

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Order and Agreement )  
Granting to Waste Management of Oregon, )  
Inc. (as Successor in Interest to Newberg ) BOARD ORDER 14-712  
Garbage Service, Inc.), an Extension of its )  
Solid Waste Disposal Franchise to Operate )  
Its Newberg Transfer and Recycling Center )  
Issued Under Board Order 94-735, and )  
Thereafter Extended by Board Order 01-109 )  
and Board Order 06-34, to a New Expiration )  
Date of December 4, 2024. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (“the Board”) sat for the transaction of county business in formal session on December 4, 2014 Commissioners Allen Springer, Kathy George and Mary Starrett being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. ORS 459.085 and Yamhill County Solid Waste Ordinance No. 626, as amended, authorize the county to grant franchises for solid waste disposal in the unincorporated areas of Yamhill County, including the operation of a solid waste transfer and recycling center;

B. Pursuant to a County solid waste disposal franchise granted under Board Order 94-735 and renewed under Board Orders 01-109 and 06-34, Waste Management of Oregon, Inc. (“Grantee”) (as successor in interest to Newberg Transfer and Recycling Center, Inc.) has operated a solid waste transfer and recycling center at 2904 S. Wynooski Street, Newberg, Oregon, in a manner satisfactory to the County. Grantee desires to extend the franchise beyond its current December 31, 2015 expiration date, to a new expiration date ten years from the date of approval by the Board of this extension—December 4, 2024. Such an extension is authorized by Section 16(2) of the franchise agreement adopted as Board Order 94-735, attached to this Board Order and incorporated herein by reference;

C. The Yamhill County Solid Waste Advisory Committee reviewed Grantee’s application for a franchise extension and voted 5-1 to recommend renewal of the franchise. On December 4, 2014, the Board conducted a duly-noticed public hearing to consider Grantee’s request for a franchise extension. No testimony adverse to the extension was offered at the hearing. Following the hearing, the Board voted unanimously to extend the franchise as requested by Grantee; and

D. County and Grantee are willing to agree to an extension upon the terms and conditions contained in the agreement entered into in 1994, which is attached to this Board Order and incorporated by reference, as the franchise agreement between the parties. NOW, THEREFORE,

IT IS HEREBY ORDERED THAT THE BOARD ADOPTS THE ATTACHED FRANCHISE AGREEMENT BETWEEN YAMHILL COUNTY AND WASTE MANAGEMENT OF OREGON, INC.:

**Section 1. NATURE OF GRANT OF FRANCHISE EXTENSION.**

Yamhill County does hereby grant to Grantee Waste Management of Oregon, Inc., and to its successors and assigns, an extension of its franchise to dispose of and otherwise process solid waste and recyclable materials at its Newberg Transfer and Recycling Center located at 2904 S. Wynooski Street, Newberg, Oregon 97132. Waste Management is the successor in interest to the original franchisee, Newberg Transfer and Recycling Center, Inc. Under this extension, Waste Management will continue to operate its Center as specified under Board Order 94-735, attached to and made part of this Board Order by reference.

**Section 2. TERM OF FRANCHISE THROUGH DECEMBER 4, 2024.**

Unless extended as a "Subsequent Extension" under Section 16 of Board Order 94-735, or unless suspended, forfeited or revoked in accordance with the Yamhill County Solid Waste Ordinance or Board Order 94-735, the franchise shall expire on December 4, 2024.

DONE at McMinnville, Oregon, on December 16, 2014.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN  
County Clerk

Allen Springer  
Chair ALLEN SPRINGER

By: [Signature]  
Deputy LUCY FLORES MENDEZ



Kathy George  
Vice Chair KATHY GEORGE

[Signature]  
Commissioner MARY STARRETT

FORM APPROVED BY:  
[Signature]  
TIMOTHY S. SADLO  
Senior Assistant County Counsel

Accepted by Yamhill County Board of Commissioners on 12.14.14 by Board Order # 14-712

ACCEPTANCE BY GRANTEE

I, Adam Winston, the duly appointed and acting Vice President of the Grantee, Waste Management of Oregon, Inc., 2904 S. Wynooski Street, Newberg, Oregon 97132 (PO Box 1000, Newberg, Oregon 97132), authorized by Grantee to make this Acceptance, do hereby accept on behalf of Grantee the terms and conditions contained in this Board Order and in the attached Agreement.

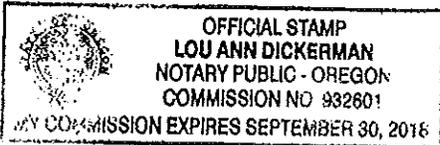
[Signature]  
(signature)

1/2/15  
(date)

STATE OF OREGON        )  
  ) ss  
County of Yamhill        )

On the 2 day of January, 2015, personally appeared the above named Adam Winston, the duly appointed and acting \_\_\_\_\_ of Grantee, and acknowledged the foregoing Acceptance of Grantee to be his voluntary act performed on behalf of Grantee, under authority from Grantee.

[Signature]  
Notary Public for Oregon  
My Commission Expires: Sept 30, 2018



Accepted by Yamhill County  
Board of Commissioners on  
12.4.14 by Board Order  
# 14-712

FILED  
YAMHILL COUNTY, OREGON  
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CHARLES STERN  
COUNTY CLERK  
INDEXED

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON  
FOR THE COUNTY OF YAMHILL  
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Board Order and Agreement )  
Granting Newberg Transfer and Recycling )  
Center, Inc., a Franchise to Operate a Solid ) BOARD ORDER 94-735  
Waste Transfer Station and Recycling Center )  
from November 7, 1994 to October 31, 2004 )  
with Provisions for Renewal. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board"), sat for the transaction of county business in special session on November 7, 1994, Commissioners Dennis L. Goecks, Ted Lopuszynski and Debi Owens being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. ORS 459.085 and the Yamhill County Solid Waste Collection and Disposal Ordinance, as amended by Ordinances 154, 192, 259, 350, 401, 434, 490, 509, 534 and 578 (the "Solid Waste Ordinance") authorize the County to grant franchises for solid waste collection and disposal in the unincorporated areas of Yamhill County, including franchises authorizing the temporary storage of solid waste prior to transfer to an approved final disposal site.

B. Pursuant to a County solid waste disposal franchise granted February 29, 1984 by Board Order 84-106, Newberg Transfer and Recycling Center, Inc. ("Grantee"), has operated a solid waste transfer station and recycling center near Newberg in a manner satisfactory to the County. Grantee desires to extend the franchise beyond its current November 7, 1994 expiration date.

C. On September 14, 1994 the County conducted a public hearing on Grantee's request for renewal of its franchise. County and Grantee are willing to agree to the terms and conditions contained in this agreement. NOW, THEREFORE

IT IS HEREBY ORDERED THAT THE BOARD ADOPTS THE FOLLOWING FRANCHISE AGREEMENT BETWEEN YAMHILL COUNTY AND NEWBERG TRANSFER AND RECYCLING CENTER, INC.:

Section 1. NATURE OF GRANT.

Yamhill County does hereby grant to Newberg Transfer and Recycling Center, Inc. ("Grantee" in this Board Order), which is qualified to do business in Oregon and to its successors and assigns, an exclusive franchise to operate a solid waste recycling and transfer station at its location at 2904 S. Wynooski Street, Newberg, Oregon, Tax Lot 3228-01700. Solid waste may be stored temporarily on site and shall be transported to disposal sites authorized by the Department of Environmental Quality to receive solid waste. In consideration for the grant of this franchise, Grantee agrees to undertake the obligations stated in this franchise.

Section 2. TERM OF FRANCHISE.

Unless extended as provided in Section 16, or suspended, forfeited or revoked in accordance with the Solid Waste Ordinance or this Board Order, the franchise shall expire October 31, 2004.

Section 3. DEFINITIONS.

For the purposes of this Board Order, the following terms, phrases, and their derivations, shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular

B.O. 14-712

number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Collect" and "Collection" shall include accept, accumulate, store, process, transport, and dispose of as required by County regulations, and state and federal law.

B. "Recyclable Material" shall have the meaning given in ORS 459.005(22), 1993 Replacement Part, which may be source separated (as defined in ORS 459.005(20), 1993 Replacement Part), and shall include, but not be limited to, newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and craft paper, container glass, aluminum, tin cans, plastics, magazines, hi-grade paper, wood wastes, yard debris, mixed waste paper, lead acid batteries, tires, telephone directories, textiles and other materials as may be designated by the County or DEQ.

C. "Service Level" shall be any type of regulated service provided to customers as reflected in the rate schedule.

D. "Solid Waste" shall have the meaning given in ORS 459.005(24), 1993 Replacement Part, including but not limited to, garbage, rubbish, refuse, ashes, discarded home appliances, manure, vegetable or animal solid and semisolid wastes and other waste; but the term shall not include:

1. Sewage sludge, septic tank and cesspool pumpings or other sludge;
2. Discarded or abandoned vehicles;
3. Recyclable material.

#### Section 4. SCOPE OF SERVICES.

County shall establish, after consultation with the Grantee, standards and specifications for operation of the transfer station and recycling facility. Grantee shall provide service in accordance with such standards and specifications as set forth in the Solid Waste Ordinance, as it may be amended from time to time, and this Board Order. Grantee shall furnish all necessary skill, labor, equipment, materials, billing facilities, transportation facilities and related services required therefor.

#### Section 5. FRANCHISE FEE AND AUDITING.

A. 1. Fee established. Grantee shall pay an annual franchise fee of \$2,500 as adjusted by subsection 2 for the year beginning November 1 and ending October 31. The first franchise fee shall be paid for the year beginning on November 1, 1994 and ending October 31, 1995.

2. Adjustment. Beginning November 1, 1995 and on each November 1 thereafter, the annual franchise fee shall be adjusted by the percentage change in the Consumer Price Index for all Urban Consumers for West-A, All Items (1982-84=100) published by the Bureau of Labor Statistics (the "Index"), as reported for the twelve month period ending the preceding September 30.

3. Payment. At the option of the Grantee, the franchise fee may be paid in advance or in quarterly installments. If the Grantee elects to pay in quarterly installments, the installments shall be due January 31, April 30, July 31 and October 31. Payments not received within thirty (30) days from the due date shall be assessed interest at a rate equal to 1 1/2% per month compounded daily from the due date.

B. If, during the term of this agreement, the Board increases or changes the franchise fee by amendment of the Solid Waste Ordinance, Grantee agrees to pay the modified amount; provided, however, that Grantee shall not be obligated to

pay any increased fee until the franchise anniversary following the calendar year in which the increase is ordered by the Board.

C. Payment of this franchise fee shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by County, except as otherwise may be provided in the ordinance or ordinances imposing such other license fee, tax, or charge.

Section 6. REGULATION.

A. This franchise is made subject to the Solid Waste Ordinance and state and federal laws relating to solid waste collection.

B. The power and right to reasonably regulate the exercise of the privileges permitted by this franchise in the public interest shall at all times be vested in County. County reserves the right to establish rules, regulations, or standards through ordinances or orders. If the county adopts ordinances or orders regarding the operation of the transfer station and the processing of recyclable materials that require the Grantee to make operational changes that increase its cost of doing business, the county agrees to allow, following Grantee's application and establishment of actual costs, a rate adjustment to enable Grantee to recoup the actual costs of compliance with the ordinance or order.

C. Compliance with laws.

1. This agreement is made subject to, and Grantee shall abide by, all present and future laws, regulations, orders or regulatory bodies, as are applicable to the performance of the collection services hereunder and shall obtain all licenses and permits required by federal, state and local governments.

2. Grantee shall abide by all special handling, treatment, storage or disposal requirements designated by the Oregon State Department of Environmental Quality (DEQ) or other agencies, for wastes designated as having a potential damage to the environment or to public health.

D. Grantee shall provide all customers with the "opportunity to recycle" in accordance with all relevant requirements of the Oregon Revised Statutes and of the Oregon Administrative Rules as now or subsequently promulgated as those requirement apply to transfer stations. Grantee shall, pursuant to a recyclable material collection strategy established by County, implement the necessary collection services and programs to comply with such strategy, including but not limited to, any waste reduction/diversion requirements or goals that may be specified by the State or the County for transfer stations.

E. Grantee shall not be relieved of its obligation to promptly comply with any provision of this franchise by any failure of County to enforce compliance with this franchise.

F. Open Books and Records. County staff or its agents shall have the right to inspect at any time, upon at least 24 hours notice, during normal business hours, at an office of Grantee located in the County, all books, records, maps, plans, income tax returns, financial statements and other like materials of Grantee which are directly related to the operation of the franchise. All information contained or disclosed to the County or its agents shall be considered "proprietary" and will not be disclosed as a public record absent an express order to disclose from a competent authority.

G. Reports. All reports required in this franchise agreement are limited to information directly attributable to the solid waste and recycling collection services provided under this franchise.

1. Quarterly Reports. Until accounting system changes have been implemented by Grantee enabling it to reproduce reports under this section each month, Grantee shall submit a written report to County's Solid Waste Coordinator verified by an officer or manager of Grantee within 15 days after the end of each calendar quarter. When such accounting system changes have been made, the report shall be submitted within 15 days after the end of the month. The report shall contain an accurate statement, in summarized form, of the following:

- a. All receipts from all sources;
- b. Volumes. For purposes of satisfying this requirement, Grantee may provide County with copies of all volume reports submitted to DEQ and Riverbend Landfill.

2. Annual Reports. No later than March 15 of each year Grantee shall submit, on a form provided by the County, a written report to the Solid Waste Coordinator which shall include a summary income statement verified by an officer or manager of Grantee.

3. General Reports. Grantee shall prepare and submit to County such other non-financial reports regarding its operation of the transfer station and the processing of recyclable materials under this franchise as County may deem reasonably necessary or appropriate. In addition, Grantee shall submit to County any information for reporting purposes which shall be required by the Department of Environmental Quality (DEQ) other than those which are deemed confidential by DEQ.

4. County, after consultation with Grantee, and after providing sufficient notice to allow the data to be gathered, may specify the form and details of all reports provided under this section.

5. Designation of Confidential Information. Grantee may identify any information submitted to the County as confidential in nature or otherwise exempt from disclosure under the Oregon Public Records Law. Upon receipt by the County of any requests for disclosure of information identified by the Grantee as exempt, the County shall notify the Grantee of the request after consideration of the public interest in disclosure of the requested information. The Grantee shall respond in writing within ten (10) days of the County's notice whether the requested information should be released or defended. If Franchisee elects to defend the exemption of the requested information from public disclosure, Franchisee shall assume all responsibilities for such defense. Franchisee shall indemnify and hold the County harmless for all costs and expenses incurred in the defense of the request, including court and appeal costs and attorney fees and expenses. Nothing in this paragraph is intended to require the County to refuse to disclose information after being so ordered by a competent judicial authority.

**Section 7. RATES AND ADJUSTMENT.**

A. Grantee shall charge rates for services provided under this franchise only as approved by the Board in accordance with the Solid Waste Ordinance. In accordance with the Solid Waste Ordinance, County may grant rate adjustments from time to time for the solid waste collection services to be provided by Grantee under this franchise. A rate adjustment application will be considered complete when the grantee has provided all information required by the application. All rate adjustments shall be adopted by County by ordinance or board order.

B. Grantee is authorized to charge and collect reasonable, usual and customary charges in connection with the operation of Grantee's business. Among those charges are charges for non-sufficient funds checks and a service charge for reestablishment of service upon termination of an account for non-payment.

Section 8. COVENANTS TO INDEMNIFY.

A. Grantee agrees and covenants to indemnify and defend County, its officers, agents, and employees, from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act done under this franchise, by or for Grantee, its officers, agents, or employees, or by reason of any neglect or omission of Grantee to keep its equipment or operating system in safe condition. Grantee shall consult and cooperate with County while conducting its defense of County.

B. Grantee also hereby agrees to indemnify County for any damages, claims, additional costs or expenses assessed against or payable by County arising out of or resulting, directly or indirectly, from Grantee's failure to conduct its business operations in accordance with federal, state or local laws governing such operation, unless Grantee's failure arises directly from County's negligence or willful misconduct.

C. Except as may be limited by the Oregon Constitution and subject to the limitations of the Oregon Tort Claims Act, County agrees and covenants to indemnify Grantee, its officers, agents and employees, from any third party claims for injury, damage, loss, liability, cost or expense, including court and appeals costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act of negligence or willful misconduct done under this franchise by or for County, its officers, agents, or employees. County shall consult and cooperate with Grantee while conducting its defense of Grantee.

D. Nothing in this franchise agreement shall constitute a waiver or relinquishment of any claims which the Grantee may have against any insurer. The indemnification provided above is not insurance and does not cover loss or damage covered by any insurance policy.

Section 9. LIABILITY INSURANCE.

## A. Liability Insurance Requirements.

1. Grantee shall maintain public liability and property damage insurance that protects Grantee and County and its officers, agents, employees, from any and all claims referred to in Section 8. The insurance shall provide coverage at all times for not less than the maximum limits of liability then in effect imposed on municipalities of the State of Oregon during the term of the franchise. At the time of this agreement, the statutory limits were \$500,000 per occurrence. At such time that the statutory limits are adjusted, the County will advise the grantee, in writing, of the new limits.

2. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured County and its officers, agents and employees. Notwithstanding the naming of the additional insured, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insured on the policy.

3. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days written notice first being given to the Solid Waste Coordinator. If the insurance is canceled or materially altered within the term of this franchise, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the amounts required, for the duration of the franchise.

4. Grantee shall maintain on file with the Solid Waste Coordinator a certificate of insurance certifying the coverage required in subsection (A)(1). Failure to maintain liability insurance shall be cause for conditional forfeiture of this franchise by County.

**Section 10. EMPLOYEES; WORKERS' COMPENSATION INSURANCE.**

A. Grantee and its employees are not employees or agents of County. Grantee is responsible to pay all FICA, unemployment compensation premiums, workers' compensation premiums, income tax withholdings and other charges attributable to an employer.

B. Grantee shall obtain workers' compensation insurance coverage for all of its workers and shall require its subcontractors to obtain workers' compensation insurance coverage as provided by Chapter 656 of the Oregon Revised Statutes (the Oregon Workers' Compensation Law). Grantee shall maintain continuous uninterrupted workers' compensation coverage, in the amounts required by law, for the duration of the franchise.

C. In the event Grantee's workers' compensation insurance coverage expires or is revoked during the term of this franchise, Grantee shall timely renew such insurance before its expiration, or otherwise arrange for its timely replacement, as required by the Oregon Workers' Compensation Law. Grantee shall provide County with further certificates of workers' compensation insurance as such renewals occur.

D. Grantee shall maintain on file with the Solid Waste Coordinator a certificate of workers' compensation insurance certifying the coverage required above. Failure to maintain workers' compensation insurance coverage shall be cause for conditional forfeiture of this franchise by County.

**Section 11. NONDISCRIMINATION.**

In performing the collection services hereunder, Grantee shall not discriminate against any person on the grounds of race, sex, age, creed, color, religion or national origin.

**Section 12. COUNTY CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE, MORTGAGE, OR SUBCONTRACT.**

A. Assignment, Transfer, Merger, Lease or Mortgage.

1. Grantee shall not assign this agreement in whole or in part, or any right or obligation hereunder, without the prior written approval of County. County consent shall not be unreasonably withheld. County agrees to grant or deny consent to assign this agreement in whole or in part within 60 days of notification of assignment by Grantee. If County does not grant or deny consent within 60 days, County shall be deemed to have given consent to an assignment. County's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

2. Nothing contained herein shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets for the purpose of financing the acquisition of equipment for the operation of the franchise without County's consent, but any such mortgage, pledge or assignment shall be subject to County's other rights contained in this franchise.

B. Grantee shall not subcontract the provision of services work under this franchise agreement, in whole or in part, without the prior written approval of County. Grantee shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all of Grantee's obligations, as specified in this franchise. Notwithstanding County approval of a subcontractor, Grantee shall remain obligated for full performance hereunder, and County shall incur no obligation other than its obligations to Grantee hereunder. Grantee agrees that

if subcontractors are employed in the performance of this franchise, Grantee and its subcontractors are subject to the requirements and sanctions of the Oregon Workers' Compensation Law.

C. No assignment of this franchise shall be valid and binding that endeavors to relieve the assigning party of any obligations to make payments that accrued prior to the date of the assignment unless the assignee has affirmatively agreed, in writing, to assume all obligations of the assignor under the franchise agreement.

D. For the purpose of determining whether County will consent to any assignment, transfer, merger, lease, or subcontract, County may inquire into the technical, legal and financial qualifications of the prospective party. Grantee shall assist County in any such inquiry. County may condition any assignment, transfer, merger, lease, or subcontract upon such conditions as it may deem necessary to insure that the transferee performs to the standards applicable to all other grantees of solid waste collection franchises by County.

Section 13. FORFEITURE AND OTHER REMEDIES.

A. Immediate Forfeiture.

In addition to any rights set out elsewhere in this franchise, the Board reserves the right to declare an immediate forfeiture of the franchise, and all of Grantee's rights arising thereunder, in the event that Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon County.

B. Conditional Forfeiture.

1. Notwithstanding any other provision of this Section 13, no conditional forfeiture shall be declared if the Grantee's ability to comply with this franchise agreement is impaired by force majeure as defined in Section 15.

2. In addition to any rights set out elsewhere in this franchise, the Board reserves the right to declare a conditional forfeiture of the franchise, and all of Grantee's rights thereunder, in the event that the Grantee, after notice and opportunity to cure, is in default of this agreement for any of the following reasons:

- a. Grantee fails to comply with any provision of the franchise;
- b. Grantee fails to obtain and maintain any permit required by County or any federal, state, or other regulatory body;
- c. Grantee's noncompliance with acceptable practices for the collection of solid waste or recyclable materials creates, in the reasonable judgment of the county, a hazard to public health or safety.

2. In the event of a conditional forfeiture, County shall give Grantee sixty (60) days prior written notice of its intent to exercise its rights under this section, stating the reasons for such action. If Grantee cures the stated reason within the 60 day period, or if Grantee initiates efforts satisfactory to County to remedy the stated reason and the efforts continue in good faith, County shall not exercise its rights under this section. If Grantee fails to cure the stated reason within the 60 day notice period, or if Grantee does not undertake efforts satisfactory to County to remedy the stated reason, then County may exercise all its authority as set forth in this section.

C. Civil Penalties. In addition to any rights set out elsewhere in this franchise, County reserves the right to impose scheduled civil penalties under its Citation Ordinance for violations of this ordinance or the Solid Waste Ordinance.

D. Suspension.

1. Upon written notification to Grantee of the immediate forfeiture of the franchise, all of Grantee's franchise rights shall be immediately suspended.

2. Upon expiration of the 90 day time period stated in subsection (B) and written notification to Grantee of the conditional forfeiture of the franchise, all of Grantee's franchise rights may be suspended, with reinstatement of the franchise rights conditional upon Grantee's curing the stated reasons for the conditional forfeiture within the time specified by County.

Section 14. PREVENTING INTERRUPTION OF SERVICE.

A. If, at any time during the term of this agreement, for a period of three (3) consecutive working days or more, Grantee fails for any reason to receive and transport solid waste and recyclable materials as required hereunder, except as provided in Section 15 hereunder, County may immediately, upon written notice to Grantee, cause such solid waste or recyclable material to be received and transported by whatever means available to County. In this event, Grantee shall, upon demand, provide County with necessary operational records.

B. Grantee shall be responsible for paying any and all costs incurred by County in providing service under this franchise, including but not limited to, any costs in excess of the fees that would have been paid to Grantee if Grantee had performed the services performed hereunder.

Section 15. FORCE MAJEURE.

A. For purposes of this section, "force majeure" shall mean acts of God, landslides, lightning, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, shortage of materials, labor strikes, governmental restraints and other events which are not reasonably within the control of the parties hereto.

B. If, as a result of force majeure, either Grantee or County is wholly or partially unable to meet its obligations under this agreement, then that party shall give the other party prompt notice of such force majeure, describing the same in reasonable detail, and the obligations under this agreement of the party giving such notice, other than for payment of monies due, shall be suspended to the extent impaired and for the duration of the force majeure.

Section 16. RENEWAL OF FRANCHISE.

A. 1. First Extension.

At any time after May 1, 1997, Grantee may apply for extension of this franchise. Upon application by Grantee for extension of its franchise, Grantee shall have the first and preferential right to renewal of its franchise upon the terms and conditions approved by County. Upon receipt of the application, the Board shall conduct a public hearing and determine whether Grantee has met all requirements of this agreement, the Solid Waste Ordinance and state and federal law. At the conclusion of the hearing, the Board may, in its sole discretion, extend the franchise upon such terms as it deems appropriate for 10 years from a date no earlier than November 1, 1997.

2. Subsequent Extensions.

At any time after 30 months from an extension of the franchise under this Section 16, Grantee may apply for another 10 year extension. Upon application by Grantee for extension of its franchise, Grantee shall have the first and preferential right to renewal of its franchise upon the terms and conditions approved by County. Upon receipt of the application, the Board shall conduct a public hearing and determine whether Grantee has met all requirements of this agreement, the Solid Waste Ordinance and state and federal law. At the

conclusion of the hearing, the Board may, in its sole discretion, extend the franchise upon such terms as it deems appropriate, for 10 years from a date no earlier than seven years before the expiration of the then existing franchise.

3. Notice.

Grantor shall exercise its best efforts to provide Grantee two months advance notice of each opportunity to renew its franchise. However, lack of notice shall not effect the duration of any franchise period.

B. Reopener. Upon 30 days notice to Grantor, Grantee may reopen this Section 16 for the purpose of negotiating an extension of the franchise in order to provide an adequate term to assure amortization of capital expenditures proposed in connection with the operation of the franchise. If the parties are unable to reach agreement as to extension of the franchise term, Grantee may refer the matter to arbitration in accordance with the rules set forth in ORS 36.300 to 36.365, 1993 replacement part.

C. In determining whether to extend the franchise, the Board shall review Grantee's renewal application, and may consider the following factors, among others, in deciding whether or not to renew the franchise:

1. Grantee's financial ability to perform the obligation under this franchise;
2. Grantee's performance of its obligations under this franchise;
3. Whether Grantee has the necessary personnel and equipment to perform the obligations required under this franchise;
4. Grantee's ability to provide evidence of insurability or bonding as required by this franchise; and
5. Whether the renewal of Grantee's franchise is in the public interest.

Section 17. CONTROL OF LITTER.

Grantee shall control litter and debris in order to minimize the littering of roadways near the transfer station and while en route to disposal facilities with solid waste. The collection, transportation and disposition of solid waste will be carried out in a clean, courteous, efficient and economic manner.

Section 18. CHOICE OF FORUM.

Any litigation between County and Grantee arising under or regarding this franchise shall occur, if in the state courts, in the Yamhill County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

Section 19. CHOICE OF LAW.

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

Section 20. NOTICE.

Any notice provided for under this franchise shall be sufficient if in writing and delivered to the following addressee by depositing said notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the County:

Board of Commissioners  
 Yamhill County Courthouse  
 535 E. Fifth Street  
 McMinnville, Oregon 97128

If the the Grantee:

Newberg Transfer and  
 Recycling Center, Inc.  
 P.O. Box 990  
 Newberg, Oregon 97132

**Section 21. ENTIRE AGREEMENT; AMENDMENT.**

This agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, previously entered into by Grantee and County. The terms of this agreement may not be amended, in whole or in part, except in writing, signed by both parties hereto.

**Section 22. COSTS AND ATTORNEY FEES.**

In the event that either County or Grantee shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this franchise agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

**Section 23. SEVERABILITY.**

If any provision of this franchise, or its application to any person or circumstance, is declared invalid or unenforceable, the remainder of this franchise shall not be affected thereby.

**Section 24. OTHER AUTHORITY SUPERSEDED.**

Upon the effective date of this franchise, any and all authority to operate previously granted to Grantee by County is superseded by this franchise.

**Section 26. WRITTEN ACCEPTANCE.**

This Board Order contains the written acceptance of Grantee, and constitutes the Grantee's acceptance of all the terms, conditions and restrictions contained in this franchise. The agreement contained in this Board Order shall become effective when approved by the Board and accepted by the Grantee.

DONE the date and year first written above.

ATTEST



By: Jaynie Mitchell  
 Deputy JAYNIE MITCHELL

YAMHILL COUNTY BOARD OF COMMISSIONERS

Dennis Goecks  
 Chair DENNIS L. GOECKS

Ted Lopuszynski  
 Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:

John M. Gray, Jr.  
 JOHN M. GRAY, JR.  
 Yamhill County Counsel

Debi Owens  
 Commissioner DEBI OWENS

- ACCEPTANCE OF GRANTEE

I, Merlin LaJoie, the duly appointed and acting Pres-  
of Newberg Transfer and Recycling Center, Inc. ("NTRC"), authorized by NTRC to  
make this Acceptance, do hereby accept on behalf of NTRC the terms and conditions  
contained in this Board Order and Agreement.

Dated this 7 day of November, 1994.

Merlin LaJoie  
(Signature)

STATE OF OREGON )  
                          ) SS  
County of Yamhill )

On the 7<sup>th</sup> day of November, 1994, personally appeared the above named  
Merlin LaJoie, the duly appointed president of  
Newberg Transfer and Recycling Center, Inc. ("NTRC"), and acknowledged the  
foregoing Acceptance of Grantee to be his voluntary act performed on behalf of  
NTRC under authority from NTRC.

Carol Ann White  
Notary Public for Oregon  
My Commission Expires: 9-17-96

