE TO UNIVERSITY PLACE REFUSE SERVICE, INC. TO PROVIDE SOLID WASTE AND RECYCLING COLLECTIONS SERVICES

WHEREAS, the City Council desires to provide University Place citizens with the solid waste and recycling collection services; and

WHEREAS, University Place Refuse Service, Inc. is capable of providing such services to University Place; and

WHEREAS, it is in the public's interest to retain a locally based company to provide such services within the City; and

WHEREAS, University Place Refuse Service, Inc. currently holds a franchise for solid waste services and the City and University Place Refuse Service believe it to be mutually advantageous to execute a new franchise agreement;

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adopting a New Franchise Agreement with University Place Refuse Service, Inc. University Place Refuse Service, Inc., is hereby granted a franchise agreement to provide for the collection and disposition of solid waste, recyclable materials, and yard waste as set forth in the Solid Waste Franchise Agreement Between the City of University Place and University Place Refuse Service, Inc, in the form attached hereto and incorporated herein by reference.

Section 2. Execution of Documents. The proper officials are authorized to execute any and all appropriate documents to effectuate this Ordinance and accompanying franchise on behalf of the City of University Place.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances by a court of competent jurisdiction shall not be affected.

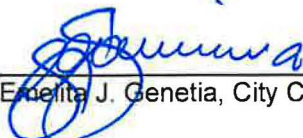
Section 4. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the franchisee and permit holder.

Section 5. Publication and Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall be effective on five (5) days after such publication.

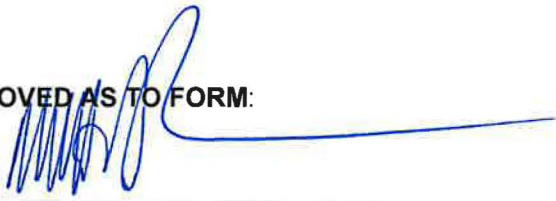
PASSED BY THE CITY COUNCIL ON FEBRUARY 1, 2021.


Caroline Belleci, Mayor

ATTEST:


Ederita J. Genetia, City Clerk

APPROVED AS TO FORM:



Matthew S. Kaser, City Attorney

Publication Date: 02/03/21

Effective Date: 02/08/21

UNOFFICIAL DOCUMENT

UNOFFICIAL DOCUMENT

AN AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE,
WASHINGTON, AND UNIVERSITY PLACE REFUSE SERVICE, INC., GRANTING
UNIVERSITY PLACE REFUSE A NEW FRANCHISE THROUGH DECEMBER 31,
2035 FOR COLLECTION AND DISPOSITION OF SOLID WASTE, RECYCLABLE
MATERIALS, AND YARD WASTE, REVOKING THE PRIOR FRANCHISE
AGREEMENT BETWEEN THE PARTIES.

**AN AGREEMENT BETWEEN THE CITY OF UNIVERSITY PLACE,
WASHINGTON, AND UNIVERSITY PLACE REFUSE SERVICE, INC.,
GRANTING UNIVERSITY PLACE REFUSE A NEW FRANCHISE THROUGH
DECEMBER 31, 2035 FOR COLLECTION AND DISPOSITION OF SOLID
WASTE, RECYCLABLE MATERIALS, AND YARD WASTE, REVOKING THE
PRIOR FRANCHISE AGREEMENT BETWEEN THE PARTIES.**

This solid waste collection contract is entered into by and between the City of University Place, a municipal corporation of the State of Washington ("City"), and University Place Refuse Service, Inc., a Washington corporation (the "Company") to provide for collection of Garbage, Compostables, and Recyclables as provided by RCW 35A.47.040.

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

Section 1. RECITALS.

- 1.1. Before incorporation of the City on August, 31, 1995, the Company handled the collection, hauling and transportation of solid waste, recyclable materials and yard waste for the individuals and businesses that are now residents of the City under its Certificate of Convenience and Necessity ("G Certificate"). The G Certificate was issued by the Washington Utilities and Transportation Commission ("WUTC").
- 1.2. The City desires the Company to continue to provide such services through this Agreement with the City and the parties wish to enter into this Agreement to define the rights, responsibilities and obligations relating thereto.
- 1.3. The City and the Company agree to revoke the prior Franchise Agreement that would expire under its terms on December 31, 2025 and substitute in its place a new Franchise Agreement.
- 1.4. The Company is qualified to provide solid waste, yard waste and recyclable collection services in accordance with the terms of this Agreement.
- 1.5. The Company is granted terms in this Agreement to provide for reliable, environmentally sound, and timely solid waste, yard waste and recyclable collection services to City residents and businesses. This Agreement constitutes a grant of an exclusive City franchise to the Company within the geographic area further defined herein and full satisfaction of the City's obligations under RCW 35A.14.900.

Section 2. DEFINITIONS. The following terms shall have the following definitions for the purposes of this Agreement.

defined in this Agreement, which are: newspaper, cardboard, mixed paper, aluminum and metal containers, and plastic. Glass is not included, and must be taken to a drop-off recycling site to be recycled. "Co-mingled Recycling" may also be referred to as "single stream recycling."

- 2.14. "Compacted Material" means material which has been compressed by any mechanical device either before or after it is placed in the receptacle handled by the Company.
- 2.15. "Compactor Disconnect/Reconnect Charge" means a flat fee established by the Company for the service of disconnecting a compactor for a drop box or container prior to taking it to be dumped and then reconnecting the compactor when the drop box or container is returned to the customer's site.
- 2.16. "Container" means a detachable container that is left at a customer's premises and emptied into the collector's truck and is lifted by mechanical means.
- 2.17. "Curb or Curbside" means a location within five (5) feet of the drivable portion of a street, alley or roadway, as determined by the Company, for the purpose of acceptable placement of solid waste, recycling or yard waste collection containers.
- 2.18. "Disposal fee" is the rate charged for disposal of Solid Waste. This rate shall also include taxes and associated costs for the disposal of Solid Waste.
- 2.19. "Designated Disposal Site" means the disposal facility to which the Company is directed by the City from time to time in accordance with Section 6.2.
- 2.20. "Drop Box" means a container that is placed on the Company's truck by mechanical means, hauled to a disposal site and returned to customer's premises.
- 2.21. "Drop-off Recycling Site" means a location that the City and the Company have mutually agreed upon for the Company to provide and maintain one or more drop boxes, containers, carts, totes, bins, or other containers for the use of City residents to bring and deposit recyclable materials.
- 2.22. "Drum" means a metal container of approximately 50-gallon capacity, generally used for oils or solvents. Maximum weight not to exceed 45 pounds when filled.
- 2.23. "Franchise Area" means the Service Area identified in Paragraph 3.4 *infra*.
- 2.24. "Gate Charge" means a flat fee charged for opening, unlocking or closing gates in order to pick up solid waste.

- 2.38. "Plastic" for recycling means plastic bottles such as milk jugs, soda containers, detergent and shampoo bottles, etc. with neck or openings smaller than the base. Plastic tubs, buckets, bags or any other plastic items not meeting this definition are not accepted. Plastic bottles containing automotive fluids or other hazardous materials are not accepted.
- 2.39. "Recyclable Materials" means those recyclable items defined in RCW 70A.205.015(18) designated by the City to be picked up in the recycling program, which items are limited to glass, aluminum, metal containers, mixed paper, cardboard and newspaper.
- 2.40. "Recycling Bin, Cart, Toter, or Container" means a bin or container specifically designed or designated for the collection of recyclables.
- 2.41. "Recycling Ordinances" means University Place Municipal Code Sections 12.20.060 (A)(curbside program), 12.20.060 (B) (multi-family program) and 12.20.070 (yard waste program).
- 2.42. "Solid Waste" means those wastes defined in RCW 70A.205.015(22), whether the source be residential, commercial, industrial or otherwise, but shall not include Recyclable Materials and Yard Waste, as those terms are defined herein and shall not include dangerous or hazardous wastes regulated under chapter 70.105 RCW.
- 2.43. "Special Pickup" means a pickup requested by the customer at a time other than the regularly scheduled pickup time, but which does not involve the dispatch of a truck. If a special dispatch is required, time rates will apply.
- 2.44. "Temporary Service" means a service that is required for a period of 90 days or less in conjunction with containers and drop boxes. Temporary service rates are not to be used for the first 90 days of service when a customer requests, and the Company provides, service for more than 90 days.
- 2.45. "Toter" means a wheeled plastic container. May also be referred to as a cart. Type and size to be defined in rate items.
- 2.46. "TPCHD" means Tacoma-Pierce County Health Department. In the event that the TPCHD is dissolved or disbanded, all references to "TPCHD" shall refer to the successor organization providing public health services under Title 70 RCW.
- 2.47. "Unit" means: (1) a can made of durable, corrosion-resistant, nonabsorbent material, watertight, with a close-fitting cover and two handles. Size to exceed 20 gallons but not to exceed 32 gallons or 4 cubic feet. Cannot weigh more than 45 pounds when filled or more than 12 pounds when empty; and (2) where agreeable between Company and customer (and where allowable under local ordinance), a box, carton, cardboard barrel or other suitable container may be

4.2 The term of this Agreement shall commence at 12:01 a.m. on the day following the Agreement Date and shall expire on December 31, 2035 ("Agreement Term").

4.3 Provided that the Company is not in default, the parties may extend this Agreement for a single extension of no more than five (5) years in duration, with said extension expiring on December 31, 2040. Any such extension shall be under the terms and conditions of this Agreement, as amended from time to time by the City and the Company.

4.4 The City and the Company will meet in 2033 or thereafter to discuss the potential for extending the Agreement Term or entering into a new agreement. In any event, any decision by the parties to extend the Agreement Term or enter into a new agreement will be made by December 31, 2035.

Section 5. ANNEXATION.

5.1. If the City annexes an area in which, before annexation, an entity other than the Company has operated under a franchise, permit or license to collect and transport Solid Waste, this Agreement and the rights and obligations of the Company hereunder shall apply and become effective with respect to such annexed area(s) immediately upon the earlier of (a) the expiration of any continuation franchise granted by the City under RCW 35A.14.900 or (b) the purchase by the City of the facilities or business of the entity holding the pre-annexation franchise, permit or license.

5.2. If (a) the City annexes an area not previously covered by any such franchise, permit or license; (b) the City annexes areas within which the Company has an existing WUTC permit or other franchise for garbage or refuse collection and removal; or (c) the Company acquires an area within the City currently served by a different contractor, this Agreement shall apply and become effective with respect to such annexed or acquired area immediately upon the City's annexation or the Company's acquisition of such area.

5.3. The Company agrees, in consideration for this Agreement, that the Company's G Certificate right of franchise, if any, applicable to any annexed areas under Section 5.2 or otherwise, shall be deemed canceled on the effective date of the annexation and that the Company shall service the newly-annexed areas under this Agreement.

5.4. The Company waives any and all claims or rights for compensation or damages under RCW 35A.14.900, as it may be amended or replaced from time to time, or pursuant to any other law or authority in effect on the Agreement Date from the City, its agents, officers or assigns, arising from the cancellation of any right of franchise resulting from the City's initial incorporation or any subsequent annexations during the Agreement Term and during the term of the prior Franchise Agreement between the City and the Company.

Recyclable Materials the customer prepares in the following manner and then places in the bins:

7.2.1. Aluminum – drain contents and flatten if possible, then place in the co-mingled recycling bin.

7.2.2. Glass – place glass jars and bottles only, of any color, loose into glass-only recycling bins provided for by Company and/or other designated glass-only recycling locations in the City. All jars and bottles must be unbroken, rinsed and placed in the bin carefully. It is not necessary to remove labels. Not accepted: plate glass, window glass, mirrors, light bulbs, Pyrex or other kitchen cookware.

7.2.3. Tin Cans – remove paper labels, rinse clean to avoid attracting insects or animals. Remove tops and bottoms (if possible), place inside can and flatten. Not accepted: clothes hangers, aerosol cans or scrap metal.

7.2.4. Mixed Paper – Cardboard must be flattened when placed in the co-mingled recycling bin.

7.2.5. Newspaper – Only newspaper and catalogs made of newsprint may be included.

7.2.6. Plastic Bottles – Remove lids, empty completely, rinse and discard.

The parties may agree to modify the nature of these materials and the processing thereof by agreement and without the necessity of amending this Franchise Agreement.

7.3 Recyclable Materials.

7.3.1. Yard Waste collected within the City by the Company shall be properly disposed of or marketed by the Company in accordance with applicable laws and regulations. The Company becomes the owner of Recyclable Materials and Yard Waste when such material is placed into containers provided by the Company at curbside for collection or, if the material is not placed at curbside, when the Company or its personnel receives such Recyclable Materials or Yard Waste. The Company may market or dispose of Recyclable Materials or Yard Waste in any manner the Company deems to be economically feasible. The Company shall be responsible for all marketing and sale of Recyclable Materials or Yard Waste collected hereunder and shall be entitled to all proceeds therefrom.

7.3.2. Recyclable Materials collected by the Company shall not be disposed of in a landfill unless the Company has considered other alternatives and, after good faith efforts to locate a market, has determined that such disposal is the only economical way to avoid a monetary loss. If the Company finds it

9.5. When the Company changes the pickup date for its service area, or a portion of its service area, all customers in the affected area must be notified of the change by mail, personal contact, or by a notice being affixed to their solid waste can in advance of the implementation of the new pickup schedule.

9.6. For regularly scheduled service, when pickup is missed due to the Company's observance of a holiday, the Company will provide service on an alternate day at no additional charge to the customer. A list of the holidays observed by the Company is shown below:

New Year's Day
Thanksgiving Day
Christmas Day

There is no pickup on these three holidays and all regularly scheduled pickups will be one day late for the balance of the week.

Section 10. SERVICE.

10.1. The Company may refuse to pick up materials from points where, because of the condition of the streets, alleys or roads, it is impractical or dangerous to persons or property to operate vehicles.

10.2. The Company may refuse to drive onto private property when, in the Company's judgment, driveways or roads are improperly constructed or maintained or without adequate turn-arounds or have other unsafe conditions.

10.3. The Company will not be required to enter private property to pick up material while an animal considered or feared to be vicious is loose. The customer will be required to confine the animal on pickup days.

10.4. Any pickup may be missed due to weather or road conditions. If the items(s) missed is (are) taken on next pickup, no credit will be given.

10.5. Other than to offer reasonable care, the Company assumes no responsibility for articles left on or near cans or units.

10.6. Where the Company is requested to provide service, and damage occurs to a customer's driveway due to reasons not in control of the Company, the Company will assume no responsibility.

10.7. The Company reserves the right to reject pickup of a stationary packer or drop box which, upon reasonable inspection:

- (a) appears to be overloaded;
- (b) would cause applicable vehicle load limitation to be exceeded, or,

16.1. The Company shall have full responsibility for billing and collection from customers all fees relating to the collection, transportation and disposal of Solid Waste, Recyclable Materials and Yard Waste under this Agreement, including determination of the timings of billings and the billing periods. Any customer who has not remitted required payments within 45 days after the date of billing may be notified by the Company that service may be discontinued 15 days after the date of notice if payment is not made before that time. The Company shall give customers notice of a right to a hearing regarding disputed bills before a designated Company official, and if a customer requests a hearing before the end of the 15-day period, service shall not be discontinued until the dismissal or conclusion of the hearing. The Company in its reasonable discretion may determine the date and time for the hearing, during its regular business hours, and the hearing procedures. If payment is not made by the date of dismissal or conclusion of the hearing, the Company may discontinue service for such customer. Upon payment of the delinquent fees, the Company shall resume collection on the next regularly scheduled collection day. Customer billing shall not be made more than two months before the service provided.

16.2. Rates and charges shall be as described in Exhibit A. All references made in this Agreement to "Exhibit A" of this Agreement shall be understood to mean "Exhibit A as amended," unless specifically noted otherwise.

16.3. Credits. When there has been a transaction that results in a credit being due the customer, the Company must issue a check within 30 days unless other arrangements have been made with the customer. When service is discontinued during a pre-billed period and the customer is due a refund, the following shall apply:

1. All requests for refund will be honored.
2. If the customer provides a forwarding address to the Company or one can be obtained from the post office, the Company will issue a refund check no later than 30 days following the request.
3. The carrier will make an attempt to refund amounts in excess of the amount described in Exhibit A. If the customer does not provide a forwarding address and the U.S. Post Office cannot furnish a forwarding address, the amount may be presumed to be abandoned and subject to the Uniform Unclaimed Property Act after the lapse of one year.

16.4. Overtime Charges. When a customer requests service during overtime periods, additional charges will apply as described on Exhibit A. Overtime periods include Sundays and the following holidays: New Year's Day, Labor Day, President's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. When a holiday listed above falls on Sunday, it will be observed on the following Monday. When a holiday listed above falls on Saturday, the preceding Friday shall be the legal holiday. Time is to be recorded to the nearest increment of 15 minutes, from the time the Company's vehicle is dispatched from the terminal until the time it returns to the

16.10 Materials Requiring Special Testing and/or Analysis. When the Company or disposal facility determines that testing and/or analysis of solid waste is required to determine whether dangerous or prohibited substances are present, the actual cost for such testing and/or analysis will be paid by the customer.

16.11 Low Income Senior Discounts. The Company will offer a twenty percent (20%) discount to those who (1) are already qualified through the Tacoma Public Utility's Low Income Senior Program (TPU Program); and (2) whose service consists of only a 24- or 48-gallon waste container (and may include recycling and yard waste). If Tacoma Public Utility abandons this program, the parties agree to negotiate substitute criterion comparable to the TPU Program.

Section 17. RATE AND RATE ADJUSTMENTS.

17.1. Base Rates. As compensation for its services hereunder, the Company shall be paid the Base Rates. These rates shall not be adjusted before March 1, 2021.

Rates may be automatically adjusted annually, beginning March 1, 2022. On or by December 15th of each year, starting December 15, 2021, the Company shall submit in writing and electronic form to the City for review and verification a Rate Adjustment Statement, calculating the new rates for the next year. In the event that the Company does not submit a Rate Adjustment Statement by December 15, the rate shall remain the same.

Upon City review and verification, the new rates shall take effect on March 1st of the following year, and Customers shall be notified by January 15th, forty-five (45) days prior to the new rate going into effect. Should ratepayers not receive notification by January 15th, due to missed deadlines by the Company or failure of the City to verify the rates, implementation of the new rates shall be delayed by one month without opportunity for recovery of lost revenue.

Adjustments to the Company's collection service charge shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

17.2 CPI Adjustments.

The Company's collection service charges and miscellaneous fees and Contract options contained in Exhibit A, excluding disposal fees, for each level of service shall be adjusted by one hundred percent (100%) of the annual percentage change in Seattle-Tacoma-Bellevue Metropolitan Area for the U.S. City Average Urban Wage Earners (CPI-U) prepared by the United States Department of Labor, Bureau of Labor Statistics, or a replacement index (the "CPI"). Rates will be adjusted using the most recently available trailing 12 months average CPI -U comparing June to the 12 months preceding. In the event of a decrease in the CPI, the collection service charges, miscellaneous fees and Contract options shall not decrease, unless the CPI decreases by more than one and a half percent (1.5%).

Average Weighted Composite Rate. Each Schedule of Schedules 1 through 5 shall be evaluated independently of the other and if found necessary, all the Company's Adjusted Rates that each such Schedule covers shall be reduced until the Company's Weighted Composite Rate for that Schedule is equal to or below one hundred three percent (103%) of the Pierce County Average Weighted Composite Rate. Adjustments under this Section shall be made after the CPI Adjustment. Adjustments and calculations under this Section shall not include Disposal Fee-related charges, whether charged by the Company or any of the companies identified on Schedules 1 through 5.

17.5 Change in Law or Taxes. If new City, Pierce County, Washington State or Federal taxes are imposed, the rates of existing taxes are changed after the execution date of this Agreement, and the impact of these changes results in increased or decreased Company costs in excess of ten thousand dollars (\$10,000) annually, other than taxes associated with Disposal Fees, the Company and City shall enter into good faith negotiations to determine whether compensation adjustments are appropriate and if so, to determine the amount and the method of adjustment. Any adjustment in Company charges should coincide with the annual rate adjustment process described in Section 17.1 but shall not be considered an automatic rate adjustment and requires Council approval.

17.6 Notice to Customers. The Company shall provide notice to its customers of any change to its Rates and shall pay for notice of these changes as provided in RCW 35A.21.152. The Company, however, is not obligated to pay for the Publication of the Agreement or the publication of any amendment to the Agreement.

17.7. Other Rate Changes. Changes that result in a detrimental change in circumstances or a material hardship for the Contractor in performing this Contract may be the subject of a request by the Company for a rate adjustment, subject to review and approval by the City, at the City's reasonable discretion. Such determination shall be a discretionary act of the City, but will be taken only following consultation with the Company. The Company understands that the City's determination regarding service and rates may be influenced by public health, safety and welfare, law and police regulation, including policies to encourage waste reduction and recycling.

17.8. Truth in Billing. The City and the Company agree that the Base Rates include all of the City Agreement Administration Fees (Section 18) and other fees and charges authorized by law. In addition to the administrative fee, the City or other agency may, from time to time, impose other fees or taxes that shall be assessed and payable as directed by City ordinance or legislation of another governmental agency or jurisdiction. The Company may pass on such fees and taxes to Customers or otherwise separately line-item and charge such fees and taxes to Customers, only to the extent authorized by law. The Company is exclusively responsible for determining whether such fees, taxes and other charges may be charged or passed on to Customers.

20.2. The City and the Company shall jointly design and implement additional collection events, including the annual Spring Clean-UP, Fall Clean-UP, Spring Yard Waste Pick-UP, and Fall Yard Waste Pick-UP. Should the County approach the Company to host a paper shredding event within the City at premises controlled by the Company, the Company will make a good faith effort to consider hosting the event at a location within the City. These events are for the disposal of items not included in the normal collection services provided for in this Agreement. The material types and quantities eligible for these future special collection events and other details and conditions of these events shall be jointly discussed and agreed to by the Company and the City after considering the best interests of the City and its residents and the costs to the Company and the City of the event. Public information for these events shall be a shared responsibility of the City and the Company. The City will provide reasonable access to its newsletter, and publications and other media through which it communicates to the community at no cost to assist in publicizing these events and will assist the Company in staffing appropriate sites (i.e., drop-off sites). The Company shall not seek reimbursement for any cost it incurs from the planning and implementation of the annual Spring Clean-UP, Fall Clean-UP, Spring Yard Waste Pick-UP, and Fall Yard Waste Pick-UP.

20.3 On the first Saturday of each month, the Company shall make available a location to drop off oversize, bulky or other solid waste. This service shall be charged in the same manner to the residential customers of the Company as the Company charges for items dropped off by the Customer during the week. Nothing in this Agreement, however, is intended to preclude the Company from expanding the scope of this service to those not otherwise eligible to receive this service and charging those entities a reasonable fee. Where either (a) the first Saturday of the month or (b) where the preceding Friday or following Monday to the first Saturday is a state legal holiday as identified in RCW 1.16.050, then the Company may identify an alternative date to supply this service.

20.4 The Company shall offer an on-call service to haul Bulky Waste at no charge to its residential customers in good standing with the Company. This service may be offered once per year and shall be limited to no more than five (5) bulky items per customer. For the purposes of this Section, a residential customer does not include those whose service is billed under a commercial account. Company may place reasonable limitations on the nature of items accepted which pose a hazard (e.g., gasoline, oil, asbestos) and may, in those instances where the Company incurs a charge for the disposal of the item (e.g., items containing a compressor such as a freezer) assess the charge shown on Exhibit A, discounted by twenty percent (20%). Company and the City further agree, that due to service capacity that they may impose an aggregate annual limit on the number of customers receiving this service, not to be below 300 annually.

Section 21. COMPANY PLANNING ASSISTANCE. The Company shall, upon request and without additional cost, make available either to the City or the property owner, planning assistance on new construction or major remodeling of buildings and structures within City limits with respect to the design and planning of garbage and

records delivered to the City in strictest confidence and shall not disclose such information except to the extent reasonable as required by applicable laws without the prior written consent of the Company. The Company hereby indemnifies and holds harmless the City from all costs, expense and liability, including attorney fees, that may arise from the City's nondisclosure of such information because of the Company's failure to give its written consent for disclosure.

Section 25. INDEMNIFICATION.

25.1. The Company's Indemnification of the City.

The Company shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Company's acts, errors or omissions, or from the conduct of Company's business, or from any activity, work or thing done, permitted, or suffered by Company arising from or in connection with this Franchise Agreement, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Company and the City, its officers, officials, employees, and volunteers, the Company's liability hereunder shall be only to the extent of the Company's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Company's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

25.2. Claims Subject to Indemnification. The term "claims" as used in this Section means all claims, lawsuits, causes of action, damages, penalties, charges, costs, expenses, judgments, losses, liabilities of any character or kind, including attorney fees (including those fees incurred to establish the City's right to indemnification) and other legal actions and proceedings of any nature, whether or not asserted in a judicial forum, including but not limited to claims involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by the City, the Company or any other person and all property owned or claimed by the City, the Company, any affiliate of the Company or any other person) in any way connected with any of the following:

25.2.1. The performance or nonperformance of any provision or requirement of this Agreement by the Company, its officers, employees, subcontractors, agents or servants;

25.2.2. Any act or omission of the Company, its officers, employees, subcontractors, agents or servants at any facilities (other than any

Section 26. INSURANCE.

A. Insurance Term

The Company shall procure and maintain for the duration of the Agreement and as long as Company has facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Agreement and use of the rights-of-way.

B. No Limitation

The Company's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Company to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Company shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Company's Commercial General Liability insurance policy with respect this Franchise Agreement using ISO endorsement CG 20 12 05 09 if the Franchise Agreement is considered a master permit, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.
2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise Agreement covering losses caused by pollution conditions that arise from the operations of the Company. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Company's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Company's Excess or Umbrella Liability insurance policy.

including endorsements, required in this Agreement and evidence of all subcontractors' coverage.

H. Subcontractors

The Company shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Company-provided insurance as set forth herein, except the Company shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Company shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 2026.

I. Notice of Cancellation

The Company shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

J. Failure to Maintain Insurance

Failure on the part of the Company to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days' notice to the Company to correct the breach, terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

K. City Full Availability of Company Limits

If the Company maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Company, irrespective of whether such limits maintained by the Company are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Company.

L. Company – Self-Insurance

If the Company is self-insured or becomes self-insured during the term of the Franchise Agreement, Company or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Company's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Company or its parent company is responsible for all payments within the self-insured retention; and (iii) Company assumes all defense and indemnity obligations as outlined in the indemnification section of this Agreement.

under the terms of this Agreement, unless the City consents to that transfer. “The transfer of a controlling interest of the Company” shall include, but is not limited to, the transfer of more than 50% of the voting stock or the beneficial ownership of the Company to or from a single entity, unless the City, at the Company’s request, approves that transfer in writing. However, intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of the Company, or transfers to corporations, limited partnerships or any other entity owned or controlled by the Company as of the date of this Agreement, shall not be construed as the transfer of a controlling interest of the Company. If the City determines that the new ownership can adequately and faithfully render the service required in this Agreement for the remainder of the Agreement Term and has the same commitment to the community as does the Company, the City may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Agreement and releasing the previous ownership of all obligation and liability. The new ownership would then be solely liable for any work and/or claims related to this Agreement.

29.2.2. The term “transfer” includes a sale, merger, or change in ownership by operation of law, the issuance of new shares, or conversion of shares without voting rights to voting shares. “Voting stock” means the shares entitled to vote for election of the directors of the corporation.

29.2.3. Notwithstanding the requirements above in this Section 29, the Company shall have the right to transfer interests in the beneficial ownership of the Company, and/or to assign this Agreement without City’s consent so long as the Company (and/or its transferee or assignee) remains controlled 51% or more, directly or indirectly, by University Place Refuse Service, Inc.

29.2.4. For purposes of this subsection 29.2, control by University Place Refuse Service, Inc., means control directly or indirectly by any or all of:

(a) Those natural persons who currently control University Place Refuse Service, Inc. as of December 31, 2020;

(b) Spouses or surviving spouses of those persons described in subsection 29.2.1;

(c) Lineal descendants of those persons described in subsection 29.2.1 (adopted children shall be deemed lineal descendants for purposes of this section);

(d) A trust, estate, corporation, limited partnership, limited liability company, voting trust or other entity controlled by, or the beneficiaries, shareholders or members of which are persons described in subsection 29.2.4(a)-(c), above; or

Section 33. DEFAULTS; FAILURE TO PERFORM CONTRACTUAL OBLIGATIONS.

33.1. Company Defaults Involving Disposal. If the Company is notified that it has violated the provisions of this Agreement relating to the disposal of Solid Waste, the Company shall, to the extent it disposed of such Solid Waste, immediately upon receipt of notice from the City, take steps to remedy the violation and to prevent further violations. Such action may include removing such Solid Waste and disposing of it at an approved facility. The Company shall indemnify and hold the City harmless for the cost of (a) any cleanup of a disposal site, required pursuant to state or federal law, when the Company has disposed of Solid Waste at such site in violation of this Agreement; and (b) the removal and/or disposal of any Solid Waste disposed of by the Company in a location that is not authorized under this Agreement.

33.2. Other Company Defaults. The Company shall be in default of this Agreement if it violates any provision of this Agreement. In addition to any rights set forth elsewhere in this Agreement, the City reserves the right to declare the Company to be in default of this Agreement if:

33.2.1. The Company fails to commence collection or fails to provide a substantial portion of service under this Agreement for more than five business days after performance is due;

33.2.2. The Company fails to obtain and maintain any permit required by the City or any federal, state or other regulatory body in order to perform the services required under this Agreement and as a result, the Company is prohibited from performing its obligations under this Agreement; or

33.2.3. The Company is in such noncompliance with this Agreement that it creates a serious hazard to public health or safety.

In the event of default, other than a default described in subsections 33.2.1, .2 or .3, the City shall give the Company 45 calendar days' written notice of its intent to exercise its rights under Section 33.3, stating the reasons for such action. With respect to a default described in subsections 33.2.1, .2 or .3, the City shall give the Company 48 hours' written notice of its intent to exercise its rights under Section 33.3, stating the reasons for such action. If the Company cures the stated reason within the applicable cure period or if the Company initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 33.3 for the particular incident. If the Company fails to cure the stated reason within the applicable cure period, or if the Company does not undertake efforts satisfactory to the City to remedy the stated reason, the City may, without impairing any of its rights hereunder, exercise its rights under Section 33.3.

33.3 City Remedies. If the Company is in default under this Agreement, and after any cure period, the City may pursue any or all of the following:

received by confirmed facsimile transmission or three business days after deposit in the U.S. Mail.

Section 35. RELATIONSHIP OF PARTIES. The City and the Company intend that an independent City/Company relationship be created by this Agreement. Responsibility for the implementation of services lies solely with the Company. No agent, employee, servant or representative of the Company shall be deemed to be an employee, agent, servant, or representative of the City.

Section 36. GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action brought under this Agreement shall be in Pierce County, Washington.

Section 37. SEVERABILITY. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

Section 38. NO THIRD-PARTY BENEFICIARIES. This Agreement is entered into by the City in its governmental capacity and is not intended nor does it create any third-party beneficiary or other rights in any private person.

Section 39. EXECUTION/AGREEMENT DATE. This Agreement is effective on the Agreement Date and is executed on the date(s) shown below.

CITY OF UNIVERSITY PLACE

Stephen P. Sugg
City Manager

Date

Approved as to Form:

Matthew S. Kaser, City Attorney

Date

UNIVERSITY PLACE REFUSE SERVICES, INC.

Roger Gruener
President

Date