

1                   **BEFORE THE BOARD OF COMMISSIONERS**

2                                   **FOR LINCOLN COUNTY, OREGON**

3   ORDINANCE # 425

4 \_\_\_\_\_  
5  
6 **Relating to disposal of solid waste; creating new provisions; amending LCC 2.1105 and**  
7 **2.1120; repealing LCC 2.1125; and declaring an emergency.**  
8 \_\_\_\_\_

9           The Lincoln County Board of Commissioners ordains as follows:

10           **SECTION 1.**

11           Sections 2 through 4 of this Ordinance are added to and made apart of LCC Chapter  
12 2, as indicated.

13           **SECTION 2.**

14           **2.1122 Definitions for LCC 2.1122 through 2.1126**

15           **Unless the context requires otherwise, as used in LCC 2.1122 through 2.1126:**

16           **(1) "Affiliated company" means the parent company of a franchisee or any**  
17 **subsidiary of such parent company, or any company of which 30 percent or more of**  
18 **the common stock of control is owned or controlled by the franchisee or a shareholder**  
19 **or shareholders of the franchisee who own or control 30 percent or more of the**  
20 **common stock of the franchisee which shares costs with the franchisee with respect to**  
21 **the services provided under this agreement. Examples of such shared costs include, but**  
22 **are not limited to, labor, equipment or administrative costs.**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

1           (2) "Allowable expenses" means those expenses incurred by a franchisee in the  
2 performance of this agreement that are acceptable as reimbursable by the ratepayer as  
3 enumerated below. Allowable expenses are allowable only to the extent that such  
4 expenses are known and measurable, calculated according to Generally Accepted  
5 Accounting Principles (GAAP) on an accrual basis, do not exceed the fair market value  
6 of comparable goods or services, and are commercially reasonable and prudently  
7 incurred by the franchisee solely in the course of performing its obligations under the  
8 franchise. Allowable expenses, as qualified above, shall include, but not be limited to,  
9 the following:

10           (a) The costs of complying with all laws, regulations or orders applicable to the  
11 obligations of franchisee.

12           (b) Disposal costs, as defined below, including increased disposal costs and  
13 surcharges to the extent that such increase does not exceed 85 percent of the Consumer  
14 Price Index (CPI) for the current year, as provided in LCC 2.1124(7). If such  
15 increased disposal costs and surcharges exceed 85 percent of the CPI for the current  
16 year, then such costs and surcharges shall be allowed as pass through expenses as  
17 provided in LCC 2.1124(9).

18           (c) Labor costs, including supervisory labor, associated with provision of  
19 services under the franchise, including workers compensation and benefits and third  
20 party transportation costs for recyclable materials.

1           (d) Vehicle and equipment expenses, including vehicle registration fees, motor  
2 fuel, oil, tires, and repairs and maintenance of equipment.

3           (e) All expenses of maintaining and replacing capital equipment and assets,  
4 including depreciation and repair and maintenance.

5           (f) Performance bonds and insurance, at a minimum, in the amounts and  
6 coverage required by the county.

7           (g) Administrative expenses related to data processing, billing and supplies,  
8 finance and accounting, officer salaries, franchise administration, human resource and  
9 labor management, rate analysis, and regulatory compliance.

10          (h) Utilities.

11          (i) Training and worker safety.

12          (j) Advertising, promotion, and public education costs.

13          (k) Property or facility depreciation, rental or lease costs necessary to the  
14 provision of services required by the franchise agreement.

15          (l) Depreciation and amortization of capital assets, including any necessary  
16 stand-by or back-up equipment used on a regular and ongoing basis in the provision of  
17 services under this franchise over standardized economic useful lives of the various  
18 assets. The county shall set the standard economic lives based upon industry input and  
19 prevailing practices.

20          (m) Outside professional fees and costs.

1           (n) Debt service expenses other than any debt service expenses associated with  
2 purchases of routes or business purchases, that are not in excess of market rates  
3 ordinarily charted for the various types of financing required for purchases or leases.

4           (o) Franchise fees.

5           (p) Any expense incurred in the collection, handling, processing, storing,  
6 transporting, marketing, or sale or other disposition of recyclable materials, as defined  
7 in ORS 459.005(20).

8           (q) All surcharges, taxes or fees, other than state or federal income taxes or  
9 franchise fees, which are imposed upon franchisee or levied by federal, state or local  
10 governments in connection with franchisee's provision of solid waste collection,  
11 transportation, disposal and resource recovery services.

12           (r) Any other expense determined in advance by the county and franchisee to be  
13 reasonable and necessary to the provision of the services required under the franchise  
14 agreement.

15           (s) Bad debts.

16           (3) "Collection" or "collection service" means all or any part of the activities  
17 involved in the collection of solid waste and its transportation to an appropriate solid  
18 waste management facility.

19           (4) "Customer" means generators of solid waste in the county to whom the  
20 franchisee provides collection services pursuant to a franchise granted by the county,  
21 and who have not been refused service pursuant to this chapter.

1           (5) "Disposal" means the disposition of solid waste collected by a franchisee at a  
2 permitted solid waste handling facility selected by the franchisee.

3           (6) "Disposal costs" means the total paid by a franchisee for the disposal of solid  
4 waste collected pursuant to a franchise granted by the county at the solid waste  
5 handling facility or transfer station.

6           (7) "Gross revenue" for any period means gross accrual-based billings by the  
7 franchisee to customers for services provided under this agreement and the accrual-  
8 based proceeds from the sales of recycled material collected within the franchise.

9           (8) "Operating margin" for a period means gross revenues minus allowable  
10 expenses.

11           (9) "Operating ratio" is the allowable expense divided into the gross revenues.  
12 Expressed as a percentage, the return on gross revenues shall be approximately 88  
13 percent of gross revenues, which is consistent with industry averages for solid waste  
14 collection companies.

15           (10) "Revenue requirement" means the sum of the quotient of allowable  
16 expenses divided by the operating ratio, expressed as a decimal, and pass through  
17 expenses.

18           (11) "Unallowable expense" means any of the following, which under no  
19 circumstances will be counted as an allowable expense:

- 20           (a) Political and charitable contributions.
- 21           (b) Federal, state, and local income taxes.

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

- 1           (c) **Loss on sale of assets.**
- 2           (d) **Officers' life insurance premiums.**
- 3           (e) **Director fees.**
- 4           (f) **Interest on the purchase of equipment or facilities to the extent that the**  
5 **purchase price exceeds the fair market value of the asset at the time of purchase.**
- 6           (g) **Penalties and fines.**
- 7           (h) **Costs, whether allocated or direct, associated with collection or unrelated**  
8 **operations that are not governed by this ordinance.**
- 9           (i) **Accruals for future unknown regulatory changes.**
- 10          (j) **Principal or interest payments on the acquisition of solid waste, recyclable**  
11 **materials and yard debris collection routes; the purchase of equipment and facilities at**  
12 **a price that would be construed to include goodwill or a premium in excess of fair**  
13 **market value at the time of acquisition.**
- 14          (k) **Attorney's fees and related expenses resulting from:**
  - 15           (A) **Any judicial proceeding in which the county and a franchisee are adverse**  
16 **parties, unless the franchisee is the prevailing party.**
  - 17           (B) **Any judicial proceeding in which a franchisee is ruled to be liable due to**  
18 **willful misconduct or gross negligence, or in violation of law or regulation.**

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

1           **SECTION 3.**

2           **2.1124 Determination of Rates**

3           (1) Franchisee shall charge and collect those rates adopted each year in  
4 accordance with this section. The rates set shall be fixed at a level sufficient to produce  
5 a revenue requirement for the franchisee that is equal to the quotient of allowable  
6 expenses divided by the operating ratio, expressed as a decimal. The operating ratio  
7 for this agreement shall be calculated at 88 percent. For purposes of this section, the  
8 rates shall include all monies collected by the franchisee for the services provided  
9 pursuant to a franchise granted by the county, including, but not limited to, charges  
10 for collection of solid waste and recyclable materials, revenue from the sale of recycled  
11 material, disposal charges, surcharges, fees and taxes. Revenue shall also include any  
12 other monies received by the franchisee from any other entity as compensation for  
13 services allocated fairly and reasonably to the jurisdiction and customers receiving said  
14 services.

15           (2) The franchisee and its affiliates may use common resources, such as  
16 equipment, fuel, labor, management, and administration, to service the county and  
17 other nearby jurisdictions. In such cases, it will be necessary to allocate the costs of  
18 such resources among the jurisdictions they serve. Franchisee and the county shall  
19 mutually agree upon an allocation formula, which may be amended upon the written  
20 mutual consent of the franchisee and the county, and shall be applied, as amended, to  
21 determine allowable expenses throughout the term of the franchise.

1           (3) The three factors that will be used to allocate these costs are:

2           (a) Labor hours: Used to allocate labor costs. Vehicle costs will also be  
3 allocated on labor hours as a substitute for engine hours. If, in the opinion of the  
4 operator, these hours would not be materially similar, then a four-factor formula  
5 would need to be implemented which would include engine hours to allocate the cost of  
6 vehicles.

7           (b) Weight: Average vessel weights used to allocate disposal.

8           (c) Customer base: Weighted customer counts used to allocate general,  
9 administrative, and management expenses.

10           (4) The methods for collecting the data for the factors described in subsection  
11 (3) of this section are:

12           (a) Labor hours: A 'time on route' form will be completed by route drivers one  
13 week each quarter. This data will then be summarized and averaged for application to  
14 the annual accounting data, or summarized and applied to the specific quarterly  
15 accounting data.

16           (b) Weight: Quarterly weight statistics will be generated by the company to  
17 obtain quarterly average vessel weights. These weights will then be applied to route  
18 list customer data to obtain relative weights per route. These relative weights per route  
19 will then be applied to the cost of disposal.

20           (c) Customer base: This data is readily available from computer reports  
21 generated in conjunction with billing and route list preparation.

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in boldfaced type.

1           (5) The factors described in subsection (3) of this section will be captured and  
2 applied to the costs on a periodic basis. The county and the franchisee agree that test  
3 periods shall be utilized, at least quarterly, to collect this data.

4           (6) Commencing on April 1, 2003, but in no event after April 1, 2004, the  
5 franchisee will submit to the county an annual report of operations prepared by the  
6 hauler's certified public accountant, showing the actual allowable expenses incurred by  
7 the franchisee in the preceding fiscal year, all additional allowable expenses the  
8 franchisee reasonably anticipates will be incurred or imposed in the current fiscal year,  
9 the allocation formulas used to determine expenses, the actual operating ratio for the  
10 preceding fiscal year, and the expected operating ratio for the current fiscal year.

11           (7) Except as provided in subsection (8) of this section, a cost of living rate  
12 adjustment shall be made every other year commencing with the completion of the  
13 report described in subsection (6) of this section, and according to the following  
14 procedure:

15           (a) Commencing on June 1, 2004, and on June 1 of each even numbered year  
16 thereafter (the adjustment date) throughout the term of the franchise, the rates shall be  
17 adjusted in an amount equal to 85 percent of the two-year percentage change in the  
18 Consumer Price Index for all Urban Consumers for West B/C, All Items (1982-84=100)  
19 published by the Bureau of Labor Statistics (the index) that occurred between the  
20 months of May and April of the previous and the current years. The adjustment shall  
21 not exceed six percent in any two-year period. In addition, no cost of living adjustment

1 shall be allowed if the adjustment would cause the franchisee to project operations in  
2 excess of the operating ratio range. The adjusted rates shall become effective on each  
3 July 1, thirty days following the adjustment date.

4 (b) On each adjustment date, the then current rates shall be multiplied by the  
5 calculated percentage change in the index for the year.

6 (c) On or before each adjustment date, the franchisee shall send to the county a  
7 revised rate schedule reflecting the proposed new rates, as adjusted by the index as  
8 provided in this subsection. Upon adoption, the revised rate schedule shall become  
9 effective on July 1 of each year.

10 (d) If a rate adjustment occurred in the previous year due to an upward  
11 adjustment of the rates due to a formal rate review, then the franchisee is only eligible  
12 for 85 percent on the one year change in the Consumer Price Index.

13 (e) In the event that the Index for Urban Consumers of West B/C is no longer  
14 published by the Bureau of Labor Statistics, the franchisee and the county shall  
15 negotiate in good faith and agree upon a suitable replacement index reflective of the  
16 cost of living in the franchise area.

17 (8) If the report described in subsection (6) of this section indicates that the  
18 operating ratio for the next succeeding 12-month period will be less than 85 percent or  
19 greater than 91 percent, then a rate review will automatically be implemented in  
20 accordance with this section. No more than five consecutive years shall pass during the  
21 term of this franchise without a formal rate review as set forth in this section. In the

1 event a rate review is requested or required as provided in this section, the following  
2 procedures shall bind the county and the franchisee:

3 (a) The county shall review the report and, if the county's review of the report  
4 indicates that the operating ratio is likely to be greater than 85 percent or less than 91  
5 percent, the county shall adopt rates for the next year, either as proposed by the  
6 franchisee in the report, or as modified by the county, no later than June 15. The  
7 adopted rates shall then become effective no later than July 1, and shall supersede the  
8 rates that were previously in effect. The adopted rates shall provide the franchisee an  
9 operating ratio of 88 percent.

10 (b) In the event the report shows that the operating ratio for the current fiscal  
11 year is not likely to be greater than 85 percent or less than 91 percent, the existing rates  
12 shall not be adjusted, and the current rates shall continue in effect until next adjusted  
13 in accordance with subsection (7) of this section. The county shall set all policies and  
14 procedures respecting the implementation of rates and shall direct the franchisee to  
15 carry out such policies and procedures. The county, its agents or employees may, upon  
16 reasonable notice and during normal business hours, audit those records of the  
17 franchisee that pertain to revenue and allowable expenses. However, in reviewing such  
18 records, the county and its agents and employees shall maintain the confidentiality of  
19 the records, and not disclose, divulge or transmit the records, or copies of the records,  
20 to any third party, except as may be compelled under law or by a court of competent  
21 jurisdiction.

1           (c) Upon review by the county, if it is found that deliberate or malicious  
2 material misrepresentation of books, records, accounts or data relating to collection  
3 service operations has occurred, the franchisee shall pay all review costs incurred by  
4 the county.

5           (9) In the event the franchisee, at any time, becomes liable to pay any new or  
6 increased legislated costs, including surcharges, fees, or expenses associated with  
7 regulatory requirements, or any new or increased disposal or long-haul transportation  
8 costs or fees, and these costs represent in excess of three percent of gross revenue, then  
9 all such costs and fees shall be immediately passed through and added to the existing  
10 rate structure upon the county's receipt and verification of the franchisee's  
11 documentation of, and liability to pay, those new costs or fees. In the event the  
12 franchisee, at any time, experiences a reduction in these costs, in excess of three percent  
13 of gross revenue, then all such savings shall be immediately passed through and  
14 subtracted from the existing rate structure upon the county's receipt and verification  
15 of the franchisee's documentation of those reduced costs or fees. The franchisee shall  
16 include all such costs, cost savings, and fees in the next succeeding year's report as  
17 actual allowable expenses of the franchisee.

1            **SECTION 4.**

2            **2.1126 Reports and Records**

3            (1) **The following reports and information shall be submitted by the franchisee**  
4 **to the county in accordance with the following schedule: Commencing with the first**  
5 **rate adjustment request by the franchisee, and on each April 1<sup>st</sup> thereafter, the**  
6 **franchisee shall submit the annual report in the format approved and distributed by**  
7 **the county, consisting of the following:**

8            (a) **Financial statements for the franchisee for the preceding year, with**  
9 **schedules prepared by the franchisee's certified public accountant to provide backup**  
10 **for any allocated expenses. The franchisee shall also identify any expense incurred**  
11 **with an affiliated company. At the county's request, the franchisee shall provide**  
12 **backup as is reasonable to verify expenses;**

13            (b) **Equipment and depreciation schedules and equipment replacement**  
14 **projections for the current year;**

15            (c) **Projected allowable expense and pass-through expense for the current year;**

16            (d) **Projected gross revenue for the current year, based on current levels of**  
17 **service and the current rate schedule before any cost of living adjustment; and**

18            (e) **Subject to the conditions of LCC 2.1124, a proposed rate schedule to be**  
19 **effective July 1, with rationale as to how the rates were developed.**

20            (2) **Records and information requirements: The franchisee shall maintain**  
21 **accounting, statistical, operational, and other records related to its performance under**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in **boldfaced** type.

1 the franchise agreement. Also, the franchisee agrees to conduct data collection,  
2 information and record keeping, and reporting activities needed to comply with  
3 applicable laws and regulation and to meet the reporting and solid waste program  
4 management needs of the county. To this extent, requirements set out in this  
5 agreement shall not be considered limiting or necessarily complete. In particular, this  
6 section is intended to only highlight the general nature of records and reports, and is  
7 not meant to define exactly what the records and reports are to be, and their content.  
8 Further, with the written direction or approval of the county, the records and reports  
9 to be maintained and provided by the franchisee in accordance with this agreement  
10 shall be adjusted in number, format, or frequency. This is not intended to require  
11 significant additional administrative labor, or the modification of the franchisee's  
12 computer software.

13 (3) All records shall be maintained for at least five years after the expiration of  
14 this agreement, with the exception of accounts payable records, which shall be  
15 maintained for at least three years after payment. The records addressed in this  
16 agreement shall be provided or made available to the county and its official  
17 representatives during normal business hours.

18 (4) Solid waste records: Records shall be maintained by the franchisee for the  
19 county relating to:

20 (a) Customer service and billing;

21 (b) Weight and volume of solid waste and recyclable materials;

- 1 (c) Routes;
- 2 (d) Facilities, equipment and personnel used;
- 3 (e) Facilities and equipment operations, maintenance and repair;
- 4 (f) Disposal of solid waste;
- 5 (g) Complaints; and
- 6 (h) Missed pick-ups.

7 (5) CERCLA defense records: The county views the ability to defend against  
8 litigation brought under the Comprehensive Environmental Response, Compensation,  
9 and Liability Act of 1980 (42 USC § 9601, *et seq.*), and other related litigation, as a  
10 matter of great importance. For this reason, the county regards the ability to prove  
11 where solid waste collected in the county was taken for disposal, as well as where it was  
12 not taken, to be matters for concern. Franchisee shall maintain data retention and  
13 preservation systems which can establish where solid waste collected in the county was  
14 land filled, and therefore establish where it was not land filled, and provide a copy or  
15 summary of the reports required for at least five years after the term during which  
16 collection services are to be provided pursuant to this agreement, or to provide copies  
17 of such records to the county.

18 (6) Disposal records: The franchisee shall maintain records of disposal of all  
19 solid waste collected in the county for the period of this agreement, and all extensions  
20 to this agreement or successor agreements. In the event the franchisee discontinues  
21 providing solid waste services to the county, the franchisee shall provide all records of

1 disposals or processing of all solid waste collected in the county within 30 days of  
2 discontinuing service. Records shall be in chronological order, and organized in a  
3 form and manner that is capable of easily and readily being understood and  
4 interpreted.

5 (7) Reporting responsibilities:

6 (a) At the time of payment of the annual franchise fees, the franchisee shall file  
7 with the county a sworn and verified statement of annual gross revenues for the period  
8 covered by the tendered fee. Such statements shall be public records. Each franchisee  
9 shall maintain books and records disclosing the gross receipts derived from business  
10 conducted within the county, which shall be open at reasonable times for audit by  
11 county personnel or assigned agents. The county may require a uniform system of  
12 bookkeeping and record keeping to be used by all franchisees.

13 (b) Deliberate or malicious misrepresentation of gross revenues by a franchisee  
14 constitutes a major contract violation, and may be cause to initiate the process to  
15 terminate the franchise.

16 (c) The Board may change the amount and computation of franchise fees from  
17 time to time.

18 (8) Confidentiality of annual rate review reports: Franchisees may identify  
19 information submitted to the county as confidential. The county shall treat any  
20 information marked confidential as being confidential, and shall not subject the  
21 confidential information to public disclosure except as required by law or by order of a

1 court of competent jurisdiction. If the county receives a request for disclosure of  
2 confidential information, the county shall notify the franchisee within five business  
3 days of receiving the request, in order to allow the franchisee a reasonable opportunity  
4 to defend against the requested disclosure through appropriate legal process.

5 (9) Reportable incidents and events: The franchisee shall provide the county  
6 with two copies, one to the Board and one to County Counsel, of all reports, pleadings,  
7 applications, notifications, notices of violation, and all other formal actions relating  
8 specifically to the franchisee's performance of services pursuant to this agreement,  
9 submitted by franchisee to, or received by franchisee from, the United States  
10 Environmental Protection Agency, the Oregon Department of Environmental Quality,  
11 or any other federal, state, or local agency, including federal or state court actions  
12 brought by any of the these agencies, with regard to franchisee operations within the  
13 State of Oregon. Copies shall be submitted to the county simultaneously with  
14 franchisee's filing or submission of such matters with the agency or court. A  
15 franchisee's routine correspondence to the agency or court need not be submitted to  
16 the county, but shall be made available to the county upon written request.

17 (10) The refusal or willful failure of a franchisee to file any required report, or  
18 to provide required information to the county, or the inclusion of any materially false  
19 or misleading statement or representation by the franchisee in a report, shall be  
20 deemed a material breach of this agreement, and shall subject the franchisee to all  
21 remedies which are available to the county under this agreement.

1           (11) Vehicle inventory: The franchisee, in conjunction with the annual report,  
2 shall provide the county with an inventory of vehicles used by the franchisee within the  
3 county. The list shall include vehicle make, year of manufacture, model name, vehicle  
4 identification number (VIN), and PUC numbers.

5           (12) Access for inspections and delivery of notices:

6           (a) Franchisees shall make all company premises, facilities and records related  
7 to their solid waste, recyclable materials and yard debris collection services, including,  
8 but not limited to, offices, storage areas, financial records, non-financial records,  
9 records pertaining to the origin of any solid waste collected by the franchisee, receipts  
10 for sale or delivery of collected recyclable materials, customer lists, and all records  
11 related to vehicle maintenance and safety which are required under Oregon  
12 Department of Transportation motor carrier requirements and regulations and ORS  
13 chapter 767, available for inspection by the county, the Lincoln County Solid Waste  
14 District, and their employees or assigned agent, within 24 hours of notice by registered  
15 mail. Inspections are only for purposes of enforcing this agreement, and are restricted  
16 to normal business hours.

17           (b) During normal business hours, the franchisee shall make all company  
18 premises and facilities accessible to county employees or assigned agents for delivery of  
19 any written notices.

20           (c) Franchisee collection vehicles must be accessible for inspection during the  
21 normal operating hours for collection, in addition to normal business hours. Where

1 receptacles are stored in the public right-of-way, or when the county is conducting an  
2 inspection in a situation where the franchisee is allegedly disposing recyclable or yard  
3 debris with solid waste, the need for 24-hour notice does not apply to inspection of  
4 receptacles or vehicles.

5 **SECTION 5.**

6 LCC 2.1105 is amended to read:

7 2.1105 Franchise Fees

8 The holder of a franchise granted pursuant to this title shall pay the following fees in  
9 the manner prescribed:

10 (1) Any solid waste franchisee shall pay a fee of three percent of the gross cash receipts  
11 from franchised collection service provided to the service territory included in the franchise.

12 (2) The collection franchise fee shall be computed and be payable to county annually  
13 within 30 days from the anniversary of the franchise agreement. The fee shall be accompanied  
14 by a sworn statement of such cash gross receipts. Each collection franchise holder shall  
15 maintain sufficient books and records to disclose the gross receipts from the service territory  
16 and shall make such books and records available at franchisee's premises at reasonable times  
17 and places for audit by authorized county personnel. The Board may specify reasonable  
18 requirements for keeping such books and records.

19 **SECTION 6.**

20 LCC 2.1120 is amended to read:

21 2.1120 Rate Structure

1 County reserves the right, at any time during the period of a franchise, to examine the  
2 rate structure of a franchisee and to modify rate changes which, in the discretion of the Board,  
3 are reasonably required in view of the following considerations:

4 (1) A franchisee shall have the right to charge and collect reasonable compensation  
5 from persons to whom it shall furnish franchised services. "Reasonable compensation" shall  
6 be determined in light of the factors enumerated in LCC 2.1220(5).

7 (2) To facilitate considerations as in this section provided, a franchisee shall furnish  
8 and provide to the Board a certified copy of the published rate schedule, which rate schedule  
9 shall contain the rates and charges made for all its operations. Said rate schedule, after having  
10 been filed as herein provided, shall be kept current and a franchisee shall file with the Board, at  
11 least 90 days prior to any contemplated change, a new and revised rate schedule which shall be  
12 examined by the Board in an appropriate public proceeding affording due process.  
13 Notification of the decision of the Board shall be made to the franchisee by certified mail. In  
14 the event of disapproval, franchisee shall not put the new rate schedule into effect, but may file  
15 with the Board, either on its own motion or in compliance with the Board's request, further  
16 information to justify the rate schedule changes. Negotiations shall be had in good faith  
17 between the parties. The existing approved rate schedule, as of the effective date of this title,  
18 shall be deemed to be in effect. The Board may require annual statements and other records to  
19 be furnished to the Board to carry out the intentions of this section.

1           (3) In the event of approval of a new and revised rate schedule, the new and revised  
2 rate schedule shall not apply to persons and groups who have an advance payment agreement  
3 with the franchisee until the normal expiration of said advance payment agreement.

4           (4) The rates in effect at the time this title takes effect and thereafter shall be subject to  
5 review and change only one time in a calendar year beginning January 1 and ending December  
6 31 of the same year; provided, however, that:

7           (a) Upon application and without prior notice, the Board may, by order, grant an  
8 interim or emergency rate for new, special, or different service. The Board may specify the  
9 duration of said rate or continue it until final determination by the Board on the next overall  
10 rate adjustment.

11           (b) In addition to an annual rate adjustment, a supplemental rate adjustment may be  
12 requested when the cost of service is increased by governmental regulations and compliance  
13 therewith; or when there is substantial increase in a single expense that was not anticipated at  
14 the time of the last rate adjustment; or, when the total cost of service exceeds projected costs  
15 by five percent, or more.

16           (5) In reviewing rates, the Board shall make a finding that the rates comply with this  
17 section. The Board may consider rates charged by other persons performing the same or  
18 similar service. The Board shall give due consideration to current and projected revenue and  
19 expense, actual and overhead expense, the cost of acquiring and replacement of equipment, the  
20 services of management, local wage scales, concentration of customers in the area served,  
21 promotion of and providing source separation services, a reasonable return to franchisee,

1 length of haul, cost of disposal, research and development, future service demands, cost of al-  
2 ternate method of disposal, interest payments, and such other factors as the Board deems rele-  
3 vant.

4 (6)(a) Notwithstanding any other provision of LCC 2.1000 through 2.1180, the Board  
5 may establish a fee on waste generated within those franchises which have utilized the Agate  
6 Beach Landfill/Balefill. The fee shall be set from time to time by resolution of the Board at a  
7 level which will cover all expected costs including but not limited to financing closure and  
8 post-closure debt instruments. The fee shall be collected by the respective franchisees based  
9 on waste generated within the franchise area and remitted by franchisees monthly to Lincoln  
10 County. Lincoln County shall receive all fee proceeds to be held in trust exclusively for  
11 Lincoln County's proportional share of on-going closure and post-closure costs of the Agate  
12 Beach Landfill. Upon full funding of the costs of such closure and post-closure activities,  
13 Lincoln County shall end the Agate Beach closure fee.

14 (b) The institution of this fee is accepted by franchisees as an amendment to the  
15 provisions of LCC 2.1000 through 2.1180 and shall be binding upon them, their successors,  
16 heirs, or assigns. A separate executed instrument signifying the franchisees acceptance shall be  
17 placed in the records of the County. This subsection constitutes an amendment of the original  
18 franchise agreement.

19

1            **SECTION 7.**

2            LCC 2.1125 is repealed.

3            **SECTION 8.**

4            This Ordinance being necessary for the immediate preservation of the public peace,  
5            health and safety, an emergency is declared to exist and this Ordinance shall take effect upon  
6            its passage.

DATED this 23<sup>rd</sup> day of April, 2003.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Jean Cowan  
Jean Cowan, Chair

Don Lindly  
Don Lindly, Commissioner

Terry N. Thompson  
Terry N. Thompson, Commissioner

ATTESTED TO:

Zola Sherwood  
Zola Sherwood, Recorder

APPROVED AS TO FORM:

Wayne Belmont  
Wayne Belmont, County Counsel

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing ordinance to be omitted. New sections are in **boldfaced** type.