

**AMENDMENT TO YAMHILL COUNTY BOARD ORDER NO. 93-832
SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

THIS AMENDMENT is made and entered into this 28th day of March, 2024, by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Solid Waste Department (“County”), and WASTE MANAGEMENT OF OREGON, INC., an Oregon corporation and successor in interest to Newberg Garbage Service, Inc., located at 2904 Wynooski St, Newberg (“Grantee”).

The parties, having executed a solid waste collection franchise agreement on November 24, 1993 via Yamhill County Board Order No. 93-832, including as amended by Board Order No. 00-812, Board Order No. 06-92, Board Order No. 10-88, and Board Order No. 14-711, do now hereby agree to further amend said agreement as follows:

1. *Extension of Franchise.* The Grantee’s solid waste franchise agreement described herein is hereby extended. Unless otherwise suspended, forfeited, or revoked in accordance with the Solid Waste Ordinance or the original franchise agreement, including as amended, this solid waste franchise shall expire on January 31, 2034.
2. Section 3, *Definitions*, is hereby amended to read as follows (new language is indicated by underlined font):

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

...

D. “Recyclable Material” shall have the meaning given in ORS 459.005(22), 1993 Replacement Part, as may be amended from time to time, which may be source separated (as defined in ORS 459.005(20), 1993 Replacement Part), and may 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.

...

F. “Solid waste” shall have the meaning given in ORS 459.005(25), 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;
4. “Unacceptable Waste” which shall mean any and all waste that is:
 - a. Prohibited from being received at a disposal site by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition;
 - b. Hazardous Waste; or
 - c. Explosive materials.

The title to Unacceptable Waste shall remain with the generator.

G. “Hazardous Waste” has the meaning given that term in ORS 466.005 (definitions for ORS 453.635 and 466.005 to 466.385).

H. “Yard Debris” includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

3. Section 5, *Franchise Fee and Auditing*, is hereby amended to read as follows (new language is underlined and deletions are in strike-out):

A. Franchise Fee.

1. Grantee shall pay a franchise fee as established by the Board in the Solid Waste Ordinance, ~~at the time stated in the ordinance.~~ Until changed by the Board, the franchise fee shall continue at 2% of ~~g~~Gross ~~Receipts~~ as specified in Section ~~9.157.16~~ 9.157.16 of the Solid Waste Ordinance. If, during the term of this agreement, the Board increases or changes the franchise fee stated in Section ~~9.157.16~~ 9.157.16 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 calendar year following the year in which the increase is ordered by the Board.

...

4. Section 13, *Forfeiture and Other Remedies*, is hereby amended to read as follows (additions are underlined and deletions are in strike-out):

...

D. Suspension, Modification, Revocation, or Refusal to Renew a Franchise or License.

1. Subject to the Yamhill County Solid Waste Ordinance, the County may suspend, modify, revoke, or refuse to renew this franchise agreement upon finding that the Grantee has:
 - a. Willfully violated the Yamhill County Solid Waste Ordinance or ORS Chapter 459 or their related rules and regulations; or

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- b. Materially misrepresented facts or information given in their application for franchise; or
 - c. Willfully refused to provide adequate services in the Franchise Area or at the franchised disposal site after written notification and a reasonable opportunity to do so; or
 - d. Misrepresented the Gross Receipts from the Franchise Area or, if required to report on such receipts, the Gross Receipts from operation of a franchise disposal site.
2. In lieu of immediate suspension, modification, revocation, or refusal to renew a franchise, the County may, at its sole discretion, order compliance and make the suspension, modification, revocation, or refusal to renew a franchise contingent upon compliance with the order within the time frame stated in the compliance order.
 3. A decision by the County to suspend, modify, revoke, or refuse to renew this Agreement shall not become effective for 30 days after the date the Grantee has been notified unless the Board finds that there is a serious and immediate danger to the public health or that a public nuisance would be created. The Grantee may thereafter request a public hearing before the Yamhill County Board of Commissioners in accordance with the Yamhill County Solid Waste Ordinance.
- ~~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.~~
5. Section 19, *Choice of Law*, is hereby amended to read as follows (new language is indicated by underlined font):

This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. The parties agree that this Franchise Agreement is made in and shall be performed in Yamhill County and all civil action relating to this Franchise Agreement shall be presented in Yamhill County.
 6. Section 20, *Notice*, is hereby amended to read as follows (new language is underlined and deletions are in strike-out):

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 to the Grantee:

~~Newberg Garbage Service~~
~~P.O. Box 990~~
~~Newberg, Oregon 97132~~
Waste Management of Oregon, Inc.
Attention: Senior Manager – Public
Sector Services
7227 NE 55th Ave.
Portland, OR 97218

Copy to:

Senior Counsel
Waste Management of Oregon, Inc.
7227 NE 55th Ave.
Portland, OR 97218

7. The following new section is hereby added to the agreement (new language is signified by underline):

Section 27. EMERGENCY SERVICES.

At the County's discretion, and in compliance with all applicable federal, state, and local laws, regulations, and procedures and to the extent reasonably practicable and safe for the Grantee, its equipment and employees, the Grantee shall reasonably assist the County in the event of terrorist attack or major disaster, such as an earthquake, storm, fire, riot, or civil disturbance, by providing collection vehicles and drivers to County at Grantee's actual costs. The Grantee shall cooperate with County, State, and Federal officials in filing information related to regional, state, or federally declared state of emergency of disaster or terrorist attack as to which Grantee has provided equipment and drivers pursuant to this Franchise.

Except as expressly amended above, all other terms and conditions of the original agreement are still in full force and effect. The Grantee certifies that the representations, warranties, and certifications contained in the original Franchise Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

[remainder of page intentionally blank; signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date indicated by their duly authorized officials.

WASTE MANAGEMENT OF OREGON,
INC.

YAMHILL COUNTY

DocuSigned by:

Jason Rose

09CC7026DDEF456...

Signature

Jason Rose

Name (printed)

President

Title

4/8/2024

Date

DocuSigned by:

Lindsay Berschauer

E3542C8E207407...

Chair, LINDSAY BERSCHAUER

DocuSigned by:

Mary Starrett

389C108B9CFC411...

Commissioner, MARY STARRETT

DocuSigned by:

Kit Johnston

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Commissioner, KIT JOHNSTON

APPROVED AS TO FORM:

DocuSigned by:

Jodi Gollehon

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Jodi Gollehon, Assistant County Counsel

Approved by the BOC on: 3/28/24

via Board Order No.: 24-96