

**RESOLUTION NO. 1149**

**A RESOLUTION ADOPTING THE REVISED EXCLUSIVE SOLID WASTE FRANCHISE AGREEMENT BETWEEN THE CITY OF TROUTDALE AND EDWIN O. EGE SANITARY SERVICE, INC.**

**WHEREAS**, Ordinance No. 309 "Solid Waste Management Ordinance" has been rescinded by ordinance; and,

**WHEREAS**, Troutdale Municipal Code 12.10.030 provides that the next term of the exclusive franchise agreement shall begin January 1, 1995; and

**WHEREAS**, Troutdale Municipal Code 12.10.050 provides that the franchise agreement shall be authorized by a resolution of the Council and may, from time to time, be changed by resolution of the Council.

**NOW THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THAT:**

The attached exclusive solid waste franchise agreement between the City of Troutdale and Edwin O. Ege Sanitary Service, Inc. is authorized effective January 1, 1995.


**ADOPTED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 13TH DAY OF DECEMBER, 1994.**

**YEAS:** 5  
**NAYS:** 0  
**ABSTAINED:** 0

  
**Paul Thalhof, Mayor**

**DATED:** DECEMBER 14, 1994

**ATTEST:**

  
**George Martinez**  
**City Recorder**

# **AN EXCLUSIVE FRANCHISE AGREEMENT TO PROVIDE SOLID WASTE SERVICES WITHIN THE CITY**

## **Section 1. Short Title.**

This franchise agreement shall be known as the "Solid Waste Management Franchise Agreement" and referred to herein as the "Franchise".

## **Section 2. Purpose, Policy, and Scope.**

1. The purpose of this franchise shall be to:
  - a. Ensure safe, economical, and comprehensive solid waste service;
  - b. Ensure rates that are just, reasonable, and adequate to provide necessary public service;
  - c. Prohibit rate preferences and any other practice that might be discriminatory; and
  - d. Provide for technologically and economically feasible recycling and resource recovery by and through the Franchisee.

## **Section 3. Definitions.**

1. **City.** City of Troutdale.
2. **Collection Franchise.** A franchise, certificate, contract, or license issued by the City authorizing a person to provide collection service for use of City streets.
3. **Commercial.** Stores, offices including manufacturing, and industrial offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other non-manufacturing entities, but does not include other manufacturing activities or business manufacturing or processing activities in residential dwellings.
4. **Compensation Includes:**
  - a. Any type of consideration paid for a service including but not limited to rent, the proceeds from resource recovery, and any other direct or indirect provision for payment of money, goods, services, or benefits by owners, tenants, lessees, members, occupants, or similar persons;
  - b. The exchange of services between persons; and

- c. The flow of consideration from the person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning, possessing, or generating the solid waste.
5. **Council.** The City Council of the City of Troutdale.
  6. **Curbside.** This refers to recycling and yard debris containers being located within three (3) feet of the edge of a public street. The "street" may be a public alley if the Franchisee desires to pick up recyclables or yard debris from the alley. The three foot rule does not allow the container to be placed on the house side of a fence or enclosure even if the container is within three feet of the public street/alley. For residences on a flag lot, or other private driveway, "curbside" shall be the point where the driveway intersects the public street, or at such other location agreed upon between Franchisee and Customer or as determined by the City.
  7. **Franchisee.** The person granted the exclusive franchise by Section 4 of this franchise or a subcontractor to such person.
  8. **Hazardous Waste.** A waste as defined in ORS 466.005.
  9. **Household Hazardous Waste.** Any discarded, useless, or unwanted chemical, material, substance, or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.
  10. **Infectious Waste.** Biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.
  11. **Organic Waste.** Materials which can be biologically synthesized by plants or animals from simpler substances, are no longer suited for their intended purpose, and are readily broken down by biological processes into soil constituents. Examples include, but are not limited to, food waste, yard debris, paper, and putrescible material which are generally a source of food for bacteria.
  12. **Person.** An individual, partnership, association, cooperative, corporation, trust, firm, estate, or other public or private legal entity.
  13. **Processing.** An operation where collected, source separated, recyclable materials are sorted, graded, cleaned, identified, or otherwise prepared for end use markets.
  14. **Putrescible Materials.** Organic materials that can decompose and may give rise to foul-smelling, offensive odors or products.

15. **Rates.** The amounts of compensation paid for various levels of solid waste and recycling service.
16. **Recyclable Materials.** Any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material, or other materials as may be designated by the City.
17. **Recycling.** Any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.
18. **Resource Recovery.** The process of obtaining useful material or energy resources from solid waste including energy recovery, materials recovery, recycling, or reuse of solid waste.
19. **Service.** Collection, transportation, or disposal of or resource recovery from solid waste or recyclable material or both.
20. **Solid Waste.** All putrescible and non-putrescible wastes, including but not limited to, garbage, rubbish, refuse, ashes, wastepaper and cardboard; commercial, industrial, demolition, and construction wastes; discarded home and industrial appliances; manure, vegetable, or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, special waste and other wastes; but the term does not include:
  - a. Hazardous wastes as defined in ORS 466.005.
  - b. Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.
21. **Solid Waste Collection Service or Service.** The collection, transportation, or disposal of or resource recovery from solid wastes, as required by City regulations, and administrative rules.
22. **Solid Waste Management.** The prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing, and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.
23. **Source Separate.** A process by which the person who last uses recyclable material separates the recyclable material from solid waste.
24. **Waste.** Material that is no longer usable or wanted by the source generator of the material which is to be utilized or disposed of by another person. For the purposes of this paragraph, "utilized" means the productive use of wastes through recycling, reuse,

salvage, resource recovery, energy recovery, or land filling for reclamation, habilitation, or rehabilitation of land.

25. **Yard Debris.** This includes grass clippings, leaves, hedge trimmings, and similar vegetative waste generated from residential property or landscaping activities, but does not include sod, stumps, or similar bulky wood materials, rocks, or dirt.

**Section 4. Exclusive Franchise and Exceptions.**

1. There is hereby granted to Edwin O. Ege Sanitary Service, Inc., the Franchisee, an exclusive franchise to provide solid waste service to any person within the corporate limits of the City of Troutdale or areas later annexed thereto. The Franchisee shall have the right to use the Streets of the City for this purpose. No other person shall provide service for compensation, offer to provide, or advertise for the performance of such service to any owner, tenant, lessee, member, or occupant of any real property in the City.
2. Nothing in this franchise shall:
  - a. Prohibit any person from transporting solid waste produced by said person to a disposal site or to a resource recovery facility. The solid waste produced by a tenant, licensee, occupant, or person other than the owner of the premises is produced by such person and not by the land lord or property owner.
  - b. Prohibit any person transporting solid waste through the City that is not collected within the City.
  - c. Prohibit any person from contracting with the state or a federal agency to provide service to such agency under a written contract with such agency.
  - d. Prohibit any person from engaging in the collection of source separated materials for resource recovery for the purpose of raising funds for a charitable, civic, or benevolent activity, after notice to the Franchisee and permission from the City.
  - e. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction, or remodeling of a building or a structure, or in connection with land clearing and development.
  - f. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business of janitorial service, landscaping, or rendering service. But a person shall not provide collection service for any accumulated or stored waste generated by a customer.

- g. Require Franchisee to store, collect, transport, dispose of, or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided however, that Franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter.
  - h. Prevent the City from conducting an annual clean-up campaign for the collection of yard debris, other recyclable materials, or solid waste from residences in the City or in any other way providing for the beauty of the City and the safety and convenience of its citizens.
3. Solid waste placed out for collection, whether or not source separated, belongs to the Franchisee when so placed.

**Section 5. Franchise Term.**

The rights, privileges, and franchise granted herein shall continue for the Franchisee for the period of five (5) years starting January 1, 1995, unless sooner terminated, in accordance with the provisions herein.

**Section 6. Franchise Fee.**

- 1. The Franchisee will pay to the City a franchise fee equal to 4 percent of gross cash receipts resulting from the solid waste services conducted under the franchise. Such fees shall be computed on a quarterly basis and paid within 30 days following the end of each quarter calendar year period
- 2. In addition to the above, the Franchisee shall provide labor and equipment for an annual City clean-up. The costs of providing this service will be allowable costs used to establish appropriate rates.

**Section 7. Franchisee Responsibility.**

- 1. The Franchisee shall:
  - a. Dispose of solid wastes collected at a site approved by the governmental agency having jurisdiction of the disposal of solid waste (currently, Metro) or recover resources from the solid wastes both in compliance with Chapter 459 and 459A, Oregon Revised Statutes, and regulations promulgated thereunder.
  - b. Submit a certificate of public liability insurance with a 30-day notice of cancellation clause, acceptable to the City, which will cover its business operation including each vehicle operated by said Franchisee. The insurance coverage shall be in amounts not less than the minimum requirements of the Oregon Tort Claims Act as now enacted or hereafter amended. The insurance shall indemnify and save

the City harmless against liability or damage which may arise or occur from an injury to person or property as a result of said Franchisee's operation of the solid waste business. The City shall be named as an additional insured.

- c. Provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all types of necessary service.
- d. Respond in writing to any written complaint on service.
- e. Provide the opportunity to recycle in accordance with ORS 459A. In addition, the Franchisee shall comply with any and all rules and regulations adopted by the Department of Environmental Quality, Metro, the City, and other governmental agencies having proper jurisdictions.
- f. Provide, at regular cost, collection and disposal of solid waste and recyclables from City Hall, the Police Station, the Facilities Maintenance/Depot building, the Waste Water Treatment Plant, and the Public Works Shop. Provide, at no cost, collection and disposal of containers, four yards or less that are open to public use including but not limited to the City Parks.
- g. Permit inspection by the City of the Franchisee's facilities, equipment, and personnel at reasonable times.
- h. Give written notification to all new customers about service level options, rates, including an explanation of extra charges, the recycled materials collected, the schedule of collection, the way to prepare materials for collection, and the reasons that persons should separate their materials for recycling.
- i. Participate in studies or evaluations for programs and service needs, as proposed by the City.
- j. Submit rate reporting forms as required by the City.

#### **Section 8. Rates.**

1. The Council, by resolution, shall establish rates which the Franchisee may charge for solid waste services and may, from time to time, by resolution, change those rates.
2. When a new or unusual solid waste service, not included in the rate structure approved by the Council is requested, the Franchisee may establish a reasonable cost for providing such service. However, if such service is provided for more than one month, the Franchisee shall notify the Public Works Director in writing of the service provided, the rate established, and the basis for the rate.

3. In determining fair rates Council will consider all relevant factors.

### **Section 9. Transfer, Suspension, Modification, or Termination of Franchise.**

1. The Franchisee shall not transfer this franchise or any portion thereof without the prior written approval of the City Council, but such consent shall not be unreasonably withheld. The City Council in reaching its decision may consider, among other factors, whether the transferee meets all applicable requirements met by the original Franchisee. Any transfer without the prior written consent shall be void and shall be grounds for termination of this franchise.
2. If the Franchisee fails to comply with the terms of this Franchise or other applicable ordinances of the City, the City shall provide the Franchisee with written notice of such non-compliance. After receiving the aforementioned written notice from the City, the Franchisee shall have 30 days from the date of mailing of the notice in which to comply. The Franchisee may request a public hearing before the City Council if the Franchisee makes such a request within ten days from the mailing date of the written notice from the City. In the event of a public hearing, the Franchisee and other interested persons shall have an opportunity to present information and testimony subject to procedures established by the City Council. Failure to comply with written notice from the City to provide necessary service or otherwise comply with the provisions of this franchise after written notice and a 30 day opportunity to comply shall be grounds for modification, termination, or suspension of the franchise.

### **Section 10. Preventing Interruption of Service.**

In the event the City Council finds an immediate and serious danger to the public, creating a health hazard or serious public nuisance, the Council may, after a minimum of 24 hours actual notice to the Franchisee, authorize another person to temporarily provide service under this franchise, or the City may provide such service. In either event, the Franchisee agrees as a condition to the franchise that any real property, facilities, or equipment may be used without additional consideration to provide such emergency service. The City Council shall return any such property of the Franchisee upon abatement of the health or nuisance hazards created by the general interruption of the service.

### **Section 11. Interruption or Termination of Service.**

The Franchisee shall not terminate service to all or a portion of its customers unless:

1. The street or road access is unavoidably blocked through no fault of the Franchisee, and if there is no reasonable alternate route or routes to serve all or a portion of the customers; or

2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service, or if such interruption or termination is caused by an act of God or a public enemy; or
3. There is non-payment of an undisputed bill by a customer for services rendered. In such case, the Franchisee may terminate service after notifying the customer seven (7) days in advance of intent to terminate.

#### **Section 12. Subcontracts.**

The Franchisee may subcontract with others to provide only specialized service under this franchise. Such subcontracts shall not relieve the Franchisee of any responsibility for compliance with this franchise. All subcontracts are subject to the written approval by the City.

#### **Section 13. Specialized Services.**

The City reserves the right to contract with others to supply specialized service to recycle materials if the Franchisee chooses not to recycle such materials or supply services for such materials to be recycled.

#### **Section 14. Amendments Clause.**

This franchise may only be amended by written agreement between City Council and the franchisee.

#### **Section 15. Public Responsibility.**

1. The following requirements shall pertain to service under this franchise:
  - a. Cans shall be tapered so that they are larger at the top and shall have handles at the top and a place for a handhold at the bottom.
  - b. No garbage can designed for manual collection shall exceed 32 gallons in size and shall not weigh more than 60 pounds gross loaded weight.
  - c. Sunken refuse cans or containers shall not be installed after the effective date of this franchise. To protect against injury to employees of Franchisee, sunken cans installed prior to the date of this franchise shall not be serviced by Franchisee unless they are placed above ground, with the lid, by the customer.
  - d. The user shall provide safe access to the pick up point which does not jeopardize the persons or equipment supplying service or the motoring public.

- e. To protect against injury to employees of the Franchisee, and to protect against rodent and fire dangers, cans shall be rigid and of material that will not split or crack in cold weather.
2. To protect the privacy, safety, pets, and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside any closed gate or outside any garage or other building.
3. Any person who receives service shall be responsible for payment for said services.
4. Putrescible solid waste shall be removed from the premises of a customer at regular intervals not to exceed 14 days.
5. Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit or weight limit of the collection vehicles used by the Franchisee. A person who wishes services for a compactor shall acquire a compactor approved by the Franchisee which is compatible with the equipment of the Franchisee or the equipment the Franchisee is willing to acquire and shall provide the Franchisee with a key to access and transport such compactor.
6. When materials or customer abuse, fire or vandalism causes excessive wear or damage to a cart, container or drop box, the cost of repair or replacement may be charged to the customer. The customer shall take appropriate actions to ensure that hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes are not put into a can, cart, container or drop box.

#### **Section 16. Severability Clause.**

Any finding by a court of competent jurisdiction that any portion of this franchise is unconstitutional or invalid shall not invalidate any other provisions of this franchise. However, in the event of such finding, the City Council may, at its discretion, modify or terminate this franchise if it determines such act is in the public interest.

#### **Section 17. Indemnity and Hold Harmless.**

The Franchisee shall indemnify the City, its officers, employees, and agents, and shall hold them harmless from all loss, damage, claim, expense, or liability arising out of the operation by the Franchisee under its franchise. In the event that any notice of claim, suit, or action is brought for injury or damage to persons or to property against any of the foregoing based upon, or alleged to be based upon, any loss, damage, claim, expense, or liability arising out of the operations of the Franchisee under its franchise, the Franchisee shall defend the same at its own costs and expense; provided, however, that the City reserves their right to retain counsel of its

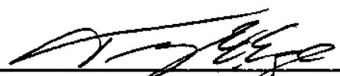
own choosing and join in the defense of any such suit or action with the reasonable cost of such additional counsel to be borne by the Franchisee.

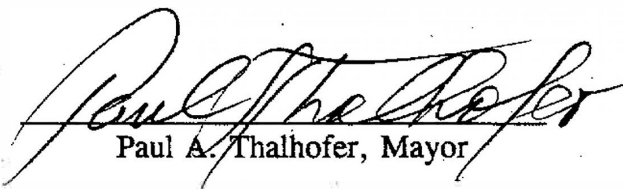
**Section 18. Franchisee's Service Requirements.**

The Franchisee may, subject to review and approval by the City, establish reasonable rules concerning the size, weight, and location of containers or compactors, which are not in conflict with those in Section 15, and on other matters directly affecting the safety of the Franchisee's employees and its ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the Franchisee can comply with weight limits, disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon or Metro. Where economically feasible, the City Council may require the Franchisee to provide special types of service or to subcontract the providing of such special service if the Franchisee shall not find it economically feasible to provide such special service with its own equipment and personnel.

**Section 19. Effective Date.**

The terms and provisions of this franchise shall become effective on January 1, 1995.

  
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Terry E. Ege, President/CEO  
Edwin O. Ege Sanitary Service, Inc.

  
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Paul A. Thalhofer, Mayor

Dated: December 15, 1994

Dated: DECEMBER 14, 1994