



**CITY COUNCIL WORK SESSION  
OCTOBER 15, 2012  
6:00 P.M.  
NEWBERG PUBLIC SAFETY BUILDING  
401 EAST THIRD STREET**

WORK SESSIONS ARE INTENDED FOR DISCUSSION. NO ACTION WILL BE TAKEN ON THE AGENDA ITEMS AND NO DECISIONS WILL BE MADE. NO ORAL OR WRITTEN TESTIMONY WILL BE HEARD OR RECEIVED FROM THE PUBLIC.

**I. CALL MEETING TO ORDER**

**II. ROLL CALL**

**III. REVIEW OF COUNCIL AGENDA AND MEETING**

Executive Session pursuant to [ORS 192.660\(2\)\(h\)](#) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

**IV. COUNCIL HOUSEKEEPING ITEMS**

**V. ADJOURNMENT**

**ACCOMMODATION OF PHYSICAL IMPAIRMENTS:**

*In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical accommodations you may need as far in advance of the meeting as possible and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the city recorder at (503) 537-1283. For TTY service please dial 711.*

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**CITY COUNCIL AGENDA  
OCTOBER 15, 2012  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

**Mission Statement**

*The City of Newberg serves its citizens, promotes safety, and maintains a healthy community.*

**Vision Statement**

*Newberg will cultivate a healthy, safe environment where citizens can work, play and grow in a friendly, dynamic and diverse community valuing partnerships and opportunity.*

**I. CALL MEETING TO ORDER**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. CITY MANAGER'S REPORT**

**V. PUBLIC COMMENTS**

(30 minutes maximum, which may be extended at the Mayor's discretion, with an opportunity to speak for no more than 5 minutes per speaker allowed)

**VI. CONSENT CALENDAR**

Consider a motion approving the September 4, 2012, City Council meeting minutes. (Pgs. 3-8)

**VII. PUBLIC HEARINGS**

1. Consider a motion tentatively approving the vacation of a portion of the Ninth Street right-of-way between Industrial Parkway and Highway 219. (Pgs. 9-18)  
**(Legislative Hearing)**
2. Consider a motion approving **Ordinance 2012-2756** approving a non-exclusive solid waste and recycling franchise with Waste Management of Oregon, Inc. (Pgs. 19-48)  
**(Legislative Hearing)**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

3. Consider a motion adopting **Resolution 2012-3018** approving Supplemental Budget #1 for fiscal year 2012-2013. (Pgs. 49-58)  
**(Administrative Hearing)**

## **VIII. COUNCIL BUSINESS**

## **IX. ADJOURNMENT**

*ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

**Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. The exception is land use hearings, which requires a specific public hearing process. The City Council asks written testimony be submitted to the City Recorder before 4:30 p.m. on the preceding Wednesday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 15, 2012

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

SUBJECT: Approve the September 4, 2012, City  
Council Meeting minutes.

Contact Person (Preparer) for this  
Motion: Norma Alley, City Recorder  
Dept.: Administration

## RECOMMENDATION:

Approve City Council minutes for preservation and permanent retention in the City's historical records.

## EXECUTIVE SUMMARY:

The City of Newberg City Council held a public meeting and minutes were recorded in text. In accordance to Oregon State Records Management law, the City of Newberg must preserve these minutes in hard copy form for permanent retention.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

None.

**CITY COUNCIL MINUTES  
TUESDAY, SEPTEMBER 4, 2012  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

A work session was held prior to the meeting. The Visitor Information Center Annual Report from the Chamber of Commerce was given by Director Sheryl Kelsh, accompanied by Terry Emery and Teri Council. No action was taken and no decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:10 PM.

**II. ROLL CALL**

Members Present:	Mayor Bob Andrews	Denise Bacon	Ryan Howard
	Bart Rierson	Marc Shelton	Wade Witherspoon
	Stephen McKinney (arrived at 6:11 PM)		

Staff Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Norma Alley, City Recorder	Barton Brierley, Planning and Building Director
	Paul Chui, Senior Engineer	Mandy Dillman, Minutes Recorder

Others Present: Leon Blanchard, Mike Ragsdale, and Robert Soppe.

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, reported the numbers received from the Special Olympics wrap up meeting. Participation was above average this year with 1,005 athletes, up from 1,300 last year, and ranging in ages 8-79 years old. There were 1,300 volunteers, 500 coaches/chaperones, 1,100 observers, and 2,000 medals and ribbons. The Chamber of Commerce is hosting the county commissioner forum on September 10<sup>th</sup> at noon at the Friendsview Manor. Darlene Adams contributed a flag pole, benches, plaque, and a flag for the new animal shelter. The flag was flown over the USS Arizona in honor of her husband, who was serving in Pearl Harbor when the Japanese attacked. She will be hosting a flag pole hoisting at 4 p.m. on September 16<sup>th</sup>. George Fox will be conducting their annual Serve Day tomorrow, September 5<sup>th</sup>, and all are invited to help the students clean up downtown. The Chehalem Cultural Center (CCC) is hosting an event on African Art for the First Friday Art Walk. A campaign was mounted to have volunteers draw African symbols in sidewalk chalk around downtown to represent community and environment. Several City Hall employees volunteered to do a square outside city hall. More drawings will be done throughout downtown by other volunteers.

**V. PUBLIC COMMENTS**

Mayor Andrews opened public testimony.

Mr. Leon Blanchard said he read in the Newberg graphic the City is doing a lot of street repairs. He admitted the City has done a good job on a lot of them, but was concerned about the north part of town and West 5<sup>th</sup> Street in particular, both of which are gravel areas. He inquired as to when the city will do something for that

particular part of the community. Mr. Blanchard explained he has resided on a gravel road in Newberg for 43 years. During this time he has dealt with people kicking rocks into his yard as well as having a car crash through his fence due to the gravel road. He is concerned it is a problem and has witnessed City officers evaluate the road, but no changes have been made. He is also concerned about the amount of gravel that gets moved onto Harrison Street from the gravel road and the size of potholes formed during the winter. Mayor Andrews requested Mr. Danicic speak with Mr. Blanchard on the process of street improvements.

Mr. Mike Ragsdale, Newberg Downtown Coalition (NDC) Director, stated the city is really cooperating to make downtown a very nice place to visit with our Halloween, Christmas, Truffle, and Camellia Festivals. Their organization is starting an annual Oktoberfest fundraiser in conjunction with Early Bird Rotary. With the money raised, they intend to provide playgrounds and safe drinking water to South African communities. Research has shown that around the country over thirty other Rotary clubs put on Oktoberfests sometimes raising over \$80,000.00. Arrangements are underway to hold the first annual Oktoberfest October 27-28 at the CCC and on the Library's lawn. Mr. Ragsdale inquired if the council would consider allowing the festival to serve beer in an area only currently permitting the serving of wine. The festival has been arranged so the beer would be served; however the bocce ball tournament area would have to be excluded if the city does not approve an exception. The NDC is submitting an application to request the one time allowance of beer on this piece of city property next week.

Mr. Robert Soppe stated he had previously raised issues with the parking code and received a response that his request would be deferred until later. He would like the City to make significant improvements on two of the items he raised; particularly, Newberg Municipal Code (NMC) 15.440.050(B) allowing the joint use of parking spaces that are non-overlapping. These areas could be improved by inserting a statement into (B)(1) similar to "an agreement shall be made with the city insuring their continues to be no substantial conflict in the principal operating hours". Similarly, Mr. Soppe reported, NMC 15.440.050(C) regarding a reduction of 50% of parking requirements based on a nearby parking lot, could be improved substantially by including "or by the numbers of spaces in nearby commercial parking lot, whichever is less". This will not resolve everything, but will make enormous improvements over these two issues and will help to solve irreversible problems. Mr. Soppe asked the Planning and Building Director about outdoor sales and how they fit with institutional zoning laws. He was told the Newberg Farmers Market is considered a temporary merchant and Mr. Soppe assumes this would also include Tunes on Tuesdays and other such events. His question is in NMC 5.15.090(A) stating "temporary merchants are authorized to set up only on properties in the C2, Community Commercial, or C3, Central Business, Zoning Districts"; however, Tunes on Tuesday and the Farmers Market are neither in such locations. Furthermore, Mr. Soppe addressed concern for errors in the approved minutes from the April City Council Meeting and the associated resolution. Changes were made to the wording of a motion in the April minutes in regards to redundancy of wording. Mr. Soppe is under the impression the spoken words of a motion are to be captured exactly in writing. He also believes if changes are to be made, that decision should be made by Council, not staff. Additionally, he is concerned the difference will cause confusion in the future for those looking back at city history. Mr. Soppe's final item was in regards to the April 2<sup>nd</sup> City Council discussion on parking in the Cultural District during events such as Tunes on Tuesday. He remembers Councilor Howard indicating he was part of a Tunes Committee working toward goals to reduce the impact on the neighbors. Mr Soppe is interested in feedback on what transpired as a result of Councilor Howard's research. In particular he would like to know what was measured, what was attempted, what succeeded, and how change progressed throughout the summer at the events (see official meeting packet for full testimony).

Councilor Howard said he would be happy to come before the neighborhood subgroup and discuss the results of the committee.

Mayor Andrews asked if Tunes on Tuesday was the event where parking was evaluated. Councilor Howard confirmed it was.

## VI. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2012-3015** authorizing the city manager to enter into a contract with N. Santiam Paving Company for road pavement restoration in the amount of \$355,950.00.

This agenda item was pulled from the consent calendar and discussed under new business.

2. Consider a motion adopting **Resolution No. 2012-3016** authorizing the city manager to approve the lease-purchase of two vehicles from Hubbard Chevrolet in the amount of \$80,957.80 for the Newberg-Dundee Police Department.
3. Consider a motion authorizing a refund of \$17,423.61 in Building Permit Fees and System Development Charges paid by Terrence and EvaKay Mahr for construction of a new home, which did not take place.

This agenda item was pulled from the consent calendar and discussed under new business.

4. Consider a motion approving the August 6, 2012, City Council meeting minutes.

**MOTION: Howard/Rierson** approving the Consent Calendar including **Resolution No. 2012-3016** authorizing the city manager to approve the lease-purchase of two vehicles from Hubbard Chevrolet in the amount of \$80,957.80 for the Newberg-Dundee Police Department and City Council minutes from August 6, 2012, as amended. Motion carried (7 Yes/0 No).

## VII. NEW BUSINESS

1. Consider a motion adopting **Resolution No. 2012-3015** authorizing the city manager to enter into a contract with N. Santiam Paving Company for road pavement restoration in the amount of \$355,950.00.

TIME – 7:35 PM

Councilor Shelton said he desired to discuss the strategic assessment of using revenue from licenses and registration by House Bill 2001 (HB2001). Councilor Shelton asked what portion of that could be used for Newberg's local Bypass construction match, since it can be a funding mechanism in some ways. Dan Danicic responded a year ago they started to set aside money from HB2001 to be used for street improvement in the future. He mentioned they are expecting \$300,000.00 from the bill and 50% will go to this purpose; however, it will be three to four years before these bonds are prepared. Typically the money is not used until after completion of the development and the bond funding will not pay out until the project is completed. Ideally the first payment would be made sometime in 2016-2017; however, he is optimistic in thinking the first payment could possibly take place in 2016 or even a year earlier.

Councilor Shelton stated he wants the community to understand HB2001 money is for road improvements. He is concerned people will misunderstand that we need to find a mechanism for these funds; these funds already have a mechanism and are available specifically for road improvement. Additionally, he would like the community to understand the money from HB2001 is also committed to the Newberg-Dundee Bypass and there will not be a need for additional funds to complete the project. Councilor Shelton asked Dan if it should be explained in the staff report that in the future we will need to find new funding mechanisms for improvements; however, we currently have the funds to complete current projects. Dan Danicic said he is convinced the wording does not need to be changed, but when the Council meets to plan next year's budget, it should be clarified that the HB 2001 monies will not be used for staff; rather, will go towards road improvements.

Mayor Andrews asked staff to clarify cost estimates of engineering for the Newberg-Dundee Bypass project. He stated the estimate was \$125,000.00 more than originally proposed. He asked if between the time of the estimate and the return of the bid if materials increased in cost that much. Mr. Paul Chiu, Senior Engineer, replied materials cost about the same, but they needed more quantity than first realized.

**MOTION: Shelton/McKinney adopting Resolution No. 2012-3015** authorizing the city manager to enter into a contract with N. Santiam Paving Company for road pavement restoration in the amount of \$355,950.00. Motion carried (7 Yes/0 No).

3. Consider a motion authorizing a refund of \$17,423.61 in Building Permit Fees and System Development Charges paid by Terrence and EvaKay Mahr for construction of a new home, which did not take place.

TIME – 7:45 PM

Mr. Terrence Mahr, City Attorney, declared a conflict of interest and removed himself from discussion.

Councilor Shelton addressed concern for Terry Mahr’s conflict of interest and wanted to make sure this process is consistent with any other individual in the same situation for Mr. Mahr’s protection. Mr. Barton Brierley, Planning and Building Director, replied the process is the same for any applicant and is eligible to receive a refund.

Councilor Shelton asked for clarification as to what fees were being refunded. Councilor Rierson stated revenue and processing fees, building plan checks, and other fees are not being refunded and assumed Terry Mahr is being refunded only the System Development Charges, which do not need to be collected because the residence will not be built. Barton Brierley replied that that is correct.

Councilor Howard asked for clarification on the difference between Water Development and Water Tap Fees. Barton Brierley clarified the Water Tap Fee is a charge to install the water line and meter to the property and system development is a charge to upgrade the system.

**MOTION: Shelton/McKinney** authorizing a refund of \$17,423.61 in Building Permit Fees and System Development Charges paid by Terrence and EvaKay Mahr for construction of a new home, which did not take place. Motion carried (7 Yes/0 No).

## VIII. COUNCIL BUSINESS

TIME – 7:54 PM

Dan Danicic reported he has received concerns there are too many garage sale signs being displayed and not being removed after the sale is over and asked the Council if they are satisfied with where signs are being put up and if a greater level of action should be taken in regards to sign posting enforcement.

General discussion commenced and consensus was met to hold a work session to discuss possible revisions to the ordinance and enforcement on this matter in more detail.

Mayor Andrews asked for an update on the status of filling the groundskeeper position.

Mr. Danicic replied they have found a temporary replacement until the end of the year who worked with Mr. Bryan Stewart. He received a letter from the union addressing concern that if it is a mandatory position it should not be contracted out. Staff will look into this determination.

Councilor McKinney asked what the process is for neighborhoods whose streets are gravel to get paved and who pays for that to happen. Dan Danicic replied residences usually pay for improvement; however, there are some exceptions where it is paid with System Development Charges money.

**IX. ADJOURNMENT**

The meeting adjourned at 8:15 PM.

**ADOPTED** by the Newberg City Council this \_\_\_ day of \_\_\_\_\_, 201x.

\_\_\_\_\_  
Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this \_\_\_ day of \_\_\_\_\_, 201x.

\_\_\_\_\_  
Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: October 15, 2012**

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion XX      Information \_\_\_  
 No.              No.                      No.                                           No.                      No.

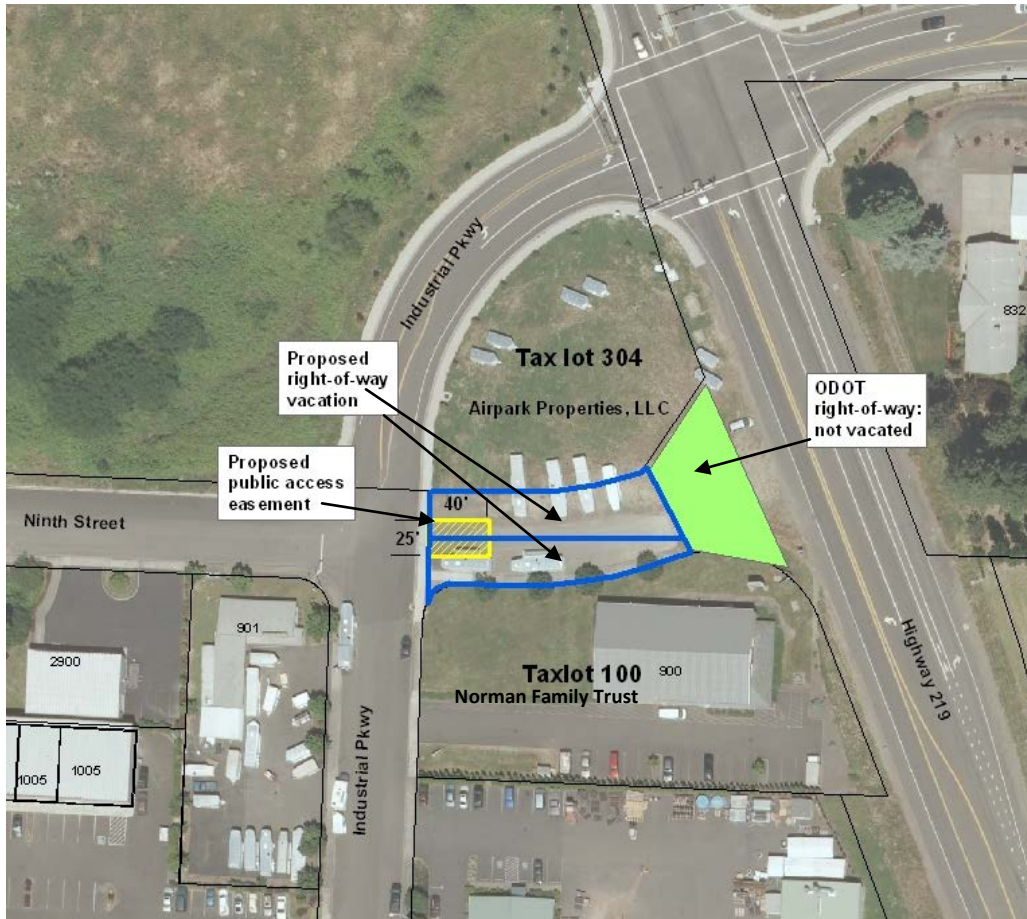
**SUBJECT: Vacation of the portion of the Ninth Street right-of-way dedicated to the City between Industrial Parkway and Highway 219.**

**Contact Person (Preparer) for this Motion: Steve Olson, AICP  
 Dept.: Planning & Building  
 File No.: VAC-11-002**

**HEARING TYPE:**     LEGISLATIVE     QUASI-JUDICIAL     NOT APPLICABLE

**RECOMMENDATION:** Take public testimony regarding support for or objections to the proposed vacation, and the effect the proposed vacation may have on the market value of abutting properties. Consider the merits of the vacation and the requirements of ORS 271.130, and make a motion to either: 1) Tentatively approve the vacation without the consent of one abutting property owner, conditional upon Airpark Properties, LLC, supplying by January 15, 2013, legal descriptions and exhibits prepared by a surveyor of the area to be vacated and any necessary utility and access easements as noted in the previous July 5, 2011, tentative approval. Direct staff to prepare an ordinance for final approval after the exhibits and utility easements have been submitted and reviewed by staff; 2) withdraw the July 5, 2011, tentative approval and end consideration of the vacation; or 3) continue the hearing to a date certain to allow additional time for deliberation.

**EXECUTIVE SUMMARY:**



Background: In January, 2011, Airpark Properties, LLC, represented by Jerry Dale, and the Norman Family Trust, represented by Gerald and Sandra Norman, submitted an application (file # VAC-11-002) requesting the City vacate the portion of the Ninth Street right-of-way between Industrial Parkway and Highway 219. Their properties are the only properties abutting the proposed vacation area. Both property owners consented to the vacation, as did other nearby property owners in the affected area of the vacation. The City Council held a public hearing on July 5, 2011, and concluded the right-of-way dedicated to the City was no longer necessary as a street and should be vacated, as long as necessary utility easements and access easements had been created. The Council made a motion tentatively approving Ordinance No. 2011-2742, vacating the right-of-way conditional upon the applicant supplying any necessary utility and access easements along with legal descriptions and exhibits prepared by a surveyor of the area to be vacated. Council directed staff to prepare an ordinance including the right-of-way and easement exhibits for final approval. The item was tabled.

In order to finalize the vacation, the property owners would have to grant each other an access easement to Industrial Parkway over a portion of the vacated right-of-way. The two parties could not come to an agreement on the easement. On June 20, 2012, John Bridges, representing the Norman Family Trust, sent the City a letter withdrawing the Norman's consent for the vacation application (Exhibit "A"). On July 9, 2012, Jerry Dale, a member of Airpark Properties, LLC, sent the city a letter saying the vacation was still in the best interests of the city and asking the city to proceed with the vacation without the consent of the Normans (Exhibit "B").

On August 20, 2012, City Council decided to take the vacation proposal off the table, and schedule a public hearing for October 15, 2012, to take public testimony and evaluate the proposal. Notice was mailed to property owners in the affected area. As of September 19, 2012, one letter had been received objecting to the vacation (Exhibit "A", Norman letter) and one letter had been received supporting the vacation (Exhibit "B", Airpark Properties, LLC, letter).

Vacation without consent: ORS 271.130 allows a city to vacate public right-of-way without the consent of abutting property owners under certain conditions. However, the vacation cannot be completed if:

- The owners of a majority of the affected area, computed on the basis provided in ORS 271.080, object in writing to the vacation.
- The vacation will substantially affect the market value of the abutting property, unless the City provides for paying damages. Provisions for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

***ORS 271.130: Vacation on city governing body's own motion; appeal.***

***(1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.***

***(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.***

***(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing***

body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.080 Vacation in incorporated cities; petition; consent of property owners.**

*(excerpt) The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted.*

Staff expects City Council will hear public testimony at the October 15, 2012, hearing regarding support for and objections to the proposed vacation and the effect the vacation may have on the market value of abutting properties. If the owners of a majority of the affected area object in writing to the vacation then it cannot proceed (a map of the affected properties is shown in Exhibit "C"). If the vacation is determined to substantially affect the market value of the Norman's property, who have objected to the vacation, then the vacation cannot proceed unless City Council provides for paying damages. The Council should consider the merits of the vacation and the requirements of ORS 271.130, and make a motion to either: 1) Tentatively approve the vacation without the consent of one abutting property owner, conditional upon Airpark Properties, LLC supplying by January 15, 2013, legal descriptions and exhibits prepared by a surveyor of the area to be vacated and any necessary utility and access easements as noted in the previous July 5, 2011, tentative approval. Direct staff to prepare an ordinance for final approval after the exhibits and utility easements have been submitted and reviewed by staff; 2) withdraw the July 5, 2011, tentative approval and end consideration of the vacation; or 3) continue the hearing to a date certain to allow additional time for deliberation.

**FISCAL IMPACT:** There is potential for a small positive impact if the vacated area is developed, as the City would collect development fees and property taxes. There is potential for a negative impact if the City were required to pay damages if the vacation substantially affected the market value of abutting properties. If the City Council decision is appealed then there would be some cost to the City to defend the decision.

**STRATEGIC ASSESSMENT:** The property is no longer needed as a public street, as ODOT has extended Industrial Parkway to the north and installed a traffic light to control access to Highway 219. Utility easements can protect the public interest in the existing utility lines, and a public access easement will provide access to both properties from Industrial Parkway. The Council previously heard testimony regarding the vacation (when it was initiated by the abutting property owners) and tentatively approved the vacation. Vacation of the right-of-way will return the property to the abutting owners and allow them to develop the property in the future. The vacation should increase the market value of abutting properties, so the risk of the City needing to make provisions for paying damages is probably small.

**EXHIBIT "A"**  
**OBJECTIONS TO THE VACATION**

**BROWN, TARLOW, BRIDGES  
PALMER & STONE PC**  
Attorneys at Law

ALLYN E. BROWN  
JOHN T. BRIDGES  
STEPHEN C. PALMER  
TRUMAN A. STONE  
RICHARD P. BROWN

DONALD O. TARLOW  
Retired



RECEIVED

JUN 22 2012

Initial: \_\_\_\_\_

515 E. FIRST STREET  
NEWBERG, OREGON 97132  
TELEPHONE: (503) 538-3138  
FACSIMILE: (503) 538-9812  
[www.newberglaw.com](http://www.newberglaw.com)

June 20, 2012

City of Newberg  
414 East First Street  
P.O. Box 970  
Newberg, OR 97132

**Re: Vacation of Ninth Street Right-of-Way  
Motion #2011-2742**

To Whom it May Concern:

My client, Gerald Norman, as Trustee of the Norman Family Trust, was one of the applicants as well as persons consenting to the vacation of Ninth Street between Industrial Parkway and Highway 219. My client now withdraws his application and consent regarding the proposed street vacation.

If you have any questions, please do not hesitate to contact me.

Yours truly,

BROWN, TARLOW, BRIDGES, PALMER & STONE, P.C.

John T. Bridges

JTB:ao

cc: Gary Norman  
Jerry Dale of Airpark Properties, LLC

**EXHIBIT "B"**  
**SUPPORT FOR THE VACATION**

Airpark Properties LLC  
P O Box 248  
Newberg, OR 97132

RECEIVED

JUL 10 2012

Initial:     JB    

July 9, 2012

Barton Brierley  
Planning Director  
City of Newberg, OR

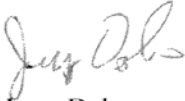
RE: 9th Street Vacation

Dear Barton:

In July of 2011 the City Council approved, with conditions, the vacation of East 9<sup>th</sup> Street that lies between Industrial Parkway and Highway 219. In trying to meet those conditions the Norman Family Trust (co-petitioner and owner of the south abutting property) has made what we believe are unreasonable demands of Airpark Properties LLC (co-petitioner and owner of the north abutting property) for completing the vacation. As a consequence of our refusal to meet their demands they have withdrawn their consent.

We believe the vacation of this portion of East 9<sup>th</sup> Street is in the best interest of the City and serves the public good. We therefore ask that the City initiate the vacation of that portion of East 9<sup>th</sup> Street that lies between Industrial Parkway and Highway 219 under the provisions of ORS 272.130. We further ask that the City reserve a 25 ft by 40 ft Public Access, east of Industrial Parkway and centered on East 9<sup>th</sup> Street, for the benefit of the public and to provide access to both abutting properties.

Yours Truly,  
AIRPARK PROPERTIES, LLC



Jerry Dale  
Member

**EXHIBIT "C"**  
**MAP OF THE AFFECTED AREA**



Ninth Street Vacation - affected area				
Number	Address	Owner	Affected area (square feet)	% of total affected area
1	2901 E. 9th St.	Airpark Prop. LLC	21,198	7.1%
2	832 S. Springbrook Rd.	Darlene Swonger Trust	74,802	25.0%
3	905 S. Wilsonville Rd.	Donald Brooks	3,562	1.2%
4	1001 S. Wilsonville Rd.	Cecil & Clara Brown Trust	11,850	4.0%
5	900 Ind. Pkwy	Norman Family Trust	37,350	12.5%
6	1000 Ind. Pkwy	Frank Harris	17,252	5.8%
7	901 Ind. Pkwy	William & Margaret Thurman	17,867	6.0%
8	1005 Ind. Pkwy	Jarrett Rose	15,914	5.3%
9	1005 Ind. Pkwy, C100	Lisa Shepherd	2,342	0.8%
10	1005 Ind. Pkwy, PO box 517	PC Electric LLC	1,261	0.4%
11	1005 Ind. Pkwy, PO box 517	NW Leasing & Aquis.	1,261	0.4%
12	2900 E. 9th St.	R. & S. Olson	20,051	6.7%
13	2800 E. 9th St.	Jamie L. Nibler Trust	8,607	2.9%
14	2771 E. 9th St.	Newberg Bus. Ctr. LLC	13,460	4.5%
15	2803 E. 9th St.	9th St. Hangars LLC	2,504	0.8%
16	2901 E. 9th St.	Airpark Prop. LLC	49,552	16.6%
<b>Total affected area =</b>			<b>298,833</b>	<b>100%</b>

## VACATION

**271.080 Vacation in incorporated cities; petition; consent of property owners.** (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing. [Amended by 1999 c.866 §2]

**271.090 Filing of petition; notice.** The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

**271.100 Action by city governing body.** The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

**271.110 Notice of hearing.** (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005 c.22]

**271.120 Hearing; determination.** At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**271.130 Vacation on city governing body's own motion; appeal.** (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

**271.140 Title to vacated areas.** The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

**271.150 Vacation records to be filed; costs.** A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**271.160 Vacations for purposes of rededication.** No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with

the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

**271.170 Nature and operation of statutes.** The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

**271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement.** To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

**271.190 Consent of owners of adjoining property; other required approval.** No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**271.200 Petition; notice.** (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive

weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**271.210 Hearing; grant of petition.** Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

**271.220 Filing of objections; waiver.** All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

**271.230 Records of vacations; fees.** (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 15, 2012

Order \_\_\_ Ordinance XX Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. No. 2012-2756 No.

**SUBJECT:** A non-exclusive solid waste and recycling franchise with Waste Management of Oregon, Inc. ("WM").

**Contact Person (Preparer) for this Motion:** Dawn Wilson  
**Dept.:** City Attorney's Office  
**File No.:**

**HEARING TYPE:**  LEGISLATIVE  QUASI-JUDICIAL  NOT APPLICABLE

**RECOMMENDATION:** Adopt Ordinance No. 2012-2756 repealing Ordinance Nos. 1986-2186, 1981-2056, and 1978-1909; and adopt a new, non-exclusive solid waste and recycling franchise with Waste Management of Oregon, Inc. (WM).

## EXECUTIVE SUMMARY:

WM has requested a new, more updated solid waste and recycling services Franchise Agreement from the City of Newberg. The new Franchise Agreement includes language to support the use, maintenance, and upgrading of WM's state of the art technology and equipment, which has substantially increased efficiency. The Cities of Newberg and Dundee have negotiated with WM for the same Franchise Agreements, except for the franchise rates and Scope of Services due to some slightly different characteristics between the two cities. The negotiations between the City and WM have been extremely friendly, successful, and have resulted in a new Franchise Agreement, which comports with the requirements of applicable laws.

## FISCAL IMPACT:

The City will continue to receive revenue from the 3% franchise fee.

## STRATEGIC ASSESSMENT:

The new Franchise Agreement contains modern language addressing current practices, processes, and state of the art technology and equipment, as well as provides for upgrades and maintenance of equipment and services. With a current franchise, the City may enforce citizen complaints more efficiently and effectively, in addition to the fact that a current franchise provides financial opportunities for both parties in order for quality services to be provided continually.

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**AN ORDINANCE REPEALING ORDINANCE NOS. 1986-2186, 1981-2056, AND 1978-1909; AND ADOPTING AND GRANTING A NON-EXCLUSIVE SOLID WASTE FRANCHISE AGREEMENT TO WASTE MANAGEMENT OF OREGON, INC. FOR THE COLLECTION, TRANSPORTATION, DISPOSAL, AND/OR RECYCLING OF SOLID WASTE AND RECYCLABLE MATERIALS GENERATED, DEPOSITED, ACCUMULATED OR OTHERWISE COMING TO EXIST WITHIN THE CITY OF NEWBERG**

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**RECITALS:**

1. Waste Management of Oregon, Inc. (WM) has requested a new, more updated solid waste and recycling services Franchise Agreement from the City of Newberg.
2. The new Franchise Agreement includes language to support the use, maintenance, and upgrading of WM's state of the art technology and equipment, which has substantially increased efficiency.
3. The Cities of Newberg and Dundee have negotiated with WM for the same Franchise Agreements, except for the franchise rates and Scope of Services due to some slightly different characteristics between the two cities.
4. The negotiations between the City and WM have been extremely friendly, successful, and have resulted in a new Franchise Agreement, which comports with the requirements of applicable laws.

**THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

**Section 1 – Title:**

This Franchise will be known and be cited as the “Solid Waste and Recycling Services Franchise with Waste Management of Oregon, Inc. (WM)”.

**Section 2 – Granting of Franchise:**

- A) Pursuant to the public interest, the City hereby grants to WM a non-exclusive and revocable authorization to make lawful the collection, transportation, disposal, and/or recycling of solid waste and recyclable materials generated, deposited, accumulated or otherwise coming to exist within the City of Newberg.
- B) This authorization is made in accordance with the applicable provisions ORS Chapter 459.

- C) The Franchise Agreement is hereby attached as Exhibit “A” and by this reference incorporated.
- D) The City agrees to the terms and conditions of the Franchise Agreement with WM. The City authorizes and directs the City Manager to sign the agreement on behalf of the City of Newberg with approval as to legal sufficiency by the City Attorney.

**Section 3 – Term of Franchise:**

The Franchise is granted for seven (7) years commencing on October 1, 2012.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: November 14, 2012.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 15<sup>th</sup> day of October, 2012, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

\_\_\_\_\_  
Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 18<sup>th</sup> day of October, 2012.

\_\_\_\_\_  
Bob Andrews, Mayor

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

This EXCLUSIVE FRANCHISE AGREEMENT ("Franchise") is made and entered into between THE CITY OF NEWBERG ("City") and WASTE MANAGEMENT OF OREGON, INC. ("Franchisee"). The parties will be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise. This Franchise will be effective upon the "Effective Date," as defined below.

**RECITALS**

**WHEREAS** the Legislature of the State of Oregon, through the enactment of Chapter 459A ORS, has declared that it is in the public interest to authorize cities and counties to provide for solid waste and recyclable material collection services by issuing exclusive franchises for such services;

**WHEREAS** the City of Newberg has determined that it is in the public interest of the residents and business of the City of Newberg to issue an exclusive franchise for the collection, transportation, disposal, and/or recycling of solid waste and recyclable materials generated, deposited, accumulated or otherwise coming to exist within the City;

**WHEREAS** the Franchisee represents and warrants to the City of Newberg that it has the necessary experience, expertise, qualifications, and resources to provide the City and its residents and businesses with safe, environmentally protective, and reliable collection, transportation, disposal, and/or recycling services;

**WHEREAS** the City of Newberg wishes to grant to Franchisee and Franchisee is agreeing to accept this exclusive franchise for the collection, transportation, disposal, and/or recycling of solid waste and recyclable materials generated, deposited, accumulated or otherwise coming to exist within the City;

**TERMS AND CONDITIONS**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the Parties agree, represent, and warrant as follows:

**1. DEFINITIONS.** For the purpose of this Franchise, the following definitions will apply unless the context clearly indicates or requires a different meaning.

1.1 "Effective Date" is defined as October 1, 2012.

1.2 "City" means the City of Newberg, its Council, officials, boards, commissions, agents, and employees unless otherwise specifically designated, and the area within the present and future territorial city limits of the City of Newberg.

1.3 "Council" means the duly-elected governing legislative body of the City.

## Exhibit "A"

1.4 "Franchise Area" means: (i) the entire territory included within the City of Newberg limits as of the Effective Date; and (ii) such additional area as may thereafter become included with the City of Newberg limits from time to time due to annexation, incorporation, or other means but only from and after the time as Franchisee is able to provide collection services in such additional area. The City will notify the Franchisee of any such annexations or incorporations, the effective date of the incorporation/annexation, and the addresses of new customers located within the newly incorporate/annexed areas.

1.5 "Franchisee" means Waste Management of Oregon, Inc., and its successors and assigns.

1.6 "Solid Waste" means solid waste as defined in ORS 459.005, including Yard Debris, Recyclable Materials and Infectious Wastes derived from residential and commercial sources located in the Franchise Area. Notwithstanding the definition of "solid waste" in ORS 459.005, the definition of Solid Waste for purposes of this Franchise does not include those materials specifically identified herein as "Excluded Solid Waste", unless the Parties subsequently agree in writing to include such materials within the definition of Solid Waste for purposes of this Franchise.

1.7 "Excluded Solid Wastes" means the following materials, provided, however, that the Franchisee and the City may in the future agree in writing to include any of the following materials as Solid Wastes subject to this Franchise:

Vehicles or similarly large items;

Animal manures, dead animals, and animal remains, including remains from slaughterhouses or butcher shops

Grease waste or used cooking oil;

Sewage sludge, septic tank and cesspool pumpings, or other sludge;

Infectious Waste that is not properly containerized and stored in accordance with the requirements of ORS 459.390;

Treated/de-characterized wastes;

Antifreeze;

Asbestos and asbestos-containing waste;

Light ballasts;

Petroleum contaminated soils;

Universal wastes as defined in OAR 340-113-0020(4) and 40 CFR § 273.9, including batteries, pesticides, mercury-containing equipment, and universal waste lamps as defined therein.

Other wastes which require specialized disposal or treatment under state or federal law;

Hazardous Waste (as defined herein); and

Other wastes that the Parties agree to in writing to be excluded from this Franchise.

1.8 "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386.

1.9 "Recyclable Materials" means any material or group of materials that is separated from other Solid Waste by the generator, and 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. It includes, but is not limited to: newspaper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and craft

paper, container glass, aluminum, tin cans, plastic bottles, magazines, scrap paper, phone books, and other materials as may be designated by the Franchisee and the City.

1.10 "Source Separated Recyclable Materials" means any Recyclable Material that has been separated from the solid waste stream prior to collection.

1.11 "Yard Debris" means compostable materials including grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter, or similar yard, garden, and landscaping vegetation. Yard debris does not include such items as dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic, animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible material.

1.12 "Hazardous Waste" means wastes that are defined as hazardous wastes any other radioactive, volatile, corrosive, flammable, explosive, biohazardous, or toxic waste, substance or material, as defined by or listed or characterized under applicable federal, state, or local laws or regulations, including, but not limited to the federal Resource Conservation & Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*; and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 6901 *et seq.*

1.13 "Gross Service Revenues" means any and all revenue or compensation actually collected by Franchisee from customers under this Franchise for the exclusive collection, transportation, processing, recycling and/or disposal of Solid Waste and Recyclable Materials within the Franchise Area, in accordance with Generally Accepted Accounting Principals (GAAP). "Gross Service Revenues" will not include revenues generated from the collection of revenues generated from the sale of Recyclable Materials or any rebates for Recyclable Materials received from the State of Oregon.

1.14 "Allowable Expenses" means those expenses incurred by the Franchisee in the performance of this Franchise, but only to the extent that such expenses are known and measurable, calculated according to GAAP on an accrual basis, and when applicable, prorated or allocated to the Franchisee's operations within the City, do not exceed the fair market value of comparable goods or services, and are commercially reasonable and prudently incurred by the Franchisee solely in the course of performing its obligations under the Franchise. Allowable Expenses will include, but are not limited to, the following:

- (a) The costs of complying with all laws, regulations or orders applicable to the Franchise under federal, state or local law, as now or hereafter amended;
- (b) Disposal costs and any fees for processing Solid Waste, Recyclable Materials, or Yard Debris;
- (c) Labor costs, including operational and supervisory labor, payroll taxes, workers' compensation, and benefits;
- (d) Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;
- (e) Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;
- (f) Performance bonds and insurance in at least the amounts and coverages required by the City;
- (g) Administrative expenses related to data processing, billing and supplies, finance and accounting, Franchise administration, human resource and labor management, rate analysis, and regulatory compliance;
- (h) Compensation paid to officers;
- (i) Utilities;

- (j) Training and worker safety expenses;
- (k) Promotion and public education costs;
- (l) Depreciation and amortization of capital assets, including any necessary stand-by or back-up equipment used on a regular and ongoing basis in the provision of services under this Franchise over standardized economic useful lives of the various assets.
- (m) Outside professional fees and costs, limited to two percentage points of revenue, unless an extraordinary circumstance exists;
- (n) Interest expense, other than interest paid with respect to route or Franchise acquisition, that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases;
- (o) All surcharges, taxes, or fees, other than state or federal income taxes or franchise fees, which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of collection services under this Franchise;
- (p) Direct write-off charges for bad debts;
- (q) Franchise Fees assessed by the City; and
- (r) Any other costs or expenses reasonably incurred by Franchisee which are reasonably necessary to perform the services under this Franchise.

**2. GRANTING OF FRANCHISE; TERM; RENEWAL; TERMINATION.**

2.1 The City does hereby grant to Franchisee, an exclusive license and franchise (the "Franchise") for a term of SEVEN (7) years from and after the Effective Date to collect and transport all Solid Waste, including Recyclable Materials and Yard Waste, generated, deposited, accumulated or otherwise coming to exist in the Franchise Area and to charge for such services and fees as herein provided. Except as provided in Section 5 below, no other person will collect or transport any Solid Waste, including Recyclable Materials and Yard Waste, generated, deposited, accumulated or otherwise coming to exist in the Franchise Area.

2.2 This Franchise will be automatically renewed on October 1, 2013, and annually each October 1<sup>st</sup> thereafter (the "Renewal Date") for a full term of SEVEN (7) years.

2.3 City may terminate this Franchise at any time. If City elects to terminate this Franchise, City will provide written notice to Franchisee, in which case the Franchise will terminate at the end of the then current term.

**3. TERMINATION OF PRIOR FRANCHISE.**

Upon execution of this Franchise by City and Franchisee, the Parties agree that the existing franchise granted to Newberg Garbage Service, Inc. pursuant to Ordinance Nos. 2186, 2056, and 1909, including all amendment thereto, will be terminated and replaced by this Franchise.

**4. SERVICES.**

Franchisee will furnish all vehicles, labor, supervision, materials, supplies, equipment, and all other items required to collect, transport, and dispose of and/or recycle all Solid Waste, including Recyclable Materials and Yard Debris, generated or accumulated within the Franchise Area, as more fully set forth in the scope of services described in *Exhibit A* attached hereto (collectively the "Services"). Franchisee will dispose of Solid Waste at any Oregon DEQ approved, permitted and licensed site or facility of Franchisee's choosing, where such disposal is lawful. Franchisee will comply

with all laws and regulations applicable to Franchisee's operations, including federal, state, and local laws, ordinances, rules and regulations applicable to the location where Solid Waste or Recyclable Materials and Yard Debris may be transported, disposed of, or recycled hereunder.

## **5. EXEMPTIONS FROM FRANCHISE.**

Notwithstanding the exclusivity of this Franchise granted in Section 2 above, nothing in this Franchise will prohibit other persons from collecting or transporting the following materials:

5.1 Solid Waste which is removed from any premises and personally transported by the person who generated the Solid Waste;

5.2 Source Separated Recyclable Materials that are donated by the generator to youth, civic, charitable, or other nonprofit organizations;

5.3 Beverage containers delivered for recycling under Oregon's Bottle Bill, ORS §§ 459A.700 - .740;

5.4 Construction and demolition debris that is incidentally removed for Recycling by a duly licensed construction or demolition contractor, or as part of a total service offered by such licensed company, and where the licensed company uses its own equipment and employees; and

5.5 Yard Debris removed from premises by a gardening, landscaping or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company, as opposed to a hauling service;

## **6. AUTHORIZED RATES.**

The City expressly reserves the right to set and regulate the rates for the Services to be rendered hereunder by the Franchisee such that the rates are reasonable and in the public's interest. Franchisee will provide the Services under this Franchise for the rates set forth in the Service Rate Schedule attached hereto and incorporated herein as *Exhibit B*, as the same may be adjusted in accordance with this Section and Section 7 below. City may require changes in the Services or the addition of new services and Franchisee will comply with such changes, provided that if such changes result in increases in cost to Franchisee, Franchisee will have the right to receive a special rate adjustment pursuant to Section 7 of this Franchise.

## **7. REVISIONS TO AUTHORIZED RATES.**

7.1 The Council may, from time to time, by resolution, revise the Service Rate Schedule, *Exhibit B*. The City or the Franchisee may request a rate revision whenever a significant change in revenue or expenses occurs or is anticipated. In the event the Franchisee requests a rate revision, the City will consider such request in good faith and will act upon the request without undue delay, but in no case later than 120 days from the date the request was made.

7.2 In determining reasonable rates, Council will consider all relevant factors, and the Parties will work in good faith to develop and adjust rates, as necessary, to allow Franchisee to earn a reasonable rate of return. Council will give due consideration to current and projected revenue and Allowable Expenses; the cost of acquiring and replacing equipment; the net cost of reuse and recycling; and such other factors as the Council deems relevant. Council may consider rates established by other jurisdictions for similar service under the same or similar service conditions. Council will provide the public opportunity to comment on a proposed rate increase as required by ORS 294.160.

7.3 Franchisee will be entitled to increase the rates and City will approve such increases sufficient to recover the increase if the City increases the Franchise Fee as provided in Section 0 below,

or if new taxes, fees or surcharges are imposed by the City. Franchisee will be entitled to an increase in rates sufficient to recover the increase in the Franchise Fee or the additional taxes and fees.

7.4 When a new or unusual solid waste service, not included in the Service Rate Schedule, is requested, the Franchisee may establish a reasonable rate for providing such service. However, if such service is provided for more than six (6) months, the Franchisee will obtain the approval of the City Manager.

7.5 All books, records, accounts and data relating to collection service operations conducted within the city by the Franchisee are subject to inspection and audit by the city.

7.5 All revisions to the Service Rate Schedule, *Exhibit B*, will be approved by resolution of Council. Franchisee shall provide a minimum of a 30-day notice to its customers of such revisions to the Service Rate Schedule.

## **8. FRANCHISE FEES.**

8.1 As consideration for the Franchise granted herein, Franchisee will pay to the City each calendar quarter the sum of three percent (3%) of Franchisee's Gross Service Revenues for the preceding calendar quarter (the "Franchise Fee"). Franchisee will submit payment to the City, along with supporting documentation confirming the Franchisee's Gross Service Revenues, on or before the end of the second month after the end of each calendar quarter. By way of example, the Franchise Fee for the first quarter of each year will be due on or before May 30<sup>th</sup> of that year. The Franchisee will pay interest at the rate of nine percent (9%) per year for any payment due pursuant to this Section made after the due date.

8.2 City may increase the amount of the Franchise Fee, provided however that the increase in the Franchise Fee will not become effective until the City has approved an adjustment in the rates for the Services in an amount sufficient for Franchisee to recover the increase in the Franchise Fee.

8.3 If a dispute arises as to the amount of Gross Service Revenues within the meaning of this Franchise, the amount of such Gross Service Revenues as determined by audit by a certified public accountant, mutually selected by the City and Franchisee, will be deemed the correct amount. The audit may cover one or more continuous quarterly reporting periods. If the audit demonstrates that the Gross Service Revenues were understated resulting in the Franchise Fee being underpaid by five percent or more in any one reporting quarter, the Franchisee will reimburse the City for the reasonable costs of the audit. Any underpayment, including interest or audit cost reimbursement, will be paid within 30 days of the City's notice to the Franchisee of such underpayment. If such notice requires reimbursement of audit costs, City will provide reasonable documentation establishing the actual costs of the audit. Any overpayment of the Franchise Fee will be credited against the subsequent quarterly Franchise Fee payment by the Franchisee to the City.

## **9. BILLING AND PAYMENT.**

Franchisee may bill residential customers either in arrears or in advance and on a monthly or bi-monthly basis for all Services, including regular and special services. Franchisee may bill all commercial customers on a monthly or bi-monthly basis for Services performed during the prior month or two months, including regular and special services. Franchisee will be entitled to charge a late fee of 1.5% per month or \$3.00, whichever is more, until paid, on all customer account balances that are not paid within THIRTY (30) days of the date of invoice. Franchisee will have the right to suspend Service to any customer whose account balance remains unpaid for a period of SIXTY (60) days or more, or exercise any other remedies available under law.

**10. SUSPENSION OR TERMINATION OF SERVICE.**

Franchisee will not suspend or terminate Service to one or more customers unless:

10.1 The street or road access is blocked and there is no alternate route.

10.2 Excessive weather conditions render providing Service unduly hazardous to persons providing Service or such suspension or termination of Service is caused by Force Majeure, as defined in Section 17 below.

10.3 Such customer has an unpaid account balance for a period of SIXTY (60) days or more and Franchisee has notified the customer in writing of the Franchisee's intention to terminate or suspend service, postmarked not less than SEVEN (7) days prior to the date of intended termination or suspension of service.

**11. CUSTOMER RULES.**

The Franchisee will provide to the City a copy of customer rules and responsibilities regarding the collection and disposal of Solid Waste, Yard Debris, and Recyclable Materials within Newberg, as more fully set forth in *Exhibit C* attached hereto (collectively the "Customer Rules"). Changes to Customer Rules will be first approved in writing by the City. Franchisee will notify customers of the change in customer rules at least ten (10) days prior to their effective date.

**12. CUSTOMER DISPUTES.**

Upon receipt of any notice of dispute from a customer about any bill, charge, or service, the Franchisee will thoroughly investigate the matter and promptly report the results of its investigation to the customer. Unless a customer has failed to provide Franchisee with notice of a dispute prior to the date of intended termination or suspension of service under Section 0 above, a franchisee will not refuse Service to any customer during a time of dispute. If the Franchisee is not able to resolve a dispute with the customer, the customer may contact the City staff. City staff will act as an informal arbitrator in an attempt to resolve the matter. The City staff may formally resolve a dispute of \$500 or less on the basis of evidence presented by the Franchisee and the customer. For matters in excess of \$500, the Franchisee and customer may mutually agree to abide by the City's recommended resolution, or pursue the matter in any court with jurisdiction over such matters.

**13. INDEMNIFICATION.**

Franchisee and City (individually, the "Indemnitor") each agrees to indemnify, hold harmless and defend the other Party, and its owners, officers, directors, employees and agents (collectively, the "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, fees, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including attorneys' fees (collectively, "Damages"), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out, including for personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with the breach of any representations, covenants or warranties of the Indemnitor set forth in this Franchise, or any negligent actions or omissions or willful misconduct of the Indemnitor, its employees, officers, owners, directors or agents in the performance of this Franchise, or the violation of any law, ordinance or regulation, including.

**14. INSURANCE.**

Franchisee will maintain throughout the term of this Franchise the following types of coverage with limits that are required by appropriate regulatory agencies or the following, whichever are greater:

- Commercial General Liability (bodily injury and property damage), \$2,000,000 combined single limit per occurrence;
- Automobile Liability, \$2,000,000 combined single limit per occurrence;
- Employer's Liability, \$1,000,000 per occurrence; and
- Workers' Compensation, statutory limit.

Upon request, Franchisee will provide to City certificates evidencing such insurance. Such coverage and policies will not be canceled, modified or revoked without providing City thirty (30) days advance written notice.

**15. TERMINATION FOR CAUSE.**

15.1 Except for the occurrence or existence of Force Majeure, in the event of any material failure or refusal of Franchisee to comply with any obligation or duty under this Franchise, the City and Franchisee will meet and confer in good faith in an effort to agree on a resolution of the breach.

15.2 If the Parties are unable to agree on the informal resolution the breach, and Franchisee has violated a material provision of this Franchise, the City may provide Franchisee with written notice of the default, stating the specific reasons for default and the provisions of the Franchise that have been violated. Franchisee will then have thirty (30) days to cure such default, or commence to cure such default if it is of a nature that cannot be cured within the prescribed timeframe.

15.3 If Franchisee fails to cure the default within the stated period, or fails to commence such cure in a manner reasonably satisfactory to remedy the stated reason, then the City may at its option issue a written notice of termination of the Franchise. Unless Franchisee requests dispute resolution within THIRTY (30) days of receipt by Franchisee of the notice of termination, this Franchise will terminate THIRTY (30) days after receipt by Franchisee of the notice of termination.

**16. ALTERNATIVE DISPUTE RESOLUTION.**

Any dispute, controversy, difference, claim, or demand of any kind, under any theory, whether at law or equity, arising out of, with respect to, or relating to, the execution, breach, interpretation, performance, termination, enforcement, or nonperformance, of this Franchise including without limitation, the validity, scope, arbitrability, and enforceability of this Franchise or any term or provision thereof, whether express or implied, or relating thereto (the "Dispute"), will be resolved as follows:

16.1 Negotiation. The Parties will attempt in good faith to resolve the Dispute through negotiation. Either Party may initiate negotiations by providing written notice in letter form to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within five days with a statement of its position on and recommended solution to the dispute. If the Dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the Dispute.

16.2 Arbitration. If the Dispute is not resolved through negotiation, the Parties agree that the Dispute will be submitted to final and binding arbitration, pursuant to the United States Arbitration Act,

9 U.S.C. Sec. 1 et seq. Either Party may commence arbitration by filing a written demand for arbitration. The arbitration will be conducted at Newberg City Hall or in such locations as all the Parties may stipulate. The Parties will cooperate with one another in selecting an arbitrator and in scheduling the arbitration proceedings. The Parties covenant that they will participate in the arbitration in good faith, and that they will share equally in its costs. The provisions of this Section may be enforced by any Court of competent jurisdiction, and the Party seeking enforcement will be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the Party against whom enforcement is ordered.

**17. FORCE MAJEURE.**

If either Party is prevented from or delayed in performing its duties under this Franchise by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government (“Force Majeure”), then the affected Party will be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure will promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Franchise to the contrary, the term “Force Majeure” does not include and a Party will not be excused from performance under this Franchise for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

**18. ENFORCEMENT.**

The City will use good faith efforts to protect and enforce the exclusive rights of Franchisee through appropriate ordinances and reasonable enforcement of those ordinances against third party violators. The Franchisee will have a private right of action to independently enforce the terms of such ordinances against any third party, including a claim for injunctive relief

**19. ASSIGNMENT OF FRANCHISE; SUBCONTRACTING.**

Franchisee will not assign this Franchise without the prior written consent of City, which will not be unreasonably withheld, provided however that Franchisee may assign this Franchise to any subsidiary, parent or affiliated company without the City’s consent. If this Franchise is assigned as provided above, it will be binding on and will inure to the benefit of the Parties hereto and their respective successors and assigns. Upon written notice to City, Franchisee may subcontract with other persons to provide a portion of the Services. Such subcontract will not relieve the Franchisee of its responsibilities under this Franchise

**20. REPORTING.**

The Franchisee will submit an annual report to the City within ninety (90) days following the end of the calendar year providing the following information:

20.1 Detailed revenues and expenses for the prior calendar year ending December 31 in a format approved by the City.

20.2 Number and classification of customer accounts, total quantity (tonnage) of materials collected, driver hour data, disposal information, a recycling summary, and other relevant information as requested.



not affect any other provision in this Franchise and this Franchise will be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

**28. SURVIVAL OF CLAIMS.**

Termination of this Franchise will not relieve either Party of any claims against it that arise under this Franchise before the Franchise is terminated.

**29. GOVERNING LAW.**

This Franchise, and all amendments or supplements thereto, will be governed by and construed in accordance with the laws of the State of Oregon.

\* \* \*

**IN WITNESS WHEREOF**, the Parties enter into this Franchise. Each person signing this Franchise represents and warrants that he or she has been duly authorized to enter into this Franchise by the Party on whose behalf it is indicated that the person is signing.

**WASTE MANAGEMENT OF OREGON, INC.**

**CITY OF NEWBERG**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Daniel Danicic  
Title: City Manager  
Date: \_\_\_\_\_

Approved by Ordinance No. 2012-2756

Approved as to Legal Sufficiency:

Approved as to Legal Sufficiency:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Terrence D. Mahr  
Title: City Attorney  
Date: \_\_\_\_\_

**Exhibit A****Scope of Services  
for the  
City of Newberg****ADDITIONAL DEFINITIONS**

“Residential” or “Residential Customers” means any residential dwelling having four or fewer units on one tax lot.

“Commercial” or “Commercial Customers” means any property or entity that does not qualify as a “Residential” or “Multi-family” customer.

“Carts” means Franchisee provided plastic containers with wheels and a lid that can be mechanically emptied by Franchisee’s equipment for safe and convenient service. Carts come in various sizes; 20, 35, 64, and 96 gallon capacity.

“Multi-family Residential Customers and Mobile Parks” means any residential dwelling having five or more units on one tax lot, or multiple residential units with a single billing address.

1.5 “Drop Box” a single receptacle used to collect Solid Waste or Recyclable materials that is designed to be removed from the generator’s site on the back of a truck for unloading at a disposal site, material recovery facility, or other processing facility.

1.6 “Container” a receptacle used to store solid waste or recyclable materials that is designed for on-site unloading into a closed bodied collection vehicle in which the contents of the receptacle are mixed with the contents of other similar receptacles.

1.7 “Receptacle” a can, cart, container, drop box, compactor or recycling bin or any other means of containment of solid waste or recyclables

1.8 “On-call service” means an occasional service were by the customer calls to specifically schedule the collection service.

1.9 “Monthly curbside service” a subscribed service including once a month garbage collection with a franchisee provided 35-gallon roll cart and every other week recycling and yard debris with a franchisee provided 64-gallon roll cart.

1.10 “Service day” means the day that normal collections are made in the customer service area.

1.11 “Non-service day” means the days that collection trucks are not servicing the customer service area.

1.12 “Bulky items” means large items of Solid Waste, such as appliances, furniture, large auto parts, trees, branches greater than four inches in diameter and 36 inches in length, stumps, and other oversized wastes whose large size precludes or complicates their handling by normal collection, processing, or disposal methods.

1.13 “Recycling contamination” means any materials that are not included in the approved list of Recyclable Materials set forth in Section 7.1 and 7.2 below.

1.14 "Cart exchange service charge" means the fee charged for customer requested cart replacement of more than two times in a 12 month period.

1.15 "Additional cart rate" means the fee charged for additional carts that are placed within three feet of the primary cart.

1.16 "Curbside" means within five (5) feet of the public street or private road. If extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the resident, convenient to the Franchisee's equipment, and mutually agreed to by the Customer and Franchisee.

## SOLID WASTE, RECYCLABLE MATERIALS, AND YARD DEBRIS COLLECTION SERVICES

### Residential Solid Waste Collection.

Frequency. Franchisee shall provide weekly Solid Waste collection service for all Residential Customers within the City. Additional Solid Waste collection service is also available as an "On-call Service," at the rates set forth in Exhibit B.

Service Level. Franchisee shall offer four different service levels to Residential Customers: 20-gallon Cart service, 35-gallon Cart service, 64-gallon Cart service, or 96-gallon Cart service. Franchisee shall bill Residential Customers for Solid Waste collection services based on the service level and the rates set forth in Exhibit B.

Regular Collection Time. Franchisee shall collect Solid Waste from Residential Customers weekly, Monday through Friday, between 6:00 am and 6:00 pm.

Additional Information. Residential Customers shall use a Franchisee-provided Cart as their primary container for Solid Waste Collection. All materials must fit within the Cart without raising the lid of the Cart more than two inches, otherwise Franchisee may assess extra charges in accordance with the rate schedule in Exhibit B. Extra materials may be placed in customer owned cans, bags or containers provided they are secured and do not pose a health and safety risk to Franchisee's collection workers.

### Residential Recyclable Materials and Yard Debris Collection.

Service. Franchisee shall provide every other week collection of Recyclable Materials and Yard Debris for all regularly subscribed Residential Customers within the City on alternating weeks. Collection of Recyclable Materials shall not include collection of Glass.

Service Level. Franchisee shall offer one service level for Recyclable Materials and Yard Debris to Residential Customers: one 96-gallon Cart for Recyclable Materials and one 96-gallon Cart for Yard Debris. The charges for collection of Recyclable Materials and Yard Debris from Residential Customers are included in the Residential Solid Waste Collection rates set forth in Exhibit B. Rates for Additional Carts are set forth in Exhibit B. If Residential Customers generate incidental excess amounts of Recyclable Materials, such will be collected without extra charge if they are placed adjacent to the Recycling Cart in bins, boxes or bags and are clearly identified as Recyclable Materials. If Residential Customers generate excess Yard Debris which does not fit neatly into the Yard Debris Cart, such materials may be collected for an extra charge, as set forth in Exhibit B, provided these Yard Debris materials are properly prepared in bundles or compostable bags and set adjacent to the Yard Debris Cart for collection. Customers who routinely generate excess Yard Debris materials may be asked to subscribe for an additional Cart.

Regular Collection Time. Franchisee shall collect Recyclable Materials and Yard Debris from Residential Customers on the same day as Residential Solid Waste collection. Collections will be made Monday through Friday, between 6:00 am and 6:00 pm.

Additional Information. Residential Recyclable Materials are collected on a co-mingled basis (i.e., single stream). The list of Recyclable Materials that may be included in a co-mingled collection container (excluding Glass) is found in Section 7.2.

Commercial Solid Waste Collection

Service. Franchisee shall provide weekly Solid Waste collection service for all Commercial Customers within the City. Additional Solid Waste collection service is also available, if requested by Commercial Customers, at the rates set forth in Exhibit B.

Service Level. Franchisee shall offer Cart, Container, and Drop Box services at different service levels and frequencies to Commercial Customers, depending on the customer's needs. Service levels may include a 35, 64, or 96 gallon Carts, or commercial containers ranging in size from 1, 1.5, 2, 3, 4, 5, or 6 yd Containers, Drop Box services are provided in 10, 20, 30, and 40 yard box sizes and various compacter box sizes. Commercial collection services may be provided as a weekly service or as a temporary collection service. Franchisee shall bill Commercial Customers for Solid Waste Collection service based on the service level and the rates set forth in Exhibit B.

Regular Collection Time. Franchisee may collect Solid Waste from Commercial Customers, anytime Monday through Friday. The Franchisee shall work with its Commercial Customers in noise sensitive areas to determine a mutually agreeable collection time.

Commercial Recyclable Materials Collection

Service. Franchisee shall provide weekly service or an alternative schedule to meet the customer's needs for Recyclable Materials collection service for all Commercial Customers within the City. Additional collection service is also available at the rates set forth in Exhibit B.

Commercial Cardboard Collection. Source separated Cardboard is collected from Commercial generators in containers of varying sizes depending on the requirements of the business.

Commercial Commingle Recycling. Co-mingled Recyclable Materials (i.e., single stream) are collected from Commercial Customers in either a 96 gallon Cart, or commercial containers ranging in size from 1, 1.5, 2, 3, 4, 5, or 6 yd containers, and are serviced weekly or on an as needed basis. The list of Recyclable Materials that may be included in a co-mingled collection container is found in section 7.2.

Commercial Glass. Glass is collected from large commercial generators as an On-call Service, at the temporary collection service rates, as set forth in Exhibit B.

Service Level. Franchisee shall offer Cart and container services at different service levels and frequencies to meet the Commercial Customer's recycling needs. The

charges for collection of cardboard and co-mingled Recyclable Materials from Commercial Customers are included in the Commercial Solid Waste Collection rates set forth in Exhibit B, up to a quantity of Recyclable Materials equal to 200% the Customer's weekly Solid Waste container size. Any Recyclable Materials collected in excess of this base level service will be charged at rates set forth in Exhibit B. Customers with no Solid Waste Collection service and Drop Box customers may also subscribe to Commercial Recyclable Materials collection services at the rates set forth in Exhibit B.

**Regular Collection Time.** Franchisee shall collect Recyclable Materials from Commercial Customers anytime, Monday through Friday. The Franchisee shall work with its Commercial Customers in noise sensitive areas to determine a mutually agreeable collection time.

#### Special and Hard to Handle Waste Collection

**Tires.** Franchisee will provide for the special collection of tires from any Residential or Commercial Customer in the Franchise Area who requests such collection service. The customer will call to schedule the special collection. Franchisee will acquire any necessary permits for storage or transportation of tires from the Department of Environmental Quality. For the collection of car tires with a rim size up to and including 18 inches, and the collection of truck tires with a rim size greater than 18 inches but not exceeding 150 pounds, Franchisee will charge the rates set forth in Exhibit B.

**Used Motor Oil.** Used motor oil will be collected by Franchisee from Residential Customers at the curbside / roadside on the same schedule as the commingle recycling. Used motor oil must be placed in one-gallon or smaller see-through plastic containers with a screw cap lid.

**Glass** is not collected from Residential Customers curbside. Glass can be taken to one of the drop-off locations in the City and at the Newberg Transfer Station and Recycling Center.

**Infectious Waste.** The Franchisee shall provide for the Commercial collection of medical and infectious waste or subcontract with a qualified collector for this service, at the rates set forth in Exhibit B. In either case, the Franchisee and their subcontractor shall conform to all rules and laws including, but not limited to, those of the State of Oregon applying to the collection, transport, storage, treatment, and disposal of medical and infectious wastes. Commercial Customers are responsible for placing Infectious Wastes including hypodermic needles in appropriate containers. Commercial Customers shall not place these items into Carts or containers for collection with Solid Waste, Recyclable, or Yard Debris Materials. Collection of Infectious Waste may be arranged by Commercial Customers on an on-call basis. Residential Customers may drop off medical waste at the Newberg Transfer Station for a fee.

#### COLLECTION OF SOLID WASTE AND RECYCLABLE MATERIALS FROM CITY FACILITIES

3.1 **Service of City Facilities.** The Franchisee will provide collection of Solid Waste and Recyclable Materials from City facilities, at no additional charge, except as otherwise described herein. Collection of Solid Waste and Recyclable Materials will occur on a regularly scheduled weekly basis from the following locations of City of Newberg Public facilities: City Hall; two Fire Stations, Public Safety Building, Library, Library Annex, Public Works Shop, Water Treatment Plant, Wastewater Treatment Plant, and Animal Control. Extraordinary services and special collections shall be charged at the rates set forth in Exhibit B.

### 3.2 Drop-Off Locations.

The Franchisee will make available and provide collection service for one (1) glass drop off location mutually agreed to by City and Franchisee for the drop off of recyclable glass by Residential Customers.

The Franchisee will also provide drop off services for recyclable glass at the Newberg Transfer Station.

#### OWNERSHIP OF MATERIALS.

Title to and responsibility for all Solid Waste, Yard Debris, and Recyclable Materials placed in containers for Residential or Commercial collection shall remain with the Customer until collected by the Franchisee. The City shall undertake reasonable efforts, including if necessary the adoption of ordinances, to prevent "dumpster diving" or the misappropriation of Solid Waste and Recyclable Materials by third parties without right or title to such materials. Upon collection by the Franchisee, title to and responsibility for Solid Waste, Yard Debris, and Recyclable Materials shall transfer to the Franchisee, provided however that title to and responsibility for any Hazardous Waste and other Excluded Solid Wastes shall remain with the Customer. Franchisee shall be entitled to retain all proceeds from the sale of Recyclable Materials collected under this Franchise.

#### VEHICLE OPERATIONS

Prevention of Leaking and Spilling Loads. All Solid Waste, Recyclable Materials and Yard Debris collection vehicles will be constructed, loaded, operated and maintained in a manner to reduce to the greatest extent practicable dropping, leaking, blowing, sifting or escaping of collected materials, or the spillage of the vehicle's fluid, hydraulic fluid or lubricants from the vehicle onto private property and public streets while stationary or in transit, excepting (1) normal leakage of fluid, hydraulic fluid or lubricants typically associated with properly maintained vehicle; and (2) leakage of fluid, hydraulic fluid or lubricants due to equipment failure. Franchisee will immediately respond to and cleanup any leakage due to equipment failure.

Maintaining Passage on Public Streets. To the greatest extent practicable, the Franchisee will avoid stopping of collection vehicles while collecting Solid Waste, Recyclable Materials or Yard Debris so as to block the passage of other vehicles and pedestrians on public streets.

#### CUSTOMER SERVICE.

Customer Information and Complaint Resolution. The Franchisee will respond to Customer calls and complaints within a timely manner. Both office and on-route staff will be knowledgeable and courteous in answering Customer information requests and resolving Customer complaints regarding Solid Waste, Recyclable Materials, and Yard Debris collection service. All complaint calls and Contractor actions in response must be recorded in customer notes on a data base noting date, time, address, and complaint. The Franchisee will meet with the City as often as needed to review complaints and resolutions.

Missed Pick Ups. In the event of missed pickups due to events beyond Franchisee's control, such as inclement weather or Force Majeure, Customers will be serviced as soon as is safe and practicable. If Franchisee misses collection for reasons other than inclement weather or Force Majeure from a customer who has properly placed their Carts for service according to the Customer Rules (Exhibit C), Franchisee will return to service the customer within 24 hours of notice, excluding holidays and weekends. In the event that the Customer does not place their

Carts for service according to the Customer Rules, Franchisee will service such Customer on the next regularly scheduled service day at two times the normal amount of Solid Waste at no additional cost; or at the Customer's request, return within 24 hours of next work day for a go back charge.

6.3 Customer Education. Franchisee will provide Customer education and outreach in compliance with all applicable Oregon DEQ rules and requirements.

RECYCLING PARAMETERS

Residential Collection of Recyclable Material and Yard Debris.

Commingled Recycling - The Franchisee will collect the following Recyclable Material set out commingled for collection, so long as the materials are properly prepared. Materials that are prepared according to these instructions and the Customer Rules are to be considered properly prepared Recyclable Materials.

Aerosol Cans. Emptied but not flattened, with plastic lids removed but with nozzle still in place.

Aluminum. Including aluminum cans, containers and foil with organics removed.

Aseptic Packaging (Drink Boxes). Straws removed and not included. Containers emptied. Placed with scrap paper.

Brown Paper Bags.

Corrugated Cardboard. Flattened and placed loose in cart.

Ferrous Scrap Metal. A single piece or bundle is limited to 30 inches in size in any direction and 30-lb. Appliances, car parts, and bicycles are not included.

Gable Top Paper Cartons. Gable-top paper cartons, such as milk, juice and coffee-creamer products, emptied and rinsed.

Magazines. Magazines and catalogs printed substantially on glossy paper. Mailing labels are acceptable.

Newspapers.

Non-Ferrous Scrap Metal. Any single piece or bundle is limited to 30 inches in size in any direction and 30-lb. Lead acid batteries are excluded.

Phone Books. Telephone directories distributed by phone directory companies.

Plastics. Bottles of a six ounce or larger capacity, with a neck or screw-on lid including milk jugs, rinsed, caps not included, labels need not be removed; margarine or yogurt-type tubes – six-oz. capacity or larger; rigid plant pots – four inches diameter or larger; buckets – five-gallon or smaller.

## Exhibit "A"

Scrap Paper. Includes household mail, cardboard boxes, paper bags, cereal boxes (without liners), shoe boxes, envelopes (sticky labels and windows are acceptable), writing paper, computer paper, fax paper, white ledger, colored ledger, copier paper, paper egg cartons, paper labels from cans, paper cores (without paper towels or bathroom tissue), construction paper, blue print paper, manila file folders, index cards, post-it-notes, tablet paper or backs, gift wrap (without foil), greeting cards (no foil), white or colored paper bags. A sticky label on an otherwise acceptable paper is also to be accepted. Shredded paper must be placed in a paper bag.

Tin Cans. Must be rinsed. Removing paper labels and ends is optional. Ferrous can ends and metal jar/bottle lids may be included.

Plastic bags are excluded from the definition of Recyclable Materials and shall not be set out by Residential Customers.

Motor Oil. Must be placed in a plastic gallon jug with a screw top lid and placed four feet from the Customer's recycling Cart on the designated recycling day.

Yard Debris. The Franchisee will provide the collection of Yard Debris from Residential Customers in a 96 gallon cart collected every other week. Approved Yard Debris includes leaves, grass, clippings, weeds, vines, vegetative material from the yard, pumpkins, and pruning of no greater than four inches in diameter or 36 inches in length. Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, food waste, animal waste, and household Solid Waste will not be considered Yard Debris, and Customers shall not place such materials in the Yard Debris Cart.

Transportation and Processing of Yard Debris. The Franchisee shall be responsible for transporting and delivering Source-Separated Yard Debris for processing, composting, or other beneficial use, to any lawful facility of its choosing. The Franchisee will ensure that all collected Yard Debris is delivered for beneficial use, including:

- A. Composting by a facility that has a current Oregon Department of Environmental Quality compost permit or registration, or is licensed as a composter by the State of Oregon.
- B. A reload facility.
- C. For animal feed by facilities regulated by the Oregon Department of Agriculture.
- D. Used as hog fuel in the case of woody waste; or
- E. Anaerobic digestion.

### 7.2 Commercial Collection of Recyclable Materials.

(a) Source Separated Cardboard Recycling. The Franchisee will collect Source Separated cardboard from commercial Customers weekly or as needed in containers of

various sizes. The container size and frequency will be arranged to meet the Customer's needs and Franchisee's collection schedule.

(b) Commingle Recycling. The Franchisee will collect the following Recyclable Materials set out commingled in a Franchisee provided Cart or container, so long as the materials are properly prepared. Materials that are prepared according to these instructions and the Customer Rules are to be considered properly prepared Recyclable Materials. The Franchisee is not required to collect Recyclables which have not been properly prepared.

(i) Aerosol Cans. Emptied but not flattened, with plastic lids removed but with nozzle still in place.

(ii) Aluminum. Including aluminum cans, containers and foil with organics removed.

(iii) Aseptic Packaging (Drink Boxes). Straws removed and not included. Containers emptied. Placed with scrap paper.

(iv) Brown Paper Bags.

(v) Corrugated Cardboard. Flattened and placed loose in cart.

(vi) Ferrous Scrap Metal. A single piece or bundle is limited to 30 inches in size in any direction and 30-lb. Appliances, car parts, and bicycles are not included.

(vii) Gable Top Paper Cartons. Gable-top paper cartons, such as milk, juice and coffee-creamer products, emptied and rinsed.

(viii) Magazines. Magazines and catalogs printed substantially on glossy paper. Mailing labels are acceptable.

(ix) Newspapers.

(x) Non-Ferrous Scrap Metal. Any single piece or bundle is limited to 30 inches in size in any direction and 30-lb. Lead acid batteries are excluded.

(xi) Phone Books. Telephone directories distributed by phone directory companies.

(xii) Plastics. Bottles of a six ounce or larger capacity, with a neck or screw-on lid including milk jugs, rinsed, caps not included, labels need not be removed; margarine or yogurt-type tubes – six-oz. capacity or larger; rigid plant pots – four inches diameter or larger; buckets – five-gallon or smaller.

(xiii) Scrap Paper. Includes mail, cardboard boxes, paper bags, cereal boxes (without liners), shoe boxes, envelopes (sticky labels and windows are acceptable), writing paper, computer paper, fax paper, white ledger, colored ledger, copier paper, paper egg cartons, paper labels from cans, paper cores (without paper towels or bathroom tissue), construction paper, blue print paper, manila file folders, index cards, post-it-notes, tablet paper or backs, gift wrap

(without foil), greeting cards (no foil), and white or colored paper bags. A sticky label on an otherwise acceptable paper is also to be accepted. Shredded paper must be placed in a paper bag.

(xiv) Tin Cans. Must be rinsed. Removing paper labels and ends is optional. Ferrous can ends and metal jar/bottle lids may be included.

(xv) Plastic bags are excluded from the definition of Recyclable Materials and shall not be set out by Commercial Customers.

(c) Glass – commercial glass collection can be arranged with the Franchisee.

7.3 Authority to Add Materials. City and Franchisee can mutually agree to add other materials to the above list, such as, but not limited to, other plastics. The process for adding mandatory materials will include an assessment on the impact on rates. Franchisee may also offer collection services for other voluntary recyclables not listed above and rates charged for collection of these optional materials will be reasonable by being commensurate with other rates set by the City and will be reported to City upon request.

7.4 Principal Recyclable Materials List. Should the Oregon Environmental Quality commission modify the list of Residential Recyclable Materials under the provisions of the Oregon Revised Statutes for collection of Source-Separated Recyclable Materials, City and Franchisee will work in good faith to add or eliminate, pursuant to applicable procedural requirements, collection of such materials, and adjust the collection rates accordingly.

7.5 Improperly Prepared Recyclable Materials. When the Franchisee encounters improperly prepared materials, which are not listed in Section 7.1 and Section 7.2 or not set out in accordance with the Customer Rules, the Franchisee may refuse to collect and may leave in place any such improperly prepared materials along with a friendly reminder of the Customer Rules and recycling parameters herein.

**Exhibit B**

City of Newberg Rates

**City of Newberg Garbage and Recycling Rates  
Effective 10/1/2012**

**Residential Service**

<b>Monthly Rate</b>	
<b>Weekly Curbside Service</b>	<b>Rate</b>
• 20 gallon cart	\$17.65
• 35 gallon cart	\$19.03
• 35 gallon cart - Each additional	\$12.95
• 35 gallon cart (Non-Curb garbage only)	\$20.90
• 64 gallon cart	\$23.40
• 96 gallon cart	\$25.71
• additional Recycling / Yard Debris cart	\$ 2.97
• Recycling only - Every other week	\$ 7.08
<b>Monthly Curbside Service</b>	
• 35 gallon cart	\$13.93

Every Other Week recycling & yard debris service is included with garbage service.

**Multiple Residential Units and Mobile Parks Service (Five or more units) Single billing**

<b>Monthly Rate</b>	
<b>Weekly Curbside Service</b>	<b>Rate</b>
• 20 gallon cart	\$15.88
• 35 gallon cart	\$17.33
• 35 gallon cart (Non-Curb garbage only)	\$19.03
• 96 gallon cart	\$25.71
• Each additional 35 gallon cart	\$11.39
• Recycling only	\$7.08
<b>Monthly Curbside Service</b>	
• 35 gallon cart	\$13.93

Every Other Week recycling & yard debris service is included with garbage service.

**Additional Rates**

<b>Service</b>	
<b>Extra On Service Day</b>	
• Regular Customer- additional 32 gal equivalent can curbside	\$ 2.84
• Regular Customer- additional 32 gal equivalent can non-curbside	\$ 3.46
• On Call Customer- 32 gallon equivalent	\$ 7.60
• Regular Customer- Yard Debris - 32 gal equivalent	\$ 3.12
<b>Extra - Non- Service Day</b>	
• Go Back Charge - Per Cart	\$ 6.74

Bulky Items- Hourly plus disposal	
• Truck- hourly rate (one person)	\$75.52
• Truck- hourly rate (two people)	\$94.40
Weekly Walk in Rate- per foot after first 50 feet	\$ 0.01
Recycling Contamination Charge	\$10.24
Cart Exchange Fee	\$11.38
Overweight Charge	\$ 2.52
Restart Fee- Service stopped for Non-payment	\$11.38
NSF - Non Sufficient Funds	\$20.00

**Commercial**

**Monthly Rate - Regular Service**

Regular Weekly Service	One Stop/Week	Each Additional Stop/Week
• 35 gallon cart	\$ 22.05	-
• 64gallon cart	\$ 24.53	
• 96 gallon cart	\$ 26.85	-
• 1 yard container	\$ 78.23	\$ 59.18
• 1.5 yard container	\$106.27	\$ 93.36
• 2 yard container	\$135.58	\$121.04
• 3 yard container	\$193.19	\$171.02
• 4 yard container	\$253.71	\$216.73
• 5 yard container	\$311.01	\$259.86
• 6 yard container	\$403.17	\$308.12
• Yard Debris 96 gallon cart EOW	\$ 7.08	-

**Temporary Service**

Container Size	Single Collection	Each Additional Stop/Week
• 1.5 yard container	\$35.41	\$25.41
• 2 yard container	\$44.92	\$34.26
• 3 yard container	\$60.08	\$48.61
• 4 yard container	\$74.88	\$64.14

**Monthly Rate - Commingled Recycling Service**

for Additional Commercial Recycling, Drop Box Recycling, and Recycling Only customers

Regular Weekly Service	One Stop/Week	Each Additional Stop/Week
• 96 gallon cart	\$ 9.75	\$ 8.30
• 1 yard container	\$ 31.65	\$ 26.90
• 1.5 yard container	\$ 41.35	\$ 35.15
• 2 yard container	\$ 51.80	\$ 44.05
• 3 yard container	\$ 72.10	\$ 61.30
• 4 yard container	\$ 94.00	\$ 79.90
• 5 yard container	\$ 114.10	\$ 97.00
• 6 yard container	\$ 153.40	\$ 130.40

Commingled recycling is included with regular service up to two times the garbage

volume.  
Drop Box

Disposal Rates		
Container Size	Loose Rate	Compacted Rate
• 10 yard	\$187.67	\$299.69
• 15 yard	N/A	\$400.48
• 20 yard	\$309.60	\$492.73
• 25 yard	N/A	\$618.36
• 30 yard	\$456.38	\$710.61
• 40 yard	\$595.08	\$920.43

Permanent Drop box Rental Rates	
Container Size	Rate
• 20 yard	\$50.92
• 30 yard	\$63.94
• 40 yard	\$68.15
Screen Lid	\$12.23
Metal Covered Lid	\$15.41
Demurrage- daily fee	\$ 5.02

Additional Rate Information	
Delivery Charge- First Box	\$ 18.88
One drop box truck (one person) hourly rate	\$ 81.81
One drop box truck & trailer (one person) hourly rate	\$ 100.69
Mileage- per mile over 10 miles round trip	\$ 2.08

- Note;
  - Drop boxes must be loaded to the point where the loaded vehicle will not exceed truck weight laws, or to the point where the drop box can not be dumped by normal dumping methods. Additional fees may apply for cost of penalties that are incurred due to overweight drop boxes.
  - Drop boxes shall not be loaded above the top of the box.
  - Weekend service for drop boxes shall be at 1.5 times the regular rate and shall be arranged prior to the service.

**Other Special Rates**

Additional Rate Information	
Tires	
• Car tire- on or off rim	\$2.89 Plus processing fee
• Truck tire- on or off rim	\$2.89 Plus processing fee

- Note;
  - Tenants are responsible for waste collection fees (unless separate payment arrangements are made by the landlord)

**Exhibit "A"**

- Definition of extra; bundles, bags, sacks, and other - based on volume, securely tied and limited to 60lbs (1.5 x 1.5 x 4 feet will be equivalent to a full garbage cart)
- Plastic bags securely tied and limited to 30lbs will be equivalent to a full garbage can. Plastic bags to be used for occasional additional garbage, not as full-time garbage service container.

**Medical - Commercial Customers Only**

<b>Container Sales</b>		
<b>Container Size</b>	<b>1-2 Containers</b>	<b>3 or More</b>
• 17 gallon tub	\$34.32	\$25.59
• 23 gallon box	\$45.96	\$32.90
• 31 gallon tub	\$38.10	\$28.55
• 43 gallon tub	\$42.96	\$33.29
• 30 gallon box	\$36.88	\$27.63

Exhibit C  
City of Newberg

Customer Rules

**CUSTOMER RESPONSIBILITY**

Franchisee will be responsible for providing Customers with information about the Customer's responsibilities in making the Solid Waste/Recycling/Yard Debris system work effectively and efficiently. The following Customer Rules will be applied:

1. **Residential - Setout Location and Time, Return of Can/Cart/Container after Collection.** It is the responsibility of the Residential Customer to place Solid Waste/Recycling/Yard Debris at the Curbside, unless the Customer has subscribed to or is eligible for other than Curbside service. Customers should not place cans/carts or containers in an area where they obstruct the sidewalk or are hidden behind parked cars. The cans/carts or containers must be set out at Curbside prior to 6:00 a.m. on the Customer's designated collection day, unless the Customer has subscribed or is eligible for other than Curbside service. Within 24 hours of collection, the Customer should move emptied can/carts or containers from Curbside into the Customer's yard area.
2. **Recyclable Materials to be Set Out in Franchisee provided Carts.** Customers will use Franchisee provided Carts for Recyclable Materials setouts in order to clearly indicate to recycling collection personnel that material is set out for recycling. A second recycling Cart is available for a fee. Incidental Recyclable Materials that don't fit into the Recyclables Cart may be set out adjacent to such Cart provided they are segregated and clearly identified as Recyclable Materials.
3. **Secure Lightweight Solid Waste Materials.** Customer should place Solid Waste safely and securely to prevent lightweight materials such as ashes, styrofoam peanuts, kitty litter, sawdust, etc. from blowing away prior to and while being dumped in the collection vehicle or container.
4. **Contents of Cans/Carts/Containers Must Falls Freely.** Contents of Solid Waste, Recyclable Materials and Yard Debris Carts or containers must fall freely. The Franchisee will not be responsible for digging the contents out of a Cart or container.
5. **Preparation of Yard Debris.** Customers will not use plastic bags to contain Yard Debris. No rocks, metal, ashes, food, pet wastes, branches exceeding 4 inches in diameter or 36 inches in length or household Solid Waste may be placed in the Yard Debris cart. Customers will follow the prescribed preparation requirements for Yard Debris material collection. A second Yard Debris Cart is available for a fee. Additional Yard Debris materials may be set out adjacent to the Yard Debris Cart for a fee, provided they are prepared in cans, bundles, or compostable Yard Debris bags.
6. **Cart Sizes/Requirements.** All Recycling and Yard Debris Carts must be provided by the Franchisee. Any Solid Waste container must be provided by the Franchisee. Rigid Solid Waste and Yard Debris cans provided by the Customer for extras may not exceed 32 gallons, weight limits, and should be designed for safe handling.
7. **Vertical Clearance Non-Curbside.** The Customer must provide for reasonable vertical clearance for any Solid waste Carts picked up away from the Curbside.

8. **Weight Limits.** The maximum weights required to be collected in any single Cart or container are:

Weights for Roll Carts, Weights Include Container and Contents:

Size/Type	Max Weight Incl. Container
Bundles and Bags – 32 gallon equivalent	30 lbs.
Cans – 32 gallons (used for extra setouts)	55 lbs.
Franchisee provided roll Carts - 35 gallons	75 lbs.
Franchisee provided roll Carts - 64 gallons	105 lbs.
Franchisee provided roll Carts – 96 gallons	145 lbs.

9. **Weights and Contents for Containers.** Franchisee is not required to collect Commercial containers exceeding 300 pounds gross loaded contents per loose cubic yard. Customer is responsible for limiting weight of the container and its contents.
10. **Responsibility to Separate Overweight Contents.** When roll Carts or containers are overweight, it is the Customer's responsibility to separate material into additional containers or bags so that weight limits are observed.
11. **Requirements for Extra Setout Due to Missed Collection or Postponed Collection.** In cases where a Customer is to be allowed the equivalent of an extra setout on a single pickup day without an additional charge, such as after a missed collection or a postponed collection due to hazardous weather, it is the Customer's responsibility to fill cans so that they meet weight limits and their contents fall out freely.
12. **Infectious Waste Setout.** Commercial Customers are responsible for placing Infectious Wastes including hypodermic needles in appropriate containers. Commercial Customers should not place these items into cans/roll carts or containers for collection with Solid Waste, Recyclables or Yard Debris. Commercial Customers should contact Franchisee for information on proper disposal options.
13. **Collection of Liquids/Animal Wastes/Kitty Litter.** Customer will not place liquids for collection with Solid Waste. Animal waste and kitty litter must be bagged separately before placing with other Solid Waste.
14. **No Hazardous Materials.** Customer will take appropriate actions to ensure that hazardous materials, chemicals, paint corrosive materials and hot ashes are not put into a cart or other container. Customer remains responsible for all Hazardous Waste.
15. **No Deduction for Missed Pickup.** Customers cannot deduct from payment for past missed pickups.

16. **Customer Must Notify Franchisee of Problems/Billing Errors.** Customers are responsible for prompt notification of the Franchisee when problems arise such as apparent missed collections or billing errors. For remedy or correction of certain problems, as noted elsewhere in these Rules, notification within a time limit may be required. In resolving Customer billing disputes the Franchisee are only required to review bills within six months of the current billing cycle.
17. **Ownership of Solid Waste Containers.** Carts, containers, and drop boxes remain the property of the Franchisee.
18. **Ownership of Recycling Carts.** Recycling Carts will be provided only by the Franchisee and remain the property of the Franchisee. If carts are not recovered a fee will be charged.
19. **Ownership of Yard Debris Roll Carts.** Yard Debris Roll Carts will be provided only by the Franchisee and remain the property of the Franchisee.
20. **Lost, Damaged, or Stolen Receptacles.** Customers shall not damage Receptacles or use them for anything other than their intended purpose. Franchisee may charge Customers for lost, stolen, or damages Receptacles at 100% of the bulk purchase price of a new Receptacle recently paid by the Franchisee. The Franchisee is responsible for replacement of Receptacles due to normal wear and tear. In the case of a Receptacle missing when a Customer has moved out, the Franchisee may bill the former Customer 100% of the bulk purchase price for a new Receptacle or request that the Receptacle be returned to the former service address.
21. **Placement of Roll Carts, Non Curbside at Duplex, Tri-plex and Four-plex.** In the case of duplexes, tri-plexes and four-plexes which subscribe to or are eligible for service other than Curbside service, any roll carts must be placed in an area where they can be assessed by the Franchisee without going up or down stairs.
22. **Improper Set-Out.** Franchisee shall have no obligation to collect Solid Waste, Recyclable Materials, or Yard debris which has been improperly set out by Customers or otherwise in violations of the above Customer Rules. To the extent practical, the Franchisee will leave a missed preparation tag explaining the reasons for non-collection.
23. **Suspension of Service.** Customers may temporarily suspend service (e.g., for vacation) by providing the Franchisee at least 7 days advance notice. If service is suspended more than once per year, the Franchisee may charge the Customer a "Restart Fee" at the rate set forth in Exhibit B.

# ***REQUEST FOR COUNCIL ACTION***

**DATE ACTION REQUESTED: October 15, 2012**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> <u>XX</u>	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No. 2012-3018</b>		

**SUBJECT: Request for approval of Supplemental Budget #1 for fiscal year 2012-2013 as described in Exhibit "A".**

**Contact Person (Preparer) for this Motion: Janelle Nordyke**  
**Dept.: Finance**  
**File No.:**

**HEARING TYPE: ADMINISTRATIVE**

**RECOMMENDATION:**

Adopt **Resolution No. 2012-3018** for approval of Supplemental Budget #1 for fiscal year 2012-2013.

**EXECUTIVE SUMMARY:**

Staff has reviewed the previous fiscal year's actual versus estimated year end numbers. A Supplemental Budget is needed to reconcile these differences. The following adjustments are required to supplement the adopted Budget appropriations to comply with Oregon Budget Law. Refer to Exhibit "A" for a detailed accounting summary.

The projected carry-forward balances for each fund were estimated in the 2012-2013 Budget process. At that time, there were still four months of revenue and expenditure activity remaining in the 2011-2012 fiscal year. The actual ending balances of several funds were higher (and in some cases lower) than anticipated at June 30, 2012. The following beginning fund balance adjustments must be made to recognize resources provided by actual results for 2011-2012:

General (Fund 01)	\$ 699,221.00
Street (Fund 02)	\$ 91,882.00
Emergency Medical Services (Fund 05)	\$ 142,997.00
Wastewater (Fund 06)	\$ 651,617.00
Water (Fund 07)	\$ 346,510.00
Building Inspection (Fund 08)	\$ 155,081.00
9-1-1 Tax (Fund 13)	\$ 34,696.00
Economic Development Loan (Fund 14)	\$ 257,694.00
Public Safety Fee (Fund 16)	\$ 6,409.00
Stormwater (Fund 17)	\$ 139,439.00
Library Gift & Memorial (Fund 22)	\$ (70,518.00)
Animal Shelter (Fund 24)	\$ (126,515.00)
Administrative Services (Fund 31)	\$ 27,771.00
Equipment Replace / Reserve (Fund 32)	\$ 86,361.00
Fire & EMS Equip Fee (Fund 33)	\$ 3,221.00
Streets System Development (Fund 42)	\$ 26,420.00
Stormwater System Development (Fund 43)	\$ (6,701.00)
Wastewater SDC (Fund 46)	\$ (173,958.00)
Water SDC (Fund 47)	\$ (170,940.00)

During the course of the year, the City receives grants. Many times the revenues are received in one fiscal year and the expenditures are completed in another fiscal year. Such is the case with the two following grants:

1. The FEMA grant revenues for the Fire Station 20 Remodel (Fund 01) are recognized when expenditures are paid. The Remodel was expected to be finished in the 2011-2012 fiscal year but did not get completed. The Remodel is now expected to be completed in the 2012-2013 fiscal year. The estimated expenditures to be reimbursed that are associated with the grant portion of Fire Station 20 Remodel are \$51,000.00. Resolution 2012-3011 allowed the City to expend additional funds to complete the Fire Station 20 Remodel. The balance of that resolution is \$27,000.00 to be expended in the 2012-2013 fiscal year. The City needs to recognize \$51,000.00 in grant revenues and \$27,000.00 in transfers from General Fund Contingency, and appropriate \$78,000.00 for completion of the Fire Station 20 Remodel.
2. The Library Gift and Memorial Fund (Fund 22) received donations for a summer education enrichment project in a previous fiscal year. The Library hired a temporary employee to complete this project. Since employee wages are not recorded in the Library Gift and Memorial Fund, a transfer is needed to move funds for the wages from the Library Gift and Memorial Fund to the General Fund (Fund 01) in the amount of \$131.00.

An Assistant City Manager has been hired to oversee the Public Works Department (Funds 02, 06, 07 and 17). The previous Public Works Directors had also managed the Engineering division, whose expenditures had been shown in the Engineering division of the Public Works Department. The 2012-2013 Budget did not fully account for this separation of expenditures. This Supplemental Budget is to more accurately allocate the Assistant City Manager's expenses in the Public Works Administration department code of 5110. Funds will be moved from the Engineering department code (5112, 5113) to the Administration department code (5110) in the following funds:

02-5112	to	02-5110	for	\$ 24,250.00
06-5113	to	06-5110	for	\$ 150.00
07-5113	to	07-5110	for	\$ (4,950.00)

When the Stormwater Fund was created (Fund 17), only the Engineering and Maintenance sections were created, but not a Public Works Administration section. Since we have an engineering manager, it is prudent to follow the department coding in the other Public Works funds and create the Administration section in the Stormwater Fund. This Supplemental Budget creates the Administration department code (5110) in the Stormwater Fund by moving amounts totaling \$35,889.00 from the Engineering department code (5113) to the Administrative department code (5110).

The Wastewater Treatment Plant (Fund 06) was unexpectedly in need of a steel utility building and a concrete pad to place it on in the amount of \$44,958.00 to provide a storage facility for utility equipment when not in use. The existing facility is planned on being used as a chlorine room when the Wastewater Treatment Plant Repair and Renovation project is completed. This Supplemental Budget is to move funds from the Equipment Repair and Replacement line item to the Capital Outlay line item in the Operations division.

A 5-year plan for Streets Capital Projects (Fund 18) is prepared each year. When the time comes to actually do the project, budget adjustments usually need to be made. This Supplemental Budget recognizes the costs not expended in the prior year that will be expended in the current year (Bicycle Route Improvements) as well as increased costs for a project (College St. R-O-W Acquisition).

Transfers in the amount of \$9,448.00 and \$20,000.00 will be made from the Street Tax Fund (Fund 02) and the Street System Development Fund (Fund 42), respectively, into the Streets Capital Projects Fund (Fund 18).

The Administrative Support Services Fund (Fund 31) received a Safety Grant from the City's insurance carrier in the prior fiscal year. This Supplemental Budget is to appropriate the expenditure of that grant and to increase the appropriations for the Safety Committee line item for unexpected additional expenditures associated with the Safety Committee in the amount of \$2,500.00. An employee in the Legal department had a change in dependent status which increased the appropriations associated with the health insurance line item in the amount of \$6,818.00. This Supplemental Budget will transfer the amounts from Administrative Support Services Contingency in the amount of \$9,318.00.

Since the preparation of the 2012-2013 Budget, the City has had some unexpected needs arise that must be accounted for in the Vehicle/Equipment Replacement Fund (Fund 32). This Supplemental Budget is to increase appropriations necessary for the following to be taken from Reserves in the fund:

Additional police vehicle equipment	\$ 10,000.00
Additional forensic equipment	\$ 4,244.00
Replacement of police radios	\$ 6,278.00
Replacement of dispatch base station for radios	\$ 4,511.00
Replacement computers for finance	\$ 3,000.00
Camera for the Public Works Vactor machine	<u>\$ 20,000.00</u>
Totals	\$ 48,033.00

The City has also approved a capital lease for the purchase of two new vehicles. Although the annual payment has been appropriated in the Police Vehicle Equipment line item (Fund 32), new requirements state that the City must appropriate the full amount of leased vehicles in the first year of the lease. This Supplemental Budget is to recognize the revenue received through a loan from US Bank and the appropriations associated with the lease in the amount of \$54,061.00.

**FISCAL IMPACT:**

The annual Budget appropriation increase requested is \$2,255,327.00 for a total Budget of \$72,690,966.00.

**STRATEGIC ASSESSMENT:**

The adoption of this Supplemental Budget will accurately reflect the activity of the City. The public hearing for the Supplemental Budget was noticed in the paper of record, the Newberg Graphic, the week of October 3, 2012.



## ***RESOLUTION No. 2012-3018***

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**A RESOLUTION TO ADOPT SUPPLEMENTAL BUDGET #1 FOR  
FISCAL YEAR 2012-2013 BEGINNING JULY 1, 2012, AND ENDING  
JUNE 30, 2013**

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### **RECITALS:**

1. The 2012-2013 Budget was adopted by Resolution No. 2012-3008 on June 18, 2012, by the City Council.
2. New circumstances since adoption require changes to the Budget as shown in Exhibit "A", which is hereby attached and by this reference incorporated.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

To recognize actual carryover beginning balances, appropriate expenditure changes and recognize changes in contingencies as attached in Exhibit "A", which is hereby adopted and by this reference incorporated.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: October 16, 2012.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 15<sup>th</sup> day of October, 2012.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 18<sup>th</sup> day of October, 2012.

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Bob Andrews, Mayor

# EXHIBIT "A"

City of Newberg  
Supplemental Budget #1  
Fiscal Year 2012-2013

<u>FUND 01 - GENERAL FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	1,975,146.00	699,221.00	2,674,367.00
FEMA Grant - Fire Station	<i>Increase</i>	-	51,000.00	51,000.00
Transfer In - Library Gift & Memorial	<i>Increase</i>	-	131.00	131.00
FEMA Grant - Fire Station	<i>Increase</i>	-	78,000.00	78,000.00
Library Salaries - Grant	<i>Increase</i>	-	131.00	131.00
Contingency	<i>Increase</i>	146,726.00	672,221.00	818,947.00

*To recognize the increased carryover from 2011-12 ending fund balance, to appropriate the carryover of the FEMA grant for expenditures made in this fiscal year, to recognize and appropriate costs associated with a grant previously funded through contributions in the Library Gift & Memorial Fund, and to appropriate the difference to Contingency.*

<u>FUND 02 - STREET FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	383,443.00	91,882.00	475,325.00
Dues & Meetings -Administration	<i>Increase</i>	-	100.00	100.00
Supplies - Administration	<i>Increase</i>	-	100.00	100.00
Travel & Training - Administration	<i>Increase</i>	-	500.00	500.00
Contractual Services - Administration	<i>Decrease</i>	25,000.00	(25,000.00)	-
Books & Publications -Administration	<i>Increase</i>	-	50.00	50.00
Fuel - Administration	<i>Increase</i>	-	100.00	100.00
Recording Fees - Administration	<i>Decrease</i>	100.00	(100.00)	-
Dues & Meetings - Engineering	<i>Decrease</i>	800.00	(100.00)	700.00
Supplies - Engineering	<i>Decrease</i>	300.00	(100.00)	200.00
Travel & Training - Engineering	<i>Decrease</i>	4,500.00	(500.00)	4,000.00
Contractual Services - Engineering	<i>Increase</i>	10,000.00	25,000.00	35,000.00
Books & Publications - Engineering	<i>Decrease</i>	250.00	(50.00)	200.00
Fuel - Engineering	<i>Decrease</i>	500.00	(100.00)	400.00
Recording Fees - Engineering	<i>Increase</i>	-	100.00	100.00
Transfer Out - Street Capital Projects	<i>Increase</i>	260,000.00	9,448.00	269,448.00
Contingency	<i>Increase</i>	252,331.00	82,434.00	334,765.00

*To recognize the increased carryover from 2011-12 ending fund balance, to move funds associated with the Assistant City Manager's position from Engineering to Administration, to transfer out additional funds needed for Street Capital Projects, and to appropriate the difference to Contingency.*

## EXHIBIT “A”

<u>FUND 05 - EMERGENCY MEDICAL SERVICES FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	142,574.00	142,997.00	285,571.00
Contingency	<i>Increase</i>	138,786.00	142,997.00	281,783.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 06 - WASTEWATER FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	4,515,552.00	651,617.00	5,167,169.00
Postage - Administration	<i>Decrease</i>	50.00	(50.00)	-
Fuel - Administration	<i>Increase</i>	-	100.00	100.00
Postage - Engineering	<i>Increase</i>	-	50.00	50.00
Fuel - Engineering	<i>Decrease</i>	500.00	(100.00)	400.00
Equipment Repair & Maintenance	<i>Decrease</i>	226,000.00	(44,958.00)	181,042.00
Capital Outlay	<i>Increase</i>	35,000.00	44,958.00	79,958.00
Contingency	<i>Increase</i>	5,473,531.00	651,617.00	6,125,148.00

*To recognize the increased carryover from 2011-12 ending fund balance, to move funds between the Engineering division and the Public Works Administration division to more accurately appropriate funds in both divisions, to move funds from Equipment Repair & Maint to Capital Outlay to purchase/build a Steel Utility Building and Concrete Pad, and to appropriate the difference to Contingency.*

<u>FUND 07 - WATER FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	3,634,884.00	346,510.00	3,981,394.00
Postage - Administration	<i>Decrease</i>	50.00	(50.00)	-
Conservation Public Outreach Prog - Admin	<i>Decrease</i>	5,000.00	(5,000.00)	-
Fuel - Administration	<i>Increase</i>	-	100.00	100.00
Postage - Engineering	<i>Increase</i>	-	50.00	50.00
Conservation Public Outreach Prog -Eng	<i>Increase</i>	-	5,000.00	5,000.00
Fuel - Engineering	<i>Decrease</i>	500.00	(100.00)	400.00
Contingency	<i>Increase</i>	3,127,886.00	346,510.00	3,474,396.00

*To recognize the increased carryover from 2011-12 ending fund balance, to move funds between the Engineering division and the Public Works Director Administration division to more accurately appropriate funds in both divisions, and to appropriate the difference to Contingency.*

<u>FUND 08 - BUILDING INSPECTION FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	-	155,081.00	155,081.00
Contingency	<i>Increase</i>	4,284.00	155,081.00	159,365.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

## EXHIBIT “A”

<u>FUND 13 - 9-1-1 TAX FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	69,809.00	34,696.00	104,505.00
Contingency	<i>Increase</i>	5,227.00	34,696.00	39,923.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 14 - ECONOMIC DEVELOPMENT LOAN FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	388,039.00	257,694.00	645,733.00
Contingency	<i>Increase</i>	135,215.00	257,694.00	392,909.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 16 - PUBLIC SAFETY FEE</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	221,894.00	6,409.00	228,303.00
Contingency	<i>Increase</i>	193,177.00	6,409.00	199,586.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 17 - STORMWATER FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	764,342.00	139,439.00	903,781.00
Administrative Salaries - Administration	<i>Increase</i>	-	23,328.00	23,328.00
FICA/Medicare - Administration	<i>Increase</i>	-	1,785.00	1,785.00
Workers Comp - Administration	<i>Increase</i>	-	491.00	491.00
Unemployment - Administration	<i>Increase</i>	-	163.00	163.00
Retirement - PERS - Administration	<i>Increase</i>	-	3,114.00	3,114.00
Retirement - Pension Bond - Administration	<i>Increase</i>	-	816.00	816.00
Health/Life/LTD - Administration	<i>Increase</i>	-	4,842.00	4,842.00
Office Supplies - Administration	<i>Increase</i>	-	100.00	100.00
Dues & Meetings - Administration	<i>Increase</i>	-	500.00	500.00
Supplies - Administration	<i>Increase</i>	-	100.00	100.00
Travel & Training - Administration	<i>Increase</i>	-	500.00	500.00
Books & Publications - Administration	<i>Increase</i>	-	50.00	50.00
Fuel - Administration	<i>Increase</i>	-	100.00	100.00
Administrative Salaries - Engineering	<i>Decrease</i>	42,732.00	(23,328.00)	19,404.00
FICA/Medicare - Engineering	<i>Decrease</i>	11,356.00	(1,785.00)	9,571.00
Workers Comp - Engineering	<i>Decrease</i>	2,883.00	(491.00)	2,392.00
Unemployment - Engineering	<i>Decrease</i>	1,038.00	(163.00)	875.00
Retirement - PERS - Engineering	<i>Decrease</i>	9,623.00	(3,114.00)	6,509.00
Retirement - Pension Bond - Engineering	<i>Decrease</i>	2,152.00	(816.00)	1,336.00
Health/Life/LTD - Administration	<i>Decrease</i>	40,170.00	(4,842.00)	35,328.00
Office Supplies - Engineering	<i>Decrease</i>	900.00	(100.00)	800.00

**EXHIBIT "A"**

<u>FUND 17 - STORMWATER FUND (continued)</u>		BUDGET	CHANGE	REVISED
Dues & Meetings - Engineering	Decrease	2,096.00	(500.00)	1,596.00
Supplies - Engineering	Decrease	300.00	(100.00)	200.00
Travel & Training - Engineering	Decrease	5,785.00	(500.00)	5,285.00
Books & Publications - Engineering	Decrease	100.00	(50.00)	50.00
Fuel - Engineering	Decrease	300.00	(100.00)	200.00
Contingency	Increase	738,842.00	139,439.00	878,281.00

*To recognize the increased carryover from 2011-12 ending fund balance, to create an Administration department code, to move funds between the Engineering division and the Public Works Director Administration division to more accurately appropriate funds in both divisions, and to appropriate the difference to Contingency.*

<u>FUND 18 - STREET CAPITAL PROJECTS FUND</u>		BUDGET	CHANGE	REVISED
Transfer In - Street Fund	Increase	260,000.00	9,448.00	269,448.00
Transfer In - Street System Development	Increase	231,000.00	20,000.00	251,000.00
Bicycle Route Improvements	Increase	10,000.00	9,448.00	19,448.00
College St R-O-W Acquisition	Increase	70,000.00	20,000.00	90,000.00

*To recognize and appropriate changes in Street Capital Projects.*

<u>FUND 22 - LIBRARY GIFT &amp; MEMORIAL FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	Decrease	181,956.00	(70,518.00)	111,438.00
Transfer Out - General Fund	Increase	-	131.00	131.00
Contingency	Decrease	174,806.00	(70,649.00)	104,157.00

*To recognize the decreased carryover from 2011-12 ending fund balance, to transfer funds for grant revenues received in a prior year which was performed in the current fiscal year in the General Fund, and to appropriate the difference to Contingency.*

<u>FUND 24 - ANIMAL SHELTER FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	Decrease	191,089.00	(126,515.00)	64,574.00
Animal Shelter (NASF) Construction	Decrease	191,289.00	(126,515.00)	64,774.00

*To recognize the decreased carryover from 2011-12 ending fund balance and appropriate the continued construction expenditures of the approved animal shelter project.*

<u>FUND 31 - ADMIN SUPPORT SERVICES FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	Increase	578,148.00	27,771.00	605,919.00
Safety Program	Increase	2,500.00	2,500.00	5,000.00
Legal Health Insurance	Increase	36,262.00	6,818.00	43,080.00
Contingency	Increase	416,974.00	18,453.00	435,427.00

*To recognize the increased carryover from 2011-12 ending fund balance, to appropriate increased health insurance coverage in Legal to account for change in dependents, and to appropriate the difference to Contingency.*

**EXHIBIT “A”**

<u>FUND 32 - VEHICLE/EQUIPMENT REPLACEMENT FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	1,492,384.00	86,361.00	1,578,745.00
Lease Proceeds - 2012-13 Police Vehicle Lease	<i>Increase</i>	350,000.00	54,061.00	404,061.00
Capital Outlay - Lease-GAAP - Police	<i>Increase</i>	-	54,061.00	54,061.00
Capital Outlay - Computers	<i>Increase</i>	-	3,000.00	3,000.00
Capital Outlay - Vehicles	<i>Increase</i>	60,000.00	10,000.00	70,000.00
Capital Outlay - Police Radios	<i>Increase</i>	-	6,278.00	6,278.00
Capital Outlay - Forensics Equipment	<i>Increase</i>	10,000.00	4,244.00	14,244.00
Capital Outlay - Communications Equipment	<i>Increase</i>	15,000.00	4,511.00	19,511.00
Capital Outlay - Maint Veh Repl	<i>Increase</i>	220,000.00	20,000.00	240,000.00
Contingency	<i>Increase</i>	1,423,548.00	38,328.00	1,461,876.00

*To recognize the increased carryover from 2011-12 ending fund balance, to account for additional unexpected expenditures for replacement equipment, to record the total lease for the newly leased police vehicles per GAAP requirements, and to appropriate the difference to Contingency.*

<u>FUND 33 - FIRE &amp; EMS EQUIPMENT FEE FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	453,383.00	3,221.00	456,604.00
Contingency	<i>Increase</i>	164,383.00	3,221.00	167,604.00

*To recognize the increased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 42 - STREETS SYSTEM DEVELOPMENT FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Increase</i>	2,179,192.00	26,420.00	2,205,612.00
Transfer Out - Street Cap Projects	<i>Increase</i>	231,000.00	20,000.00	251,000.00
Contingency	<i>Increase</i>	2,153,745.00	6,420.00	2,160,165.00

*To recognize the increased carryover from 2011-12 ending fund balance, to appropriate the unexpected additional costs for Street Capital Projects, and to appropriate the difference to Contingency.*

<u>FUND 43 - STORMWATER SYSTEM DEVELOPMENT FUND</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Decrease</i>	356,363.00	(6,701.00)	349,662.00
Contingency	<i>Decrease</i>	334,763.00	(6,701.00)	328,062.00

*To recognize the decreased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

<u>FUND 46 - WASTEWATER SDC</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	<i>Decrease</i>	1,414,715.00	(173,958.00)	1,240,757.00
Contingency	<i>Decrease</i>	1,608,735.00	(173,958.00)	1,434,777.00

*To recognize the decreased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

**EXHIBIT "A"**

<u>FUND 47 - WATER SDC</u>		BUDGET	CHANGE	REVISED
Beg F/B - Net Working Capital	Decrease	862,519.00	(170,940.00)	691,579.00
Contingency	Decrease	602,452.00	(170,940.00)	431,512.00

*To recognize the decreased carryover from 2011-12 ending fund balance and to appropriate the amount to Contingency.*

Total Increase in appropriations: 2,255,327.00

**Attached is supplemental material  
for the  
October 15, 2012,  
City Council Meeting**

**Please include this in your packet:**

**Supplemental Material for  
Public Hearing  
9<sup>th</sup> Street Vacation Motion**

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City Of Newberg  
Planning & Building Department  
PO Box 970  
Newberg, OR. 97132

File # VAC-11-002

In regards to the City Of Newberg Planning & Building Dept  
proposed street vacation of Ninth St.  
I do object to the vacation of Ninth St without both adjacent  
property owners approval.

*Darlene M. Swonger* *Oct 8, 2012*  
signature Date

*832 S Springbrook Rd. Newberg*  
address

# NEWBERG CITY COUNCIL MEETING INFORMATION

Meeting Date: October 15, 2012

Prepared by: Norma Alley

Councilors	Roll Call	MOTION Topic: Consent Calendar – 9/4/2012 Minutes	MOTION Topic: 9 <sup>th</sup> St. Vacation  POSTPONE TO FEBRUARY 19, 2013	ORDINANCE NO. 2012-2756  Topic: Waste Management Franchise	RESOLUTION NO. 2012-3018  Topic: Supplemental Budget #1	Res/Ord/Order # _____  Topic:	Res/Ord/Order # _____  Topic:	Res/Ord/Order # _____  Topic:
ANDREWS, Bob, Mayor	X	YES	YES	YES	YES			
BACON, Denise	X	YES	YES	YES	YES			
HOWARD, Ryan	X	YES	YES	YES	YES			
McKINNEY, Stephen	X	YES	YES	YES	YES			
RIERSON, Bart	X	YES	YES	YES	YES			
SHELTON, Marc	X	YES	YES	YES	YES			
WITHERSPOON, Wade	X	YES	YES	YES	YES			
<b>ROLL CALL VOTES</b>		<b>YES: 7 NO: 0 Absent: 0 Abstain: 0</b>	<b>YES: 7 NO: 0 Absent: 0 Abstain: 0</b>	<b>YES: 7 NO: 0 Absent: 0 Abstain: 0</b>	<b>YES: 7 NO: 0 Absent: 0 Abstain: 0</b>	<b>YES: NO: Absent: Abstain:</b>	<b>YES: NO: Absent: Abstain:</b>	<b>YES: NO: Absent: Abstain:</b>
<b>Department Prepared Action Item:</b>		Administration	Planning	Legal	Finance			
<b>MOTION (1<sup>st</sup>/2<sup>nd</sup>):</b>		Howard/ Shelton	Bacon/ Shelton	Howard/ Rierson	McKinney/ Shelton			

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: October 15, 2012**

**Order** \_\_\_      **Ordinance** XX      **Resolution** \_\_\_      **Motion** \_\_\_      **Information** \_\_\_  
**No.**                      **No. 2012-2756**      **No.**

**SUBJECT:** ~~A non-exclusive~~ **An exclusive** solid waste and recycling franchise with Waste Management of Oregon, Inc. (“WM”).

**Contact Person (Preparer) for this Motion:** Dawn Wilson  
**Dept.:** City Attorney’s Office  
**File No.:**

**HEARING TYPE:**     **LEGISLATIVE**       **QUASI-JUDICIAL**       **NOT APPLICABLE**

**RECOMMENDATION:** Adopt Ordinance No. 2012-2756 repealing Ordinance Nos. 1986-2186, 1981-2056, and 1978-1909; and adopt a new, ~~non-exclusive~~ **exclusive** solid waste and recycling franchise with Waste Management of Oregon, Inc. (WM).

**EXECUTIVE SUMMARY:**

WM has requested a new, more updated solid waste and recycling services Franchise Agreement from the City of Newberg. The new Franchise Agreement includes language to support the use, maintenance, and upgrading of WM’s state of the art technology and equipment, which has substantially increased efficiency. The Cities of Newberg and Dundee have negotiated with WM for the same Franchise Agreements, except for the franchise rates and Scope of Services due to some slightly different characteristics between the two cities. The negotiations between the City and WM have been extremely friendly, successful, and have resulted in a new Franchise Agreement, which comports with the requirements of applicable laws.

**FISCAL IMPACT:**

The City will continue to receive revenue from the 3% franchise fee.

**STRATEGIC ASSESSMENT:**

The new Franchise Agreement contains modern language addressing current practices, processes, and state of the art technology and equipment, as well as provides for upgrades and maintenance of equipment and services. With a current franchise, the City may enforce citizen complaints more efficiently and effectively, in addition to the fact that a current franchise provides financial opportunities for both parties in order for quality services to be provided continually.



## ORDINANCE No. 2012-2756

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**AN ORDINANCE REPEALING ORDINANCE NOS. 1986-2186, 1981-2056, AND 1978-1909; AND ADOPTING AND GRANTING A NON-EXCLUSIVE **AN EXCLUSIVE** SOLID WASTE FRANCHISE AGREEMENT TO WASTE MANAGEMENT OF OREGON, INC. FOR THE COLLECTION, TRANSPORTATION, DISPOSAL, AND/OR RECYCLING OF SOLID WASTE AND RECYCLABLE MATERIALS GENERATED, DEPOSITED, ACCUMULATED OR OTHERWISE COMING TO EXIST WITHIN THE CITY OF NEWBERG**

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### RECITALS:

1. Waste Management of Oregon, Inc. (WM) has requested a new, more updated solid waste and recycling services Franchise Agreement from the City of Newberg.
2. The new Franchise Agreement includes language to support the use, maintenance, and upgrading of WM's state of the art technology and equipment, which has substantially increased efficiency.
3. The Cities of Newberg and Dundee have negotiated with WM for the same Franchise Agreements, except for the franchise rates and Scope of Services due to some slightly different characteristics between the two cities.
4. The negotiations between the City and WM have been extremely friendly, successful, and have resulted in a new Franchise Agreement, which comports with the requirements of applicable laws.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

#### Section 1 – Title:

This Franchise will be known and be cited as the “Solid Waste and Recycling Services Franchise with Waste Management of Oregon, Inc. (WM)”.

#### Section 2 – Granting of Franchise:

- A) Pursuant to the public interest, the City hereby grants to WM a ~~non-exclusive~~ **an exclusive** and revocable authorization to make lawful the collection, transportation, disposal, and/or recycling of solid waste and recyclable materials generated, deposited, accumulated or otherwise coming to exist within the City of Newberg.

## Exhibit B

### City of Newberg Rates

**Newberg City Council Meeting**

Date: 10/15/2012

Re: Council Business

Topic: Handout regarding Waste

Management Franchise Agrmt – Ordinance

No. 2012-2756

## City of Newberg Garbage and Recycling Rates Effective 10/1/2012

### Residential Service

Monthly Rate	
Weekly Curbside Service	Rate
• 20 gallon cart	\$17.65
• 35 gallon cart	\$19.03
• 35 gallon cart - Each additional	\$12.95
• 35 gallon cart (Non-Curb garbage only)	\$20.90
• 64 gallon cart	\$23.40
• 96 gallon cart	\$25.71
• additional Recycling / Yard Debris cart	\$ 2.97
• Recycling only - Every other week	\$ 7.08
Monthly Curbside Service	
• 35 gallon cart	\$13.93

Every Other Week recycling & yard debris service is included with garbage service.

### Multiple Residential Units and Mobile Parks Service (Five or more units) Single billing

Monthly Rate	
Weekly Curbside Service	Rate
• 20 gallon cart	\$15.88
• 35 gallon cart	\$17.33
• 35 gallon cart (Non-Curb garbage only)	\$19.03
• 96 gallon cart	\$25.71
• Each additional 35 gallon cart	\$11.39
• Recycling only	\$7.08
Monthly Curbside Service	
• 35 gallon cart	\$13.93

Every Other Week recycling & yard debris service is included with garbage service.

### Additional Rates

Service	
Extra On Service Day	
• Regular Customer- additional 32 gal equivalent can curbside	\$ 2.84
• Regular Customer- additional 32 gal equivalent can non-curbside	\$ 3.46
• On Call Customer- 32 gallon equivalent	\$ 7.60
• Regular Customer- Yard Debris - 32 gal equivalent	\$ 3.12
Extra - Non- Service Day	
• Go Back Charge - Per Cart	\$ 6.74

Bulky Items- Hourly plus disposal	
• Truck- hourly rate (one person)	\$75.52
• Truck- hourly rate (two people)	\$94.40
Weekly Walk in Rate- per foot after first 50 feet	\$ 0.01
Recycling Contamination Charge	\$10.24
Cart Exchange Fee	\$11.38
Overweight Charge	\$ 2.52
Oversize Can Charge	\$ 2.52
Restart Fee- Service stopped for Non-payment	\$11.38
NSF - Non Sufficient Funds	\$20.00

### Commercial

Monthly Rate - Regular Service		
Regular Weekly Service	One Stop/Week	Each Additional Stop/Week
• 35 gallon cart	\$ 22.05	-
• 64gallon cart	\$ 24.53	
• 96 gallon cart	\$ 26.85	-
• 1 yard container	\$ 78.23	\$ 59.18
• 1.5 yard container	\$106.27	\$ 93.36
• 2 yard container	\$135.58	\$121.04
• 3 yard container	\$193.19	\$171.02
• 4 yard container	\$253.71	\$216.73
• 5 yard container	\$311.01	\$259.86
• 6 yard container	\$403.17	\$308.12
• Yard Debris 96 gallon cart EOW	\$ 7.08	-

Temporary Service		
Container Size	Single Collection	Each Additional Stop/Week
• 1.5 yard container	\$35.41	\$25.41
• 2 yard container	\$44.92	\$34.26
• 3 yard container	\$60.08	\$48.61
• 4 yard container	\$74.88	\$64.14

Monthly Rate - Commingled Recycling Service for Additional Commercial Recycling, Drop Box Recycling, and Recycling Only customers		
Regular Weekly Service	One Stop/Week	Each Additional Stop/Week
• 96 gallon cart	\$ 9.75	\$ 8.30
• 1 yard container	\$ 31.65	\$ 26.90
• 1.5 yard container	\$ 41.35	\$ 35.15
• 2 yard container	\$ 51.80	\$ 44.05
• 3 yard container	\$ 72.10	\$ 61.30
• 4 yard container	\$ 94.00	\$ 79.90
• 5 yard container	\$ 114.10	\$ 97.00
• 6 yard container	\$ 153.40	\$ 130.40

Commingled recycling is included with regular service up to two times the garbage volume.

## Drop Box

Disposal Rates		
Container Size	Loose Rate	Compacted Rate
• 10 yard	\$187.67	\$299.69
• 15 yard	N/A	\$400.48
• 20 yard	\$309.60	\$492.73
• 25 yard	N/A	\$618.36
• 30 yard	\$456.38	\$710.61
• 40 yard	\$595.08	\$920.43

Permanent Drop box Rental Rates	
Container Size	Rate
• 20 yard	\$50.92
• 30 yard	\$63.94
• 40 yard	\$68.15
Screen Lid	\$12.23
Metal Covered Lid	\$15.41
Demurrage- daily fee	\$ 5.02

Additional Rate Information	
Delivery Charge- First Box	\$ 18.88
One drop box truck (one person) hourly rate	\$ 81.81
One drop box truck & trailer (one person) hourly rate	\$ 100.69
Mileage- per mile over 10 miles round trip	\$ 2.08

- Note;
  - Drop boxes must be loaded to the point where the loaded vehicle will not exceed truck weight laws, or to the point where the drop box can not be dumped by normal dumping methods. Additional fees may apply for cost of penalties that are incurred due to overweight drop boxes.
  - Drop boxes shall not be loaded above the top of the box.
  - Weekend service for drop boxes shall be at 1.5 times the regular rate and shall be arranged prior to the service.

## Other Special Rates

Additional Rate Information	
Tires	
• Car tire- on or off rim	\$2.89 Plus processing fee
• Truck tire- on or off rim	\$2.89 Plus processing fee

- Note;
  - Tenants are responsible for waste collection fees (unless separate payment arrangements are made by the landlord)

- Definition of extra; bundles, bags, sacks, and other - based on volume, securely tied and limited to 60lbs (1.5 x 1.5 x 4 feet will be equivalent to a full garbage cart)
- Plastic bags securely tied and limited to 30lbs will be equivalent to a full garbage can. Plastic bags to be used for occasional additional garbage, not as full-time garbage service container.

**Medical - Commercial Customers Only**

<b>Container Sales</b>		
Container Size	1-2 Containers	3 or More
• 17 gallon tub	\$34.32	\$25.59
• 23 gallon box	\$36.88	\$27.63
• 31 gallon tub	\$38.10	\$28.55
• 43 gallon tub	\$42.96	\$33.29
• 30 gallon box	\$45.96	\$32.90