

AGENDA

Thursday, January 26, 2017 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2017-04

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

II. PUBLIC HEARING *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Second Reading of Ordinance No. 02-2017 Amending Chapter 8.09, Marijuana Sales Tax, of the Clackamas County Code by Imposing 3% Tax on Retail Sales of Marijuana Items by a Marijuana Retailer in Unincorporated Areas of the County and Declaring an Emergency (Stephen Madkour, County Counsel)

III. CONSENT AGENDA *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

A. Department of Transportation & Development

1. Approval of a Renewal of the Franchise Agreement with Waste Management of Oregon, Inc., to Operate the Clackamas County Garbage & Recycling Transfer Station

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

C. Department of Disaster Management

1. Approval of Sub-recipient Grant Agreement 16-023 with Oregon Department of Forestry, North Cascades District for Firewise Communities Program
2. Approval of FY2016 Emergency Management Performance Grant between Clackamas County and the State of Oregon

IV. COUNTY ADMINISTRATOR UPDATE

V. COMMISSIONERS COMMUNICATION

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. www.clackamas.us/bcc/business.html



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

January 26, 2017

Stephen L. Madkour
County Counsel

Board of County Commissioners
Clackamas County

Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Shawn Lillegren
Jeffrey D. Munns
Assistants

Members of the Board:

Second Reading of Ordinance 02-2017 Amending Chapter 8.09,
Marijuana Sales Tax, of the Clackamas County Code by Imposing 3% Tax on Retail Sales of
Marijuana Items by a Marijuana Retailer in Unincorporated Areas and Declaring an Emergency

| | |
|--|---|
| Purpose/Outcomes | Impose a 3% Tax on the Sale of Marijuana Items |
| Dollar Amount and Fiscal Impact | Nominal internal staff costs. Estimated revenue of \$180,000 based on state projections. |
| Funding Source | County General Fund |
| Duration | Indefinitely |
| Previous Board Action | Board policy session on May 24, 2016 and referring the measure to the ballot on August 11, 2016. The Board had a first reading of this ordinance on January 12, 2017. |
| Strategic Plan Alignment | Ensure safe, healthy and secure communities. |
| Contact Person | Stephen L. Madkour, County Counsel |

BACKGROUND:

ORS 475B.345 allows counties to impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses in unincorporated areas of the county by referring an ordinance to the voters at a statewide general election. The matter was referred to and approved by the voters of Clackamas County at the November 8 general election. The tax becomes effective 90 days after the election.

As described in ORS 475B.345, the tax is calculated as a percentage of the retail price of marijuana items by a retailer selling recreational marijuana in the unincorporated areas of the county. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

The tax would be collected by the Oregon Department of Revenue. The County will enter into an Intergovernmental Agreement with the Department of Revenue for the collection and distribution of the 3% sales tax. DOR will charge fees to recover costs associated with setting up the system, and collecting and distributing the tax.

The DOR recommends that all local ordinances contain the interest and penalty provisions found in state law at ORS 475B.710 and ORS 475B.715 (which cite to ORS 305.220, ORS 305.265, and ORS 314.400). The proposed amendments include the appropriate language and statutory references.

RECOMMENDATION:

Staff respectfully requests the Board perform a second reading, by title only, of the amendments to the existing voter-approved Ordinance. The tax will become effective on February 8, 2017. The amendments to the Ordinance should likewise be effective on that date. Accordingly, staff recommends that the Board declare this an emergency to allow the terms to become effective on adoption.

Respectfully submitted,

Stephen L. Madkour
County Counsel

Attachments:
Proposed Amended Ordinance

ORDINANCE NO. 02-2017

An Ordinance Amending Chapter 8.09 Marijuana Sales Tax, of the Clackamas County Code and Declaring an Emergency

WHEREAS, the matter of a marijuana sales tax was referred to and approved by the voters at the November 8, 2016 election; and

WHEREAS, the tax becomes effective 90 days after the election; and

WHEREAS, the Oregon Department of Revenue recommends that all local ordinances contain the interest and penalty provisions found in state law at ORS 475B.710 and 475B.715; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 8.09, Marijuana Sales Tax, of the Clackamas County Code is amended to read as shown on Exhibit A to this ordinance.

Section 2: Emergency Clause

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective on adoption.

ADOPTED this 26th day of January, 2017.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

EXHIBIT A

AN ORDINANCE AMENDING CHAPTER 8.09 OF THE CLACKAMAS COUNTY CODE IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER IN UNINCORPORATED AREAS

Whereas, ORS 475B.345 provides that a county governing body may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the unincorporated area of the county; and

Whereas, the Clackamas County Board of County Commissioners referred and the voters approved a tax on the sale of marijuana items by a marijuana retailer in the unincorporated area of Clackamas County;

NOW THEREFORE, BASED ON THE FOREGOING,

The People of Clackamas County ordain as follows:

Chapter 8.09 Marijuana Sales Tax

8.09.010 DEFINITIONS.

- A. Marijuana item has the meaning given that term in ORS 475B.015(16).
- B. Marijuana retailer means a person who sells marijuana items to a consumer in this state.
- C. Retail sale price means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

8.09.020 TAX IMPOSED.

As described in ORS 475B.345 the County of Clackamas hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the unincorporated areas of Clackamas County.

8.09.030 COLLECTION.

The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

8.09.040 INTEREST AND PENALTY.

(A) Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the Oregon Department of Revenue was originally required to be filed by the marijuana retailer to the time of payment.

(B) If a marijuana retailer fails to file a return with the Oregon Department of Revenue or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.

(C) Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the marijuana retailer and remitted to the Oregon Department of Revenue.

(D) Taxes, interest and penalties transferred to Clackamas County by the Oregon Department of Revenue will be distributed to the County's general fund.

(E) If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the County of the owed amount in accordance with ORS 475B.700 to 475B.755, any agreement between the Oregon Department of Revenue and Clackamas County under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.

8.09.050 REFERRAL.

This ordinance in substantially the same form was referred to and approved by the electors of Clackamas County at the statewide general election on Tuesday, November 8, 2016.



SCOTT CAUFIELD, MANAGER
 RESOURCE CONSERVATION AND SOLID WASTE PROGRAM

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
 150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

January 26, 2017

Board of County Commissioners
 Clackamas County

Members of the Board:

**Approval of a Renewal of the Franchise Agreement with
 Waste Management of Oregon, Inc., to Operate the
 Clackamas County Garbage & Recycling Transfer Station**

| | |
|---------------------------------|--|
| Purpose/Outcomes | A single franchise to operate the County owned transfer station. |
| Fiscal Impact | \$30,000 annually |
| Funding Source | 5% Franchise Fee on gross receipts |
| Duration | Ten (10) years; through December 2026 |
| Previous Action | Solid Waste Commission approval on January 4, 2017. Board Study session January 17, 2017. |
| Strategic Plan Alignment | Build public trust through good government and Ensure safe, healthy and secure communities |
| Contact Person | Rick Winterhalter, Sr. Sustainability Analyst DTD RC&SW 503-742-4466 |
| Contract No. | N/A |

BACKGROUND

The County owned Clackamas County Garbage & Recycling Transfer Station (CCTS) is located at 19600 Canyon Valley Rd., approximately 1 ½ miles east of Sandy on Hwy 26. The site is legally established non-conforming use on approximately 2 acres of the 24 acre county owned property. The transfer station is in operation for the public and to dispose of their garbage and recyclables. The garbage delivered to the transfer station is consolidated and delivered to an approved landfill for disposal. Recyclables are delivered to appropriate processing facilities for marketing.

The transfer station site was initially established as an open burn dump, operated by the County in the 1960's. In the early 1970s the County closed the dump and began operating the site as a transfer station. Since that time the County issued contracts and then a franchise for outside parties to perform the daily operation of the transfer station while the County assumed the role of providing policy direction, oversight and fee regulation.

Currently, the County has a Transfer Station Franchise Agreement with Waste Management of Oregon, Inc. to operate the Transfer Station. The franchise term ends January 31, 2017. County Code states: "*The term for a Transfer Station Franchise shall be ten (10) years, unless upon recommendation of the Commission, the Board may adjust the term of the franchise as deemed necessary due to the cost of land, equipment, or facilities.* The Code further states: *Franchises... shall be renewable unless grounds exist for refusal to renew ...*". Waste Management has performed the duties of operating the transfer station in accordance with the current agreement and operations plan. According to the DEQ the operator has performed within the parameters of DEQ Permit #121.

During 2016 approximately 27,480 private vehicles visited the site, delivering 5,000 tons of garbage, 1,000 tons of recyclables, 2,000 tires, and 2,000 gallons of used motor oil. The user survey conducted at the site, at the beginning of this franchise term, revealed an extremely high level of customer satisfaction. Throughout this term staff has received very few customer complaints and all have been resolved.

The current franchisee has the expertise necessary to ensure the environmental integrity of the covered dump is maintained. The current franchisee has maintained the property in accordance with the current agreement. Additionally, they have made changes to the site and operations to achieve the safety of the customer and improve operational efficiencies.

Franchise fees and all required reports have been submitted on time. The current franchisee has complied with staff's requests for information whether specified in the franchise agreement or not.

The attached franchise agreement is still applicable and is being reviewed to ensure contacts are current. The DEQ permit 121 and Operations Plan are included in that attachment. Also attached is a more detailed account of activities at the transfer station.

Currently, the County has a Transfer Station Franchise Agreement with Waste Management of Oregon, Inc. to operate the Transfer Station. The franchise term ends January 31, 2017. County Code states: "*The term for a Transfer Station Franchise shall be ten (10) years, unless upon recommendation of the Commission, the Board may adjust the term of the franchise as deemed necessary due to the cost of land, equipment, or facilities.* The Code further states: *Franchises... shall be renewable unless grounds exist for refusal to renew ...*". Waste Management has performed the duties of operating the transfer station in accordance with the current agreement and operations plan. According to the DEQ the operator has performed within the parameters of DEQ Permit #121.

During 2016 approximately 27,480 private vehicles visited the site, delivering 5,000 tons of garbage, 1,000 tons of recyclables, 2,000 tires, and 2,000 gallons of used motor oil. The user survey conducted at the site, at the beginning of this franchise term, revealed an extremely high level of customer satisfaction. Throughout this term staff has received very few customer complaints and all have been resolved.

The current franchisee has the expertise necessary to ensure the environmental integrity of the covered dump is maintained. The current franchisee has maintained the property in accordance with the current agreement. Additionally, they have made changes to the site and operations to achieve the safety of the customer and improve operational efficiencies.

Franchise fees and all required reports have been submitted on time. The current franchisee has complied with staff's requests for information whether specified in the franchise agreement or not.

The Solid Waste Commission met on January 4, 2017 and unanimously recommended the Board renew the franchise agreement with Waste Management of Oregon, Inc. to operate the transfer station.

The attached franchise agreement is still applicable and is being reviewed to ensure contacts are current. County Counsel has approved and signed the attached agreement. The DEQ permit 121 and Operations Plan are included in that attachment. Also attached is a more detailed account of activities at the transfer station.

RECOMMENDATION:

Accept the Solid Waste Commission's unanimous recommendation to renew the Clackamas County Garbage & Recycling Transfer Station Franchise with Waste Management of Oregon, Inc. for a ten year period ending January 1, 2027.

Sincerely,

Scott Caufield
Resource Conservation & Solid Waste Manager
Attachments

For information on this issue or the attachments, please contact Rick Winterhalter at 503-742-4466 or rickw@clackamas.us.

FRANCHISE NO. CCGRTS-4-17

DATE ISSUED: _____

EXPIRATION DATE: JANUARY 1, 2027

**SOLID WASTE
TRANSFER STATION FRANCHISE
ISSUED BY
CLACKAMAS COUNTY
150 BEAVERCREEK RD.
OREGON CITY, OREGON 97045
(503) 742-4466**

ISSUED TO: Waste Management of Oregon, Inc.

NAME OF FACILITY: Clackamas County Garbage & Recycling Transfer Station

ADDRESS: 19600 S.E. Canyon Valley Road, Sandy, OR 97055

LEGAL DESCRIPTION: T2S, R5E, Section 20, Tax Lot 800, WM

NAME OF OPERATOR: Waste Management of Oregon, Inc.

PERSON IN CHARGE: William Carr, Sr. District Manager-Disposal

ADDRESS: 7227 NE 55th Avenue, Portland, OR 97218

TELEPHONE NUMBER: 971-261-4008

INDEX

EXHIBITS

- EXHIBIT A. TRANSFER STATION SURVEY MAP
- EXHIBIT B. DEPARTMENT of ENVIRONMENTAL QUALITY
SOLID WASTE DISPOSAL PERMIT NUMBER 121
- EXHIBIT C. SPECIAL OPERATING CONDITIONS
- EXHIBIT D. PERFORMANCE BOND

SOLID WASTE TRANSFER STATION FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT (“Franchise”) is made and entered into between WASTE MANAGEMENT OF OREGON, INC. (“Franchisee”) and CLACKAMAS COUNTY (“County”). The parties shall be collectively referred to herein as the “Parties” and individually as a “Party”, unless specifically identified otherwise. This Franchise shall constitute a "transfer station franchise" within the meaning of the Clackamas County Code Chapter 10.03 (the “Code”), and the terms of this Franchise shall be enforceable under the Code as "rules or regulations" promulgated thereunder. The terms of this Franchise shall also constitute a legally enforceable contract between the parties, subject to all the rights and responsibilities of the County or Franchisee under the Code, including the provisions for enforcement, suspension, modification, revocation of, or refusal to renew a franchise.

RECITALS

WHEREAS the County owns the Clackamas County Garbage & Recycling Transfer Station, as more specifically defined herein;

WHEREAS the Franchisee has been operating the Clackamas County Garbage & Recycling Transfer Station pursuant to Franchise Agreement No. STS-1-90 dated May 9, 1990, and as thereafter amended; and

WHEREAS the Parties wish to extend and restate the Franchise Agreement pursuant to the terms and conditions provided herein;

TERMS AND CONDITIONS

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

ARTICLE I DEFINITIONS

1. Transfer Station. The “Transfer Station” is the solid waste transfer facility owned by the County and located at 19600 S.E. Canyon Valley Road, Sandy, Oregon 97055. The location of the Transfer Station is shown on the attached survey map (**Exhibit A**) and more specifically described by the following legal description:

Beginning at an iron rod on the East and West centerline of Section 20, Township 2 South, Range 5 East Willamette Meridian, said iron rod being South 88°57'11" East 851.50 feet from the quarter section corner on the west line of said Section 20; thence South 1°02'49" East 195.50 feet to an iron rod; thence South 88°57'11" East 186.99 feet to an iron rod; thence North 4°22'45" East 478.32 feet to an iron rod; thence North 82°24'26" West 203.07 feet to an iron rod; thence South 1°47'24" West 305.18 feet to an iron rod; thence North 88°57'11" West 9.10 feet to the point of beginning, containing 2.185 acres.

2. Acceptable Wastes. “Acceptable Wastes” are defined as:

2.1. "Solid wastes" as defined under ORS 459.005, but excluding those solid wastes specifically identified under Section 3 (Prohibited Wastes).

3. Prohibited Wastes. "Prohibited Wastes" are defined as:

3.1. Non-digested sewage sludges, septic tank pumpings, chemicals, liquids, infectious waste, medical wastes, explosives and other materials which may be hazardous or difficult to manage unless specifically authorized in writing by Clackamas County and the Department of Environmental Quality;

3.2. "Hazardous wastes" as defined under ORS 466.005 and under federal law, including the federal Resource Conservation & Recovery Act, 42 U.S.C. §§ 6901 et seq.

4. Allowable Expenses. Allowable expenses shall not exceed the fair market value of like services; shall be known and measurable; shall be calculated in accordance with Generally Accepted Accounting Principles (GAAP); and shall be reasonably and prudently incurred by the Franchisee in the course of performing its obligations under this Franchise. Allowable expenses may include, but not be limited to:

4.1. Labor costs, including operational and supervisory labor, payroll taxes, workers' compensation, and benefits;

4.2. Vehicle and equipment expenses, including vehicle registration fees, motor fuel, oil, tires, rental charges and/or operating lease payments and repairs and maintenance;

4.3. Expenses of maintaining other capital assets, including rental charges and/or operating lease payments and repair and maintenance;

4.4. Utilities;

4.5. Disposal costs;

4.6. The Franchise Fee assessed pursuant to Article III, Section 1, and all other surcharges, taxes or fees (other than state or federal income taxes), which are imposed upon the Franchisee or levied by federal, state or local government in connection with Franchisee's provision of services under this Franchise;

4.7. The costs of complying with all laws, regulations or orders applicable to the obligations of the Franchisee under federal, state or local law, as now or hereafter amended;

4.8. Performance bonds and insurance in at least the amounts and coverages required by the County;

4.9. Administrative expenses related to data processing, billing and supplies, finance and accounting, Franchise administration, human resource and labor management, rate analysis, and regulatory compliance;

4.10. Expenses incurred in compiling, preparing, and submitting all reports and information required pursuant to Article VII.

4.11. Training and worker safety expenses;

4.12. Promotion and public education costs;

4.13. Depreciation and amortization of properly allocated 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.

4.14. Outside professional fees and costs;

4.15. Interest expense that is not in excess of market rates ordinarily charged for the various types of financing required for purchases or leases; and

4.16. Direct write-off charges for bad debts.

5. Gross Revenue. “Gross Revenue” is defined as:

5.1. Gross billings by the Franchisee to customers for services provided under this Franchise; and

5.2. The allocated gain on the sale of fixed assets, the depreciation or amortization from which, was an Allowable Expense; and

5.3. Refunds, sales proceeds or other reimbursements for any other expense that was an Allowable Expense; and

5.4. Proceeds from the sales of recycled material collected within the Franchise.

6. Income. “Income” is defined as Gross Revenue minus Allowable Expenses.

7. Return on Revenue. “Return on Revenue” is defined as the quotient of Income divided by Gross Revenue.

ARTICLE II AUTHORITY TO OPERATE

During the Term (as defined below) of this Franchise, Franchisee is hereby authorized to operate and maintain the Transfer Station for the purpose of accepting and disposing of solid waste in accordance with the terms and conditions of this Franchise and in accordance with the provisions specified in the Solid Waste Disposal Site Permit No. 121 (**Exhibit B** attached hereto) issued by the Oregon Department of Environmental Quality (“DEQ”).

ARTICLE III COMPENSATION – RATES, FEES, AND OTHER COSTS

1. Franchise Fee. Franchisee will pay a franchise fee (the “Franchise Fee”) to the County as determined by order of the Board of County Commissioners. Franchisee shall have the option, within 30 days from the initial imposition of the Franchise Fee or increase in the Franchise Fee, to cancel this Franchise and discontinue service with 90 days written notice. The Franchise Fee is payable to the County on or before the end of each month following the end of each calendar quarter.

2. Fees. The Franchisee is authorized to charge users of the Transfer Station only those fees that shall be determined by the Clackamas County Board of Commissioners.

3. Fee Adjustments. If the result of a financial review (Clackamas County Code 10.03.340) reveals the Return on Revenue is outside the range of 8%-12%, the fees (**Section 2.**

of this article) may be adjusted to produce a targeted Return on Revenue of 10% when applied to the revenues and expenses presented in the financial review.

The Franchisee may, at any time, request an increase in fees if the Return on Revenue, for a twelve month period, falls below 8% as determined by a financial review. The franchisee will bear the County's cost of the review if the request is made at a time other than the regularly scheduled review as described in Article VII.

4. Utilities. Franchisee will pay for all utilities or services used at the Transfer Station.

ARTICLE IV TERM AND TERMINATION

1. Term. The Term of this Franchise shall commence upon the date that all Parties have executed this Agreement, as evidenced by the signatures below, and shall terminate on January 31, 2027.

2. County's Right to Terminate. The County shall have the right to terminate this Franchise pursuant to Section 10.03.270 and Section 10.03.280 of the County Code.

3. Notice of Default and Right to Cure. Notwithstanding the above, the County shall only terminate this Franchise if the County has given written notice to the Franchisee of the County's intent to terminate the Franchise, including the reasons for such termination, and the Franchisee has failed to cure such breach within thirty (30) days after receipt of written notice of the County's intent to terminate.

4. Return of Premises. Upon termination of this Franchise, Franchisee shall immediately quit and deliver the Transfer Station (including all improvements or additions which have not been removed within a reasonable amount of time) to the County peaceably, quietly and in good order and clean condition, normal wear and tear excepted.

ARTICLE V IMPROVEMENTS

Franchisee may erect such buildings or structures on the County-owned land described in this Franchise as necessary for the operation of the Transfer Station or other solid waste collection functions. Franchisee must comply with all applicable land-use and construction regulations in the construction of any such structures, and shall be responsible for obtaining any necessary permits. Upon termination of the Franchise, any such buildings or structures shall become the sole property of the County if they are not removed from the premises within a reasonable amount of time. Franchisee is aware that the Transfer Station may constitute a pre-existing nonconforming use under current zoning regulations and that land-use approval may, therefore, be required before expanding the use of the Transfer Station.

ARTICLE VI SPECIAL OPERATING CONDITIONS

Franchisee shall comply with the Special Operating Conditions attached hereto as **Exhibit C**. The Special Operating Conditions may be revised from time-to-time by the Parties without the requirement to amend this Franchise.

**ARTICLE VII
MINIMUM REPORTING REQUIREMENTS**

At a minimum, the Franchisee shall collect, summarize, and submit to the County the following information concerning the Transfer Station operations:

| Data | Reporting Frequency |
|--|----------------------------|
| Tons of solid waste deposited by commercial collection vehicles. | Monthly |
| Number of commercial collection vehicles. | Monthly |
| Tons of solid waste deposited by private vehicles | Monthly |
| Number of private vehicles including cars, pickups, trailers and other small hauling vehicles. | Monthly |
| Unusual occurrences affecting disposal site operation. | Each Occurrence |
| Significant construction activities. | Each Occurrence |
| Tons of source separated recyclables by type. | Monthly |
| Counts of batteries, tires, appliances with freon, uncovered loads, gallons of oil. | Monthly |
| Daily transactions by type (inbound/outbound) | Monthly |
| Financial Review – submitted on forms provided or approved by the County for a twelve month period | Every two years |

**ARTICLE VIII
INDEMNIFICATION**

The Franchisee agrees to indemnify, save harmless and defend the County, the Solid Waste Commission and their officers, commissioners and employees (collectively, the “Indemnitees”) from and against all claims and action, and all expenses incidental to the investigation and defense thereof, to the extent caused by, or arising from or in connection with the breach of any representations, covenants or warranties of the Franchisee set forth in this Franchise, or any negligent actions or omissions or willful misconduct of the Franchisee, its employees, officers, owners, directors or agents in the performance of this Franchise, or the violation of any law, ordinance or regulation. Such indemnity shall exclude Damages to the extent they arise as a result of any negligent actions or omissions or willful misconduct of the Indemnitees.

ARTICLE IX INSURANCE

1. Amount. Franchisee shall 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), \$1,000,000 combined single limit per occurrence;
- Automobile Liability, \$500,000 combined single limit per occurrence;
- Employer's Liability, \$1,000,000 per occurrence; and
- Workers' Compensation, statutory limit.

2. Other Requirements. Franchisee shall name County as an additional insured under the Franchisee's Commercial General Liability and Automobile Liability insurance policies, but only to the extent of the Franchisee's indemnity obligation set forth above. Upon request, Franchisee shall provide to County certificates evidencing such insurance. Such coverage and policies shall not be canceled, modified or revoked without providing County thirty (30) days advance written notice.

3. Performance Bond. The Franchisee shall furnish to the County a Performance Bond (**Exhibit D**) in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00) or any other amount as deemed appropriate by the Director as security for the faithful performance and payment of all obligation under the Franchise Agreement. This Performance Bond shall remain in effect for the duration of the Franchise Agreement.

ARTICLE X 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 shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall 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 shall 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.

**ARTICLE XI
GENERAL CONDITIONS**

1. Compliance with Laws. Franchisee shall comply with all applicable federal, state, and local laws, regulations, ordinances, permits, orders, and other requirements applicable to operation of the Transfer Station, including, but not limited to, all Environmental Laws. Without limiting the generality of the foregoing, the Franchisee shall comply with all conditions of Solid Waste Permit Number 121 issued by the Oregon Department of Environmental Quality (DEQ), including all amendments thereto. Franchisee shall also be responsible for submitting a timely application for the renewal Solid Waste Permit Number 121.

2. Communications with Regulatory Agencies. The Franchisee shall submit a duplicate copy to the County of any material information submitted to, or required by the Department of Environmental Quality pertaining to the Solid Waste Permit for the Transfer Station.

3. Authorized representatives from the County shall be permitted access to the Transfer Station at all reasonable times for the purpose of making inspections and carrying out other necessary functions relating to this Franchise. Access to inspect is authorized:

- a. during all working hours without notice.
- b. at other reasonable times with notice.
- c. at any time without notice where, at the discretion of the County, such notice would defeat the purpose of the entry.

4. Notice. Any notice required or permitted hereunder shall be in writing (including, without limitation, by facsimile transmission) and sent to the address shown below:

| | | | |
|---------------|-----------------------|----------|-----------------------|
| If to COUNTY: | 150 Beavercreek Rd. | Copy to: | 150 Beavercreek Rd. |
| | Oregon City, OR 97045 | | Oregon City, OR 97045 |

| | | | |
|------------|-------------------|--|-------------|
| Attention: | Rick Winterhalter | | Nancy Davis |
|------------|-------------------|--|-------------|

| | | | |
|----------------------|------------------------------|----------|--|
| If to FRANCHISEE: | 7227 NE 55 th Ave | Copy to: | |
| | Portland, OR 97218 | | |

| | | | |
|------------|--------------|--|--|
| Attention: | William Carr | | |
|------------|--------------|--|--|

5. Successors and Assigns. Neither Party shall assign this Franchise without the prior written consent of the other Party, except that Franchisee may assign this Franchise to any subsidiary, parent or affiliated Franchisee without the County's consent, provided, however, that Franchisee has provided written notice to County of such assignment. If this Franchise is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns. Franchisee may subcontract any of its obligations under this Franchise only with prior approval by the Board of County Commissioners, and such approval shall not be unreasonably withheld. If approved, the Franchisee shall remain responsible for compliance with this Franchise.

6. No Liens. Franchisee will not permit any liens to be placed on the Transfer Station or property where the Transfer Station is located.

7. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Franchise, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

8. Entire Agreement; Amendment. This Franchise constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Franchise may not be modified, in whole or in part, except in writing signed by all the Parties.

9. No Third Party Beneficiaries. This Franchise is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Franchise, whether as a third party beneficiary or otherwise.

10. Headings. The Headings used in this Franchise are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Franchise nor the intent of any provision thereof.

11. Construction. In case any one or more of the provisions contained in this Franchise shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Franchise and this Franchise shall be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

12. Governing Law. This Franchise, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Oregon and the Clackamas County Code.

* * *

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.

CLACKAMAS COUNTY

**WASTE MANAGEMENT OF
OREGON, INC.**

By: _____
Name: Jim Bernard
Chair,
Title: Board of County Commissioners
Date: _____

By: _____
Name: Adam Winston
Title: Vice President
Date: _____

EXHIBIT A
SURVEY MAP OF TRANSFER STATION

EXHIBIT B
SOLID WASTE DISPOSAL SITE PERMIT NO. 121

EXHIBIT C

SPECIAL OPERATING CONDITIONS

1. Hours of Operation. Except as provided herein, the Transfer Station shall, at a minimum, be open during the hours of 9:00 a.m. to 5:00 p.m., five days per week; Saturday and Sunday shall be two of the five days.

1.1. The Franchisee may, in its reasonable discretion, temporarily close the Transfer Station or change the hours or days of operation if the Franchisee determines that inclement weather or other conditions interfere with the safe and effective operation of the Transfer Station. In the event of a closure or change in the hours and days of operation, the Franchisee shall notify the County of such closure or change.

1.2. The County may, in its reasonable discretion, require the Franchisee to close the Transfer Station or change the hours or days of operation if the County determines that such closure or change is reasonably necessary to ensure compliance with this Franchise.

2. Refusal of Service. The Franchisee may refuse service to any customer if the customer refuses to pay for service in accordance to the rates established by the Board or the customer refuses to follow the facility rules. The number of customers refused service shall be reported to the County.

3. Temporary Closures. In the event that the Transfer Station is to be closed for an indefinite period of time during the effective period of this franchise, the Franchisee shall provide the County with written notice of the proposed time schedule and closure procedures at least ninety (90) days prior to closure or as soon as practicable if it is not possible to provide 90 days advance notice. In addition to notice to the County, the Franchisee shall provide at least thirty (30) days written notice of the proposed closure to any franchisees using the Transfer Station. This requirement shall not apply to any order, foreclosure or restriction of use by any public agency, public body or court having jurisdiction.

4. Access. The Franchisee shall control unauthorized public access to the Transfer Station by using fences, natural terrain, features of the site, or other measures as necessary to preclude unauthorized entry, dumping, or other vandalism. The Franchisee shall report any vandalism, theft, or damage to the Clackamas County Sheriff's Office and to the Department of Transportation and Development (Community Environment Division).

5. Signage. The Franchisee shall post signs at the Transfer Station that clearly state the Transfer Station rules and the applicable disposal rates. The Franchisee shall also maintain a clearly visible and legible sign at the entrance to the Transfer Station. Such sign shall at a minimum, include the following information:

- Name of the Facility
- Hours of Operation

6. Tires. Whole tires may be accepted and shall be stored in a separate area of the disposal site behind a gated chain link fence or other approved enclosure. Normally no more than 300 whole waste tires shall be stored at the site at any time. Franchisee shall comply with

all Department of Environmental Quality Waste Tire Storage Requirements. Tires must be stored in such a manner as to prevent vector harborage.

7. Recycling Operations.

7.1. The site operator shall accept from the public, at a minimum, the same type of recyclable materials collected curbside outside of the Metro Urban Growth Boundary.

7.2. Salvaging of recyclables is authorized if controlled so as to not interfere with optimum disposal site operation and not create unsightly conditions or vector harborage.

7.3. Only the operator of the site, or such other authorized County Employees, representatives, or agent as agreed to in writing by the operator and County, shall be allowed to salvage through the waste for recycling purposes. There shall be no unauthorized salvaging or rummaging through the disposed waste or recyclables.

7.4. Storage areas for recyclable materials such as corrugated cardboard, newsprint, scrap metal, appliances and other recyclable materials shall be maintained in an orderly manner and recyclable materials shall be removed at sufficient frequency to avoid creating nuisance conditions, vector harborage, or safety hazards.

7.5. The Franchisee shall provide all the necessary on-site recycling containers for the public's convenience. All recycling containers or drop off areas shall be clearly and legibly identified with signs by recyclable types.

7.6. Franchisee shall provide to the users of the facility information about the opportunities to recycle at the facility.

8. Cleanliness & Maintenance.

8.1. Dust, malodors, and noise shall be controlled so as to comply with the Department of Environmental Quality rules pertaining to air pollution and noise control.

8.2. Access and on-site roads shall be maintained to prevent traffic hazards and excessive dust and shall provide for all weather passage of vehicles.

8.3. Rodent and insect control measures such as baiting and insecticide spraying shall be provided as necessary to prevent vector production and sustenance.

8.4. The Franchisee shall perform litter patrols as needed on site and along the entire length of Canyon Valley Road to minimize blowing paper and other material.

8.5. Franchisee shall maintain the buildings and grounds in a manner acceptable to the County. Except for damage due to an act of God all paved areas, including driveways, pads, and maneuvering areas, and the concrete walls and

guardrails shall be maintained in compliance with federal, state, and local safety standards.

9. Emergency Procedures.

9.1. In the event a breakdown of equipment, fire or other occurrences which causes a violation of any conditions of this Franchise, Department of Environmental Quality Disposal Permit, Solid Waste and Waste Management Ordinance or any subsequent contract, ordinance permit or amendments thereto, the Franchisee shall:

(a) Take immediate action to correct the unauthorized condition or operation.

(b) Immediately notify the County so that an investigation can be made to evaluate the impact and the corrective actions taken and, if applicable, determine additional action that must be taken.

9.2. If the County finds that there is a serious danger to the public health or safety as a result of the actions or inactions of the Franchisee, the County may take whatever steps are necessary to abate the danger without notice to the Franchisee.

10. No Fires. No burning of any materials shall be conducted or allowed at the Transfer Station site. Accidental fires shall be immediately extinguished and reported to the County.

11. Transfer Vehicles. All solid waste transfer vehicles and devices using public roads shall be constructed, maintained and operated so as to prevent leaking, sifting, spilling or blowing of solid waste while in transit.

12. Removal of Waste Materials.

12.1. Prohibited waste shall be contained and removed from the site within a reasonable amount of time and shall be transported to a disposal site authorized to accept said material.

12.2. Solid waste other than material for recycling or reuse shall be removed from the site a minimum of every seven (7) days and shall be transported to an authorized Department of Environmental Quality disposal facility.

EXHIBIT D
PERFORMANCE BOND

DRAFT

Approval of Previous Business Meeting Minutes:
January 12, 2017

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<http://www.clackamas.us/bcc/business.html>

Thursday, January 12, 2017 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

**PRESENT: Commissioner Jim Bernard, Chair
Commissioner Ken Humberston
Commissioner Paul Savas**

EXCUSED: Commissioner Martha Schrader

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. CITIZEN COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

1. Bob Rees, Oregon City – representing Oregon Steelheaders Association – urged the Commissioners to opt out of the Linn County lawsuit.

~Board Discussion~ the Board will discuss this issue at their Jan. 17th Work Session.

II. PUBLIC HEARINGS

1. **Board Order No. 2017-01** for Boundary Change Proposal No. CL 16-010, Annexation to Clackamas County Service District No. 1

Chris Storey, County Counsel presented the staff report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Savas: I move we approve the Board Order for Boundary Change Proposal No. CL 16-010, Annexation to Clackamas County Service District No. 1.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

2. **Board Order No. 2017-02** Accepting a Transfer of Jurisdiction from Clackamas County to the City of Lake Oswego for a Portion of Carman Drive

Rick Maxwell and Mike Bezner, Department of Transportation & Development presented the staff report.

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the Board Order Accepting a Transfer of Jurisdiction from Clackamas County to the City of Lake Oswego for a Portion of Carman Drive.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

The Board will recess as the Board of County Commissioners and convene as the Development Agency for the next item.

3. Second Reading of Ordinance No. 01-2017 Amending the Clackamas Town Center Area Development Plan and Report - *first reading was 12-19-16*

Dan Johnson, Dave Queener, Development Agency presented the staff report.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Savas: I move we read the Ordinance by title only.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

Chair Bernard asked the Clerk to assign a number and read the Ordinance by title only, he then asked for a motion.

MOTION:

Commissioner Savas: I move we adopt the Ordinance Amending the Clackamas Town Center Area Development Plan and Report.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

The Board will adjourn as the Development Agency and re-convene as the Board of County Commissioners for the remainder of the meeting.

4. First Reading of Ordinance No. 02-2017 Amending Chapter 8.09, Marijuana Sales Tax, of the Clackamas County Code by Imposing 3% Tax on Retail Sales of Marijuana Items by a Marijuana Retailer in Unincorporated Areas of the County and Declaring an Emergency

Stephen Madkour, County Counsel presented the staff report. The second reading of this ordinance will be on Thursday, Jan. 26, 2017.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing asked for a motion.

MOTION:

Commissioner Humberston: I move we read the Ordinance by title only.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

Chair Bernard asked the Clerk to assign a number and read the Ordinance by title only.

~Board Discussion~

He announced the second reading will be on Thursday, January 26, 2017 at the regular Business Meeting at 10 AM.

III. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title, he then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.
Commissioner Savas: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 3-0.

A. County Counsel

1. Approval of an Intergovernmental Agreement with the Oregon Department of Revenue for the Collection and Distribution of a 3% Sales Tax on Marijuana

IV. COUNTY ADMINISTRATOR UPDATE

<http://www.clackamas.us/bcc/business.html>

V. COMMISSIONERS COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

MEETING ADJOURNED – 10:42 AM

NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. www.clackamas.us/bcc/business.html



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

January 26, 2016

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Sub-recipient Grant Agreement 16-023 with the Oregon Department of Forestry,
North Cascades District for Firewise Communities Program

| | |
|--|--|
| Purpose/Outcomes | The Firewise Communities Program is a project of the National Fire Protection Association. The program encourages local solutions for safety by involving homeowners and individual responsibility for preparing for wildfire and for planning for wildland fires. |
| Dollar Amount and Fiscal Impact | Contract maximum value is \$390,569 |
| Funding Source | Federal Title III Grant Funds for Firewise. No County General Funds are involved. |
| Duration | Effective November 01, 2015 and terminates on October 31, 2017 |
| Previous Board Action | The Board has approved Firewise Grants in previous years that were managed through Count Administrator's Office |
| Strategic Plan Alignment | 1. Increase self-sufficiency for our clients. 2. Ensure safe, healthy and secure communities. |
| Contact Person | Nancy Bush, Director – 503-655-8665 |
| Contract No. | 16-023 |

BACKGROUND:

The Oregon Department of Forestry, Molalla Unit, will provide Firewise coordination and educational opportunities for home owners in Clackamas County in support of Clackamas County Community Wildfires planning efforts and the development of Firewise communities in the wildland urban interface as identified in the Clackamas County Wildfire Protection Plan (CCWP).

The Firewise Program is a continuation of work outlined in the CCWP in respect to fuel reduction efforts with the United States Forest Service and local fire districts and for planning for wildland fire interface within the county.

RECOMMENDATION:

Staff recommends the Board approve and sign this agreement.

Respectfully submitted,

Nancy Bush, Director



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

January 26, 2017

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY2016 Emergency Management Performance Grant
between Clackamas County and the State of Oregon

| | |
|--|--|
| Purpose/Outcomes | The Emergency Management Performance Grant (EMPG) agreement #16-503 will reimburse Clackamas County Disaster Management (CCDM) for up to 50% of pre-identified program costs. |
| Dollar Amount and Fiscal Impact | The grant agreement total value is \$170,436. The grant is a 50% federal share grant that will reimburse CCDM for up to fifty percent of salaries of six employees, departmental telephone costs and some allocated costs. |
| Funding Source | FY 2016 Emergency Management Performance Grant via the State of Oregon Military Department, Office of Emergency Management |
| Duration | Effective July 1, 2016 and terminates on June 30, 2017 |
| Previous Board Action | The Board approved the application for this grant on May 10, 2016 |
| Strategic Plan Alignment | 1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities |
| Contact Person | Nancy Bush, Director – Disaster Management Department, 503-655-8665 |
| Contract No. | Grant number 16-503 |

BACKGROUND:

County emergency management programs are required by Oregon Revised Statutes 401. The EMPG is a recurring federal grant program providing limited reimbursement of a portion of the costs incurred in operating local emergency management programs. The funds provided are for the development of an all-hazard emergency management capability to promote preparedness, mitigation, response and recovery.

County Counsel has approved the agreement as to form.

RECOMMENDATION:

Staff respectfully recommends Board approval of the EMPG grant agreement #16-503.

Respectfully submitted,

Nancy Bush, Director