

**CITY OF JOHN DAY
ORDINANCE NO. 21-199-10**

AN ORDINANCE EXTENDING THE SOLID WASTE MANAGEMENT AND RECYCLING SERVICE FRANCHISE GRANTED TO CLARK'S DISPOSAL, INC. PURSUANT TO CITY OF JOHN DAY ORDINANCE NO. 11-149-02; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 11-149-02 (the "Solid Waste Management Ordinance"), City of John Day ("City"), an Oregon municipal corporation, granted Clark's Disposal, Inc. ("Franchisee"), an Oregon corporation, a non-exclusive franchise to provide certain solid waste management and recycling services within City's incorporated limits for a period of 10 years (the "Franchise"). The term of the Franchise commenced on May 24, 2011 and expired on May 23, 2021. The Solid Waste Management Ordinance was codified under Title 8, Chapter 3 of the John Day City Code (2017) (the "Code"); and

WHEREAS, on October 8, 2019, the John Day City Council (the "Council") approved Franchisee's requested service rate and fee increase in accordance with Code Section 8-3-4, which service rate and fee increase became effective as of January 1, 2020; and

WHEREAS, by the adoption of this Ordinance No. 21-199-10 (this "Ordinance"), (a) the term of the Franchise is extended for one additional term of ten (10) years, and (b) ratifies the service rate and fee increase approved by the Council on October 8, 2019.

NOW, THEREFORE, the City of John Day ordains as follows:

1. Findings; Defined Terms. The above-stated findings are hereby adopted. Unless otherwise defined under this Ordinance, capitalized terms contained in this Ordinance that are not defined herein have the meanings assigned to such terms under Title 8, Chapter 3 of the Code.

2. Franchise Extension.

2.1 Unless sooner terminated or extended as provided under Title 8, Chapter 3 of the Code, the term of the Franchise is extended for one additional term of ten (10) years, commencing on May 24, 2021 and ending on May 23, 2031 (the "Extended Term"). Subject to the terms and conditions contained in this Ordinance, the Extended Term will be on the same terms and conditions contained in Title 8, Chapter 3 of the Code. Franchisee represents and warrants to City that Franchisee has paid and performed all Franchisee's obligations arising out of or under Title 8, Chapter 3 of the Code, including, without limitation, timely payment of the Franchise Fees.

2.2 Within thirty (30) days after City's passage of this Ordinance, Franchisee will file with City the written acceptance attached hereto as Exhibit A (the "Acceptance"). If Franchisee fails to timely file the Acceptance with City, this Ordinance (and the rights granted to Franchisee herein) will be null and void and repealed by City in all respects without further act of the Council.

3. Rate Schedule. Franchisee will charge its customers no more than those service rates and fees identified in the attached Schedule 3 (the "Amended Rate Schedule"). The service rates and fees identified in the Amended Rate Schedule are deemed effective as of January 1, 2020. The Amended Rate Schedule replaces and supersedes all prior Rate Schedule(s) adopted under Title 8, Chapter 3 of the Code as of January 1, 2020 and will be deemed the "Rate Schedule" under Section 8-3-4A. of the Code as of January 1, 2020. Any further amendment to the Rate Schedule will be made subject to and in accordance with Section 8-3-4 of the Code.

4. Franchise Fees. Notwithstanding anything contained in Title 8, Chapter 3 of the Code to the contrary, commencing on January 1, 2022, Franchisee will pay City Franchise Fees in accordance with the following schedule:

a. Four percent (4%) of Gross Revenues for the period commencing on January 1, 2022 and ending on December 31, 2022.

b. Five percent (5%) of Gross Revenues for the period commencing on January 1, 2023 and ending on December 31, 2023.

5. Effect of Franchise Amendments. This Ordinance is made part of Title 8, Chapter 3 of the Code. The provisions of Title 8, Chapter 3 of the Code that are not amended under this Ordinance remain unchanged and in full force and effect. This Ordinance does not relieve Franchisee of any obligations arising out of or under Title 8, Chapter 3 of the Code. City may continue the enforcement, prosecution, conviction, and/or punishment of any person who has or will violate the provisions of Title 8, Chapter 3 of the Code.

6. Miscellaneous. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors.

7. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City’s citizens. The Council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts, omissions, and/or conditions detrimental to the public health, safety, and welfare. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect upon its passage by the Council and approval of the mayor.

This Ordinance was PASSED by the Council by a vote of ___ for and ___ against and APPROVED by the Mayor on October 26, 2021.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager

Exhibit A
Acceptance

The forgoing Ordinance No. 21-199-10 adopted by City of John Day on October 26, 2021, consisting of four pages (which includes this Exhibit A), is approved and accepted by Clark's Disposal, Inc., an Oregon corporation, in all respects.

Clark's Disposal, Inc.,
an Oregon corporation

By: Farrell D. Clark, President

Schedule 3
Rate Schedule

Franchisee will not charge more than the following identified rates and fees for its provision of the services under Title 8, Chapter 3 of the Code:

Residential Rates

1. 32 Gallon Cans
 - \$17.80 per month for one can per week
 - \$29.70 per month for two cans per week
2. 45 Gallon Cans - \$21.60 per month for one can per week
3. 90 Gallon Roll Cart - \$43.20 per month for one cart per week
4. 1 Yard Container - \$75.60 per month for one container per week
5. 1½ Yard Container - \$105.30 per month for one container per week
6. 2 Yard Container - \$135.00 per month for one container per week
7. Drop Box
 - \$0.06/lb. – Tip Fee
 - \$100.00 – Set-up Fee
 - \$10.00 – Daily Rent
8. Cardboard - \$15.00 per month for one pick up per week
9. Late Fee - 1½% on all past due accounts.
10. Senior Discount - 5%