

Sec. 46-63. - Authority.

The city is empowered to contract with one or several third parties to collect and dispose of all garbage, waste, commercial waste, and yard waste generated by the city. In addition, the city may sell franchise rights in garbage collection to third parties.

(Ord. No. 08-03-04, § 1(ch. 17, art. 1, § 2), 3-17-2008; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-64. - Grant of nonexclusive contract.

The city shall hereby grant to companies a nonexclusive contract pursuant to the terms set forth herein to use the public streets, alleys, roads and thoroughfares within the city for the purpose of operating and engaging in the business of collecting and disposing of waste; including, but not limited to, contracting with customers and providing service pursuant to contract therefore, placing and servicing containers, operating trucks, vehicles and trailers, and such other operations and activity as are customary and/or incidental to such business and service.

(Ord. No. 06-11-04, § 2, 11-21-2006; Ord. No. 07-11-54, § 2, 11-15-2007; Ord. No. 08-11-30, § 2, 11-17-2008; Ord. No. 10-11-84, § 2, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-65. - Term.

The term of any agreement shall be for a period of one year beginning on the effective date of the contract execution and terminating on the first anniversary of said date. The company shall begin performance under this contract immediately after the effective date of the contract execution.

(Ord. No. 06-11-04, § 3, 11-21-2006; Ord. No. 07-11-54, § 3, 11-15-2007; Ord. No. 08-11-30, § 3, 11-17-2008; Ord. No. 10-11-84, § 3, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 3 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-65 from "One year in length" to "Term."

Sec. 46-66. - Scope and nature of operation.

- (a) Residential and commercial refuse and waste. The company may collect and deliver for disposal all residential and commercial refuse and waste accumulated within the corporate limits of the city by the company's customers and the words "refuse", "garbage", "trash" and "waste" when used in this article are used for convenience and, unless the context shows otherwise, refer to yard trimmings, recycling, storm debris, garbage, and construction/demolition debris. The company will furnish the personnel and equipment to collect refuse, provide the services described herein, and as contracted for with its customers, in an efficient and businesslike manner.
- (b) Service provided. Company shall provide container, bin and other collection service for the collection of residential and commercial refuse and waste according to the individual customer agreements and applicable city regulations and shall make provision for the special collection of such refuse and waste upon request. The company shall cause or require its equipment, containers and bins to be kept and maintained in a manner to not cause or create a threat to the public health and shall keep the same in a good state of repair.
- (c) Collection operation. Save and except as provided in this section, collection shall not start before 7:30 a.m. or continue after 7:30 p.m. at any location. Company may request variances to this collection period provided that collections: (i) are made in a manner that does not cause or result in loud noise; and (ii) that are made at a location which will not cause the disturbance of persons occupying the premises or neighboring property must first be confirmed prior to the request. All requests for variances of times must be submitted to the city manager, or his designee, and include documentation on the hardship created by the collection operation period. Should such a collection operation variance be granted and the city receives two

complaints about the collection operation in any six-month time period, the city shall verify and substantiate the factual basis for any complaints. Should the complaints be substantiated, the collection operation variance will be revoked. The frequency of collection shall be determined by each individual customer agreement.

- (d) Holidays. The company shall observe such holidays as it, in its sole discretion, determines appropriate. Notification must be given by the company to its customers of the holidays and resulting collection cycles.
- (e) All companies must maintain a local customer service telephone number while conducting business within the city. The telephone number must be publicly listed in a phone book and available through directory assistance. Each company providing trash receptacles, whether commercial or residential, must mark each receptacle with the company's name and telephone number in letters not less than four inches in height. Each company must provide a mechanism to accept, investigate, and respond to customer complaints. Companies are strongly encouraged to use multi-media devices including interactive websites, e-mail, fax, and automated telephone systems. Service calls received by the city as a result of noncompany performance will result in the consideration of revocation of a nonexclusive contract or the city's choice to not renew an existing agreement.
- (f) Any invoice, bill, statement, or other device intended to request remittance by the customer to the company of funds for payment of service shall include at a minimum, the company's telephone number and payment methods available to customers.
- (g) All companies providing residential service or service to residential multi-family units must provide a recycling program to all customers. This program is intended to promote recycling programs throughout the city by reducing the amount of waste landfilled. Commodities may be commingled by the consumer and collected commingled by the hauler. Recycled commodities which must be offered in all programs are as follows: steel and tin cans; aluminum cans, foil, pie pans, plastic items (#1, #2, and #3); cardboard, cereal boxes and any non-waxed paper containers; brown paper grocery bags; newspapers; magazines; telephone books; junk mail; office papers; and school papers. Customers shall be charged for the recycling program by the company regardless of utilization of the service. Haulers are to include this service with their residential rate structure; however, the charge for recycling shall be shown separate from other services provided.
- (h) All companies providing commercial service must offer and promote a recycling program to all customers. This program is intended to promote recycling programs throughout the city by reducing the amount of waste landfilled.
- (i) All companies providing residential service must offer the collection of yard trimmings to all customers. This program is intended to assist in the collection and disposal of grass clippings;

leaves; pine cones and needles; twigs, limbs, and trunks of trees meeting size limitations set by company; bushes, brush, and all other general debris generated from the maintenance of residential yards and lawns.

- (j) It shall be the company's obligation and responsibility to educate all customers on industry trends and best practices relating to solid waste collection, removal, and disposal. Such education programs must consist of the following elements: recycling; holiday schedules; new customer information; and any service related items. All companies have the obligation to inform customers of any non-collected trash or items placed for collection by the customer but not covered under the agreement between the customer and the company. Further, it shall be the company's obligation and responsibility to educate customers on days of collection for each specific service provided. All education and communication between the company and customers should promote the placement of residential collectibles at the curb the night before pick-up. Receptacles, containers, or bagged materials shall not be left at the curb for longer than a 24-hour period.

(Ord. No. 06-11-04, § 4, 11-21-2006; Ord. No. 07-11-54, § 4, 11-15-2007; Ord. No. 08-11-30, § 4, 11-17-2008; Ord. No. 10-11-84, § 4, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-67. - Vehicles to be covered and identified.

- (a) All vehicles used by company for the collection and transportation of refuse shall be covered at all times while loaded and in transit to prevent the blowing or scattering of refuse onto the public streets or properties adjacent thereto, and such vehicles shall be clearly marked with the company's name and telephone number in letters not less than four inches in height.
- (b) Company must provide a comprehensive and proactive driver safety education program which encourages safety on city streets. Such program must be demonstrated and conveyed to the city. Company must comply with all other regulatory agencies, both local, state, or otherwise with respect to commercial vehicle operation within the city. Service calls received by the city as a result of noncompany performance will result in the consideration of revoking a nonexclusive contract or the city's choice to not renew an existing agreement.
- (c) Company must manage collection services delivered within the city to minimize the number of vehicles on city roads. Coordination between haulers and service providers is strongly encouraged to manage service vehicles on residential streets and neighborhoods.
- (d) Should company utilize "scout" trucks to facilitate collection in residential areas where it is not

feasible to use standard collection vehicles, such vehicles must be covered at all times while loaded and in transit should they exceed 30 miles per hour or be driven more than 300 yards on a public street.

(Ord. No. 06-11-04, § 5, 11-21-2006; Ord. No. 07-11-54, § 5, 11-15-2007; Ord. No. 08-11-30, § 5, 11-17-2008; Ord. No. 10-11-84, § 5, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-68. - Regulation of containers.

The company may rent, lease, provide or define specifications for containers to any customer within the corporate limits of the city for refuse storage and collection purposes subject to the following requirements:

- (1) All containers shall be constructed and maintained according to industry practice;
- (2) All containers shall be equipped with stable covers to prevent blowing or scattering of refuse while being transported for disposal of their contents;
- (3) All containers, save and except those being used for the purpose of collecting and storing rubble, building and scrap construction materials, shall be equipped with covers suitable to prevent blowing or scattering refuse and access to the container by animals while the container is at the site designated by customer;
- (4) All containers shall be periodically cleaned, maintained, serviced and kept in a reasonably good state of repair, to prevent the unreasonable accumulation of refuse residues, to avoid excessive odor and harborage for rodents and flies resulting from excessive residues remaining after collection of containers;
- (5) All containers shall be clearly marked with the company's name and telephone number in letters not less than four inches in height;
- (6) All containers shall not be on public rights-of-way and shall be located so as to not interfere, block, obstruct or impede the normal use of any sidewalk, street, alley driveway or fire lane, or to block, obstruct or impede sight distance at street, road or alley intersections;
- (7) All containers, bins, or other collection instruments must be kept free from graffiti, rust, broken and nonoperational parts and pieces, and litter in and around the area; and
- (8) It shall be the responsibility of each company to educate their customers on the regulations of containers and maintain industry standards, policies, and procedures, which promote an aesthetically pleasing environment in and around all refuse and waste

containers and receptacles.

(Ord. No. 06-11-04, § 6, 11-21-2006; Ord. No. 07-11-54, § 6, 11-15-2007; Ord. No. 08-11-30, § 6, 11-17-2008; Ord. No. 10-11-84, § 6, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 6 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-68 from "Container requirements" to "Regulation of containers."

Sec. 46-69. - Disposal of refuse.

The company will deliver all waste collected by it from its customers within the city, except for materials which the company may select for recovery and recycling, to a disposal facility that is permitted by the EPD to accept such refuse and waste. Rules and regulations governing hours of operation and disposal practices at the disposal facility will be observed and followed by the company while engaged in the disposal of refuse pursuant to this article. Any items collected as part of a recycling program must be delivered to a facility where recovery and reuse occurs.

Should any company choose to offload or dispose of materials collected by one vehicle into another for transport to the final disposal facility, company shall make every available effort to perform such refuse transfer on property owned by the company or privately owned property where the company has an agreement with the property owner to perform such activity. In the event any transfer occurs on public land, including streets, alleys, rights-of-ways, roads, thoroughfares, avenues, parkways, expressways, or other areas designed and designated for public travel, company shall make every effort available to clean the area after completion of the transfer to insure the area is maintained at the same or better level than if the area was not used for this activity. In the event the city receives complaints regarding this practice, company shall be required to cease from this activity at the location of the complaint.

(Ord. No. 06-11-04, § 7, 11-21-2006; Ord. No. 07-11-54, § 7, 11-15-2007; Ord. No. 08-11-30, § 7, 11-17-2008; Ord. No. 10-11-84, § 7, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-70. - Contract and rental fees.

Contract fee. The streets, rights-of-way, and public easements to be used by the company in the

operation of its business within the boundaries of the city as such boundaries now exist and exist from time to time during the term of this contract, are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and the city will incur costs to regulate and administer this article. In consideration of such benefits, costs and expenses, the company shall through the term of its contract collect an "infrastructure maintenance fee" equal to five percent of the company's gross receipts to customers within the city (exclusive of sales tax). The term "infrastructure maintenance fee" shall be used on all bills, invoices, or statements sent by any company to a customer under this article. This fee is applicable to haulers that are providing trash and recycling collection to residential accounts as well as haulers serving commercial accounts.

- (1) *Fees paid.* The infrastructure maintenance fee shall be payable quarterly to the city and delivered to the city in conjunction with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the fifteenth day of the second month following the end of the quarterly period for which said payment is due. The quarterly payments shall be due on February 15, May 15, August 15, and November 15 of each year during the term hereof, with the February 15 payment being based upon the company's gross receipts during the calendar quarter ending the prior December 31 and being payment for the rights and privileges granted hereunder for said calendar quarter, the May 15 payment being based upon the company's gross receipts during the calendar quarter ending the prior March 31 and being payment for the rights and privileges granted hereunder for said calendar quarter, the August 15 payment being based upon the company's gross receipts during the calendar quarter ending the prior June 30 and being payment for the rights and privileges granted hereunder for said calendar quarter, and the November 15 payment being based upon the company's gross receipts during the calendar quarter ending the prior September 30 and being payment for the rights and privileges granted hereunder for said calendar quarter. During the implementation of this article, all bills generated by companies after December 1, 2006, shall include the infrastructure maintenance fee. The city shall provide material relating to the education and marketing efforts of the infrastructure maintenance fee as well as provide education and training to company employees to ensure a consistent message is conveyed to constituents of the city. For purposes of verifying the amount of such fee, the books of the company shall at all reasonable times be subject to inspection by the duly authorized representatives of the city. If the infrastructure maintenance fee is not paid by the due date as set forth herein, the company from whom the fee was due shall be assessed and shall pay a late fee in the amount of ten percent of the amount not timely paid. In addition, all amounts otherwise due, including late fees, shall accrue interest at the rate of 1.5 percent per calendar month beginning 30 days after the original due date.

- (2) *No other rental fees.* The contract fee shall be in lieu of any and all other city-imposed rentals or compensation or contract, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, city sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the city) or permits upon or relating to the business, revenue, installations and systems, fixtures, and any other facilities of the company and all other property of the company and its activities, or any part thereof, in the city which relate to the operations of the company pursuant to this article; provided, that this shall not be construed to prevent the company from being required to pay any and all applicable fees and charges in effect from time to time for dumping at a landfill or transfer station.
- (3) *Credit for fees paid.* Should the city not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of contracts, fees, street or alley rentals or charges, easement or ordinance fees or charges aforesaid, then city agrees that it will apply so much of said sums of money paid as may be necessary to company's obligations, if any, to pay any such contract, ordinance charges, other charges, fees, rentals, easement, taxes or charges.
- (4) *Reporting.* Any company providing service pursuant to this article or a resulting contract shall from time to time provide the city with the necessary statistics regarding waste collected and disposed which shall allow the city to comply with state reporting requirements. Such information shall be in the manner and format requested by the city and provide adequate details for the city to maintain compliance with local, state, federal, and all other guidelines relating to solid waste collection, removal, and disposal.
- (5) *Dedicated revenue.* The infrastructure maintenance fee collected by the city under this article shall be dedicated to the following: (i) maintenance of the city's streets, corridors, alleys, thoroughfares, and transportation routes; (ii) administration of contract compliance between customers and companies where service is received as provided in this article; and (iii) collection of litter, trash and hazardous waste materials within the city.

(Ord. No. 06-11-04, § 8, 11-21-2006; Ord. No. 07-11-54, § 8, 11-15-2007; Ord. No. 08-11-30, § 8, 11-17-2008; Ord. No. 10-11-84, § 8, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 8 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-70 from "Fees" to "Contract and rental fees."

Sec. 46-71. - Compliance with law.

The company shall conduct under this article in compliance with the material provisions of all applicable local, state and federal laws, rules and regulations, and with the general specifications contained in this article.

(Ord. No. 06-11-04, § 9, 11-21-2006; Ord. No. 07-11-54, § 9, 11-15-2007; Ord. No. 08-11-30, § 9, 11-17-2008; Ord. No. 10-11-84, § 9, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 9 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-71 from "Compliance with local, state and federal regulations required" to "Compliance with law."

Sec. 46-72. - Insurance provided by company.

- (a) *Minimum coverage requirements.* The company shall maintain throughout the term of its contract, property damage coverage, general liability insurance, and automobile liability insurance for any automobile owned or operated by company, with an insurance company authorized and licensed to do business in the state and acceptable to the city, insuring against claims for liability and damages for the benefit of the city. The insurance shall include the city as an additional insured. General liability coverage insurance under this section shall be a minimum of \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate. Automobile liability insurance under this section shall, at a minimum, have limits of \$1,000,000.00 for each occurrence. Additionally, umbrella coverage of \$1,000,000.00 on both automobile liability insurance and general liability insurance is required.
- (b) *Employer's liability.* If the company is required by state statute, the company shall maintain throughout the term of the contract resulting from this article the requisite statutory workers' compensation insurance, and a minimum of \$100,000.00 employer's liability insurance. Company shall be required to show compliance to this section by submitting documentation of such coverage from an approved carrier licensed in the state, or documentation explaining the exemption from employer's liability insurance should they not meet the state requirements to carry such coverage.
- (c) *Certificate of insurance.* The insurance policy, or policies, obtained by the company in compliance with this section shall be approved by the city manager or his designee in the city manager's or his designee's reasonable discretion, and the certificate of insurance for the insurance policy shall be filed and maintained with the city during the term of the contract

resulting from this article with a copy of the endorsement required under subsection (d) to be attached or made a part of such certificate.

- (d) *Endorsements.* All insurance policies maintained pursuant to this article shall contain the following conditions by endorsement:
- (1) *Additional insured.* The city shall be an additional insured and the term "owner" and "city" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the city and the individual members, officers, employees and agents thereof in their official capacities and/or while acting on behalf of the city.
 - (2) *Other insurance clause.* The policy clause "other insurance" shall not apply to the city when the city is an insured on the policy.
 - (3) *No recourse.* Companies issuing the insurance policies shall not recourse against the city for payment of any premium or assessment.
- (e) *Increase requirements.* The city may choose to amend this article to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry.

(Ord. No. 06-11-04, § 10, 11-21-2006; Ord. No. 07-11-54, § 10, 11-15-2007; Ord. No. 08-11-30, § 10, 11-17-2008; Ord. No. 10-11-84, § 10, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 10 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-72 from "Company to provide insurance" to "Insurance provided by company."

Sec. 46-73. - Indemnification and hold harmless.

The company agrees to indemnify, defend and save harmless the city, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity arising from any negligent act or omission or willful misconduct of the company, or any of its agents, contractors, servants, employees or contractors, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon. Promptly after receipt from any third party by city of a written notice of any demand, claim or circumstance that, immediately or with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "asserted claim") that may result in losses for which indemnification may be sought hereunder, the city shall give written notice thereof (the "claims notice") to the company provided, however, that a failure to give such notice shall not prejudice the city's right to indemnification hereunder except to the extent that the company is actually and materially

prejudiced thereby. The claims notice shall describe the asserted claim in reasonable detail, and shall indicate the amount (estimated, if necessary) of the losses that have been or may be suffered by the city when such information is available. The company may elect to compromise or defend, at its own expense and by its own counsel, any asserted claim. If the company elects to compromise or defend such asserted claim, it shall, within 20 business days following its receipt of the claims notice (or sooner, if the nature of the asserted claim so required) notify the city of its intent to do so, and the city shall cooperate, at the expense of the company, in the compromise of, or defense against, such asserted claim. If the company elects not to compromise or defend the asserted claim, fails to notify the city of its election as herein provided or contests its obligation to provide indemnification under this agreement, the city may pay, compromise or defend such asserted claim with all reasonable costs and expenses borne by the company. Notwithstanding the foregoing, neither the company nor the city may settle or compromise any claim without the consent of the other party; provided, however, that such consent to settlement or compromise shall not be unreasonably withheld. In any event, the city and the company may participate at their own expense, in the defense of such asserted claim. If the company chooses to defend any asserted claim, the city shall make available to the company any books, records or other documents within its control that are necessary or appropriate for such defense.

(Ord. No. 06-11-04, § 11, 11-21-2006; Ord. No. 07-11-54, § 11, 11-15-2007; Ord. No. 08-11-30, § 11, 11-17-2008; Ord. No. 10-11-84, § 11, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 11 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-73 from "Company to indemnify city; defense of suits" to "Indemnification and hold harmless."

Secs. 46-74—46-92. - Reserved.

DIVISION 3. - TERMINATION OF CONTRACT

Sec. 46-93. - Forfeiture and terminating of contract.

- (a) *Material breach.* In addition to all other rights and powers retained by the city under this article or otherwise, the city reserves the right to declare any resulting contract from this article forfeited and to terminate the contract and all rights and privileges of the company hereunder in the event of a material breach of the terms and conditions hereof. A material breach by company shall include, but shall not be limited to, the following:

- (1) *Fees.* Failure to pay the fees set out in section 46-70;
 - (2) *Telephone listings.* Failure to keep and maintain a local telephone listing and office or answering service that is available by phone without long distance charge during regular business hours for service to the public, and which telephone or office shall, at minimum, provide and maintain the following services:
 - a. Coordinate and provide information concerning deposits, payments and accounts to customers and prospective customers;
 - b. Respond to customer and prospective customer questions and issues about billings, accounts, deposits and services;
 - c. Coordination with the city with respect to private sector and public works projects and issues related to or affecting the company's operation; and
 - d. Immediate response, upon request, to police, fire and other emergency situations in which the public health and safety requires action with respect to or assistance regarding company's property.
 - (3) *Failure to provide service.* Failure to materially provide the services provided for in this article;
 - (4) *Misrepresentation.* Material misrepresentation of fact in the application for or negotiation of any contract resulting from this article; or
 - (5) *Conviction.* Conviction of any director, officer, employee, or agent of the company of the offense of bribery or fraud connected with or resulting from the award of a contract from this article.
- (b) *Operation information.* Material misrepresentation of fact knowingly made to the city with respect to or regarding company's operations, management, revenues, services or reports required pursuant to this article.
- (c) *Economic hardship.* Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- (d) *Forfeiture and proceedings.* Any unwarranted and intentional neglect, failure or refusal of the company to comply with any material provision of this article or resulting contract within 30 days after written notice from city setting forth the specific provision and noncompliance, said notice to be mailed to company at its principal place of business by certified mail, return receipt requested, shall be deemed a breach of this article, and the city council, upon notice to company and hearing, may, for good cause declare a contract forfeited and exclude company from further use of the streets of the city under this article, and the company shall thereupon surrender all rights in and under this article and contract.
- (1) *Proceedings.* In order for the city to declare a forfeiture pursuant to subsections (a), (b), (c),

(d), the city shall make a written demand that the company comply with any such provision, rule, order, or determination under or pursuant to this article. If such violation by the company continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the council may take under consideration the issue of termination of the resulting contract from this article. The city shall cause to be served upon company, at least 20 days prior to the date of such a council meeting, a written notice of intent to request such termination and the time and place of the meeting. Notice shall be given of the meeting and issue which the council is to consider.

- (2) *Hearing.* The council shall hear and consider the issue, hear any person interested therein, and shall determine whether or not any violation by the company has occurred.
- (3) *Forfeiture.* If the council shall determine that the violation by the company was the fault of company and within its control, the council may declare the contract forfeited and terminated, or the council may grant to company a period of time for compliance.

(Ord. No. 06-11-04, § 12, 11-21-2006; Ord. No. 07-11-54, § 12, 11-15-2007; Ord. No. 08-11-30, § 12, 11-17-2008; Ord. No. 10-11-84, § 12, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 12 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-93 from "Forfeiture" to "Forfeiture and terminating of contract."

Sec. 46-94. - Transfer, sale or conveyance by company.

The company shall not transfer, assign, sell or convey any rights granted under any resulting contract from this article without the prior approval of the city council; provided that this section shall not apply to vehicles, replacements, maintenance, upgrades or modifications of equipment, machinery, containers and buildings by company for the purpose of maintaining and continuing its operation within the city; and provided further that company may, in its sole discretion and upon written notice to the city, transfer, assign, sell or convey their rights under this article to a wholly owned subsidiary of the company or to an affiliated entity that is under common control with company (i.e., has a common parent entity).

(Ord. No. 06-11-04, § 13, 11-21-2006; Ord. No. 07-11-54, § 13, 11-15-2007; Ord. No. 08-11-30, § 13, 11-17-2008; Ord. No. 10-11-84, § 13, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 13 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-94 from "Transfer, sale or conveyance by company prohibited; exceptions" to "Transfer, sale or conveyance by company."

Sec. 46-95. - Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the assets and property of the company used for and dedicated to providing service pursuant to this article, the company shall notify the city of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place and the provisions of this article governing the consent of the council to such change in control of the company shall apply. Upon the foreclosure or judicial sale, or the leasing of all or a substantial part of the property and assets of the company dedicated to and used for the purposes of providing service pursuant to this article, without the prior approval of the council, the council may, upon hearing and notice, terminate any contract resulting from this article.

(Ord. No. 06-11-04, § 14, 11-21-2006; Ord. No. 07-11-54, § 14, 11-15-2007; Ord. No. 08-11-30, § 14, 11-17-2008; Ord. No. 10-11-84, § 14, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 14 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-95 from "Foreclosure or judicial sale" to "Foreclosure."

Sec. 46-96. - Receivership and bankruptcy.

Cancellation option. The council shall have the right to cancel any contract resulting from this article 120 days after the appointment of a receiver or trustee to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy, other action or preceding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, unless:

- (1) *Trustee compliance.* Within 120 days after his election or appointment, such receiver trustee shall have fully complied with all the provisions of this article and remedied all defaults thereunder; or
- (2) *Trustee agreement.* Such receiver or trustee, within 120 days, shall have executed an agreement, duly-approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this article granted to the company.

(Ord. No. 06-11-04, § 15, 11-21-2006; Ord. No. 07-11-54, § 15, 11-15-2007; Ord. No. 08-11-30, § 15, 11-17-2008; Ord. No. 10-11-84, § 15, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Secs. 46-97—46-115. - Reserved.

DIVISION 4. - ADDITIONAL PROVISIONS

Sec. 46-116. - Retention of city police powers.

The city retains and reserves all of its police powers and the rights, privileges, and immunities that it now has under the law to regulate, patrol and police the streets and public ways within the city, and the granting of any contract as a result of this article shall in no way interfere with the improvements to, or maintenance of, any street, alley or public way, and the rights of the city to use said streets, alleys and public ways.

(Ord. No. 06-11-04, § 16, 11-21-2006; Ord. No. 07-11-54, § 16, 11-15-2007; Ord. No. 08-11-30, § 16, 11-17-2008; Ord. No. 10-11-84, § 16, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-117. - Amendments of city ordinances and regulations.

The city reserves the right and power, pursuant to its police power, after due notice to company, to modify, amend, alter, change or eliminate any rules, regulations, fees, charges and rates of the city, and to impose such additional conditions, that are not inconsistent with the rights granted by this article, upon the company and all persons, firms or entities of the same class as the company, as may be reasonably necessary in the discretion of the city council to preserve and protect the public, health, safety and welfare and/or ensure adequate service to the public.

(Ord. No. 06-11-04, § 17, 11-21-2006; Ord. No. 07-11-54, § 17, 11-15-2007; Ord. No. 08-11-30, § 17 11-17-2008; Ord. No. 10-11-84, § 17, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 17 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-117 from "Reservation to amend city ordinances and regulations" to "Amendments of city ordinances and regulations."

Sec. 46-118. - Taxes.

The company shall promptly pay all lawful ad valorem taxes, levies and assessments, if any, that are imposed upon the company. Absent an administrative or judicial challenge, or appeal, the failure to pay any such tax, levy or assessment shall be a breach of this article.

(Ord. No. 06-11-04, § 18, 11-21-2006; Ord. No. 07-11-54, § 18, 11-15-2007; Ord. No. 08-11-30, § 18, 11-17-2008; Ord. No. 10-11-84, § 18, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 18 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-118 from "Payment of taxes required" to "Taxes."

Sec. 46-119. - Public necessity.

The council hereby finds and declares that the public welfare, convenience and necessity require the service which is to be furnished by the company.

(Ord. No. 06-11-04, § 19, 11-21-2006; Ord. No. 07-11-54, § 19, 11-15-2007; Ord. No. 08-11-30, § 19, 11-17-2008; Ord. No. 10-11-84, § 19, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 19 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-119 from "Disposal of solid waste deemed public necessity" to "Public necessity."

Sec. 46-120. - No suspension of laws.

All provisions of the ordinances of the city as now existing or as may be amended from time to time, and all provisions of the statutes of the state applicable to general law cities shall be a part of any resulting contract from this article as fully as if the same had been expressly stated herein, and said the city retains and may exercise all of the governmental and police powers and all other rights and powers not directly inconsistent with the terms, conditions and provisions of this article.

(Ord. No. 06-11-04, § 22, 11-21-2006; Ord. No. 07-11-54, § 22, 11-15-2007; Ord. No. 08-11-30, § 22, 11-17-2008; Ord. No. 10-11-84, § 22, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 22 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-120 from "City ordinances and state law considered part of contract" to "No suspension of laws."

Sec. 46-121. - Peaceful employment.

From and after the effective date of this article, the city and the company shall be and are hereby authorized and entitled to act in reliance upon the terms, conditions and provisions of this article and any resulting contract and, subject thereto, the company shall collect rates for service, operate and conduct its business and work within the city, and enjoy the benefits and privileges of this article during the term hereof.

(Ord. No. 06-11-04, § 23, 11-21-2006; Ord. No. 07-11-54, § 23, 11-15-2007; Ord. No. 08-11-30, § 23, 11-17-2008; Ord. No. 10-11-84, § 23, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 23 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-121 from "City and company to rely on this chapter" to "Peaceful employment."

Sec. 46-122. - Endorsements and records.

The city clerk is directed to make endorsements as appropriate over his/her official hand and the seal of the city on the form provided at the conclusion of this article, for the public record and convenience of the citizens, of the date upon which this article is finally passed and adopted.

(Ord. No. 06-11-04, § 25, 11-21-2006; Ord. No. 07-11-54, § 25, 11-15-2007; Ord. No. 08-11-30, § 25, 11-17-2008; Ord. No. 10-11-84, § 25, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Sec. 46-123. - Acceptance by company.

Within 30 days after the passage of this article, or within 30 days of establishing a business within the corporate city limits, all companies operating a residential or commercial refuse waste service shall file with the city its acceptance of the terms and provisions of this article, and request for contract. The acceptance and request for contract shall be in writing in a format provided by the city substantially as follows:

City of Milton

2006 Heritage Walk

Milton, GA 30004

_____ (the "Company"), acting by and through an officer who is acting within its official capacity and authority, hereby accepts the City of Milton Solid Waste Ordinance to operate a refuse and solid waste collection and disposal system within the City as said Ordinance is set forth in the City of Milton Code of Ordinances as Part II, Chapter 46 - Solid Waste, Article III - Collection Services, which Ordinance is hereby incorporated herein by reference and as it may be amended from time to time. The Company agrees to be bound and governed by each term, provision and condition of the Ordinance, to accept and to give the benefits provided by the Ordinance, and to perform each service and duty set forth and provided for in the Ordinance in a businesslike and reasonable manner and in compliance with the Ordinance.

Company: _____

By: _____

Printed Name: _____

Title: _____

(Ord. No. 06-11-04, § 26, 11-21-2006; Ord. No. 07-11-54, § 26, 11-15-2007; Ord. No. 08-11-30, § 26, 11-17-2008; Ord. No. 10-11-84, § 26, 11-15-2010; Ord. No. 11-11-117, §§ 1—5, 11-21-2011; Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 14-12-229, § 5(Exh. A), 12-1-2014; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-04-394, § 1, 4-22-2019; Ord. No. 19-12-411, Exh. A, 12-16-2019)

Editor's note— Section 26 of Ord. No. 10-11-84, adopted Nov. 15, 2010, changed the title of § 46-123 from "Written acceptance of company required" to "Acceptance by company."

Sec. 46-124. - Decal.

Upon satisfactory compliance with the requirements set forth in this chapter in order to allow the company to collect and/or dispose of waste, garbage and/or refuse, the city shall issue to the company a decal designating the company as an approved city hauler in compliance with the city's solid waste ordinance.

(Ord. No. 12-12-155, § 5(Exh. A), 12-3-2012; Ord. No. 13-12-191, § 5(Exh. A), 12-2-2013; Ord. No. 15-11-263, § 5(Exh. A), 11-16-2015; Ord. No. 16-12-291, § 5(Exh. A), 12-5-2016; Ord. No. 17-11-331, § 5(Exh. A), 11-20-2017; Ord. No. 18-12-385, § 5, 12-17-2018; Ord. No. 19-12-411, Exh. A, 12-16-2019)