

MARION COUNTY INFECTIOUS WASTE DISPOSAL AGREEMENT

City of Portland Contract No. 30006083

THIS AGREEMENT by and between Marion County, a political subdivision of the State of Oregon, hereinafter called County, and City of Portland, by and through Portland Fire & Rescue, hereinafter called Hauler, provides for disposal of infectious waste at the Covanta Waste-to-Energy Facility located in Brooks, Oregon, hereinafter called WTEF.

The parties agree as follows:

1. Definitions: For purposes of this Agreement as defined in Marion County Code 8.05.050:
 - a. "Infectious waste" means biological waste, cultures and stocks, pathological waste, and sharps, as defined in ORS 459.386. "Infectious waste" does not include human fetal tissue.
 - b. "Excluded waste" means specifically excluded from the definition of Infectious Waste are the following:
 1. Resource Conservation and Recovery Act (RCRA)-designated wastes.
 2. Radioactive wastes
 3. Anatomical parts that do not emanate from;
 - I. Surgery
 - II. obstetrical procedures
 - III. autopsy
 - IV. laboratory procedures
 4. Human fetal tissue
 5. Large animal carcasses over 65 pounds.
 6. Wastes that are not permitted for acceptance by the Oregon Department of Environmental Quality.
 - c. "Human fetal tissue" means tissue or cells from a dead human embryo or fetus after a spontaneous or induced abortion, or after a still birth. Human fetal tissue does not include non-fetal products of conception (i.e. placenta, membranes, umbilical cord, and amniotic fluid).
2. Right to deliver Infectious Waste to the WTEF: Subject to the terms and conditions set forth in this Agreement, the County hereby grants the Hauler the non-exclusive right to deliver infectious waste to the WTEF at a rate to be determined from time to time by the County.
3. Delivery of Infectious Waste: The Hauler agrees that the infectious waste will be delivered to the waste-to-energy facility in vehicles which comply with state and federal laws and regulations and the requirements of the County, including, but not limited to, the following: Delivery vehicles will not compact the infectious waste and will be leak-proof; all waste shall be contained in impervious, plastic-lined boxes or, in the case of

sharps, in boxes specifically designed for sharps; and each box shall bear the universal biological hazard symbol.

4. **Billing by County:** Incoming vehicles will be weighed on the scale at the WTEF, and the vehicle's tare weight as determined by the County will be subtracted from the scale reading to determine the weight of infectious waste delivered to the WTEF. The County shall use this weight to calculate the billing charges for disposal. The County will bill the Hauler by the 10th of the following month. The Hauler shall pay the County upon receipt of the billing. If the County has not received the payment by the 25th of the month, the County can charge the Hauler a penalty fee of 1.25 percent of the billing, which is 15.00 percent annually. If the billing and fee are not paid within 30 days of the assessment of penalty this agreement is automatically terminated.
5. **Acceptance of Infectious Waste:** A copy of the vehicle's manifest and certification of the infectious waste hauler shall be presented to the County at the scales. The vehicle manifest shall specify the generator(s) of the infectious waste and the general contents of the vehicle. The Hauler certifies that each infectious waste generator of the contents of the shipment has certified to the hauler in writing that the infectious waste does not contain any human fetal tissue
 - a. **Right to Inspect Shipment:** The County reserves the right to inspect the vehicle manifest, certifications and the contents of any individual box of Infectious Waste to determine compliance with Marion County Code, including but not limited to, compliance with the prohibition on the disposal of human fetal tissue.
 - b. **Generator Liability Provision:** Each hauler is responsible for including a provision in contracts or orders for services with generators that failure of the generator to comply with the generator's certification, the inspection process or rejection of a shipment are grounds for termination of the generator's collection service, and that the generator will be responsible for any damages incurred by Marion County or the hauler, or imposed on the hauler by Marion County, due to failure to comply with the generator's certification, the inspection process or rejection of a shipment.
 - c. **Acceptance of Shipment:** Infectious Waste shall be deemed accepted by the County after it has been off-loaded by the Hauler's personnel, and after the County has reviewed the associated manifest, certification of infectious waste hauler, inspected the general condition of the shipping containers to ascertain that none is damaged or leaking, and any inspection for compliance with the prohibition on the disposal of human fetal tissue, if required. The county may reject all or part of any shipment, and any future shipments of infectious waste from the Hauler or an infectious waste generator for failure to comply.
 - d. **Rejection of Shipment:** The County shall have the sole discretion to reject any shipment, or any portion of the delivered infectious waste, if, in the County's opinion, the waste is either not infectious waste as defined herein or poses an unacceptable risk to the County, the WTEF or either's personnel, or for failure to comply with the certification and inspection process. In such instance, the Hauler shall immediately remove the waste from the WTEF at the Haulers cost and

expense. Any contamination caused by such waste by the Hauler to the County or the WTEF shall be eliminated at the Hauler's cost and expense.

6. Incineration of Infectious Waste: The County will, to the best of its ability, cause through its agreement with the operator of the WTEF, to incinerate all acceptable infectious waste delivered by the Hauler. If for some unforeseen circumstance the WTEF does not incinerate infectious waste delivered by the Hauler, the County shall notify the Hauler.
7. Delivery times: Delivery times will be made by the County in conjunction with the operator of the WTEF. If the Hauler has not scheduled a time with the County, the Hauler's infectious waste may be rejected by the County.
8. Unloading of Infectious Waste: The Hauler shall be responsible for scheduling a time with the County for delivery of infectious waste to the WTEF. The Hauler, upon arriving at the WTEF, shall use its personnel to off-load the boxed infectious waste onto the conveyor at the WTEF.
9. Audits, Inspections and Reporting Requirements. The HAULER shall permit authorized representatives of the COUNTY, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the HAULER as they relate to the Agreement services in order to satisfy audit or program evaluation purposes deemed necessary by the COUNTY and permitted by law.

By signature on the Agreement, the HAULER grants the COUNTY, except where expressly prohibited by law, the right to reproduce, use, and disclose for COUNTY purposes, all or part of the reports, data, and technical information furnished the COUNTY under this Agreement.

10. Maintenance and Retention of Record:

The HAULER agrees to establish and maintain records and statistics as follows:

Financial records, which indicate the number of shipments provided under this Agreement and other appropriate records pertinent to this Agreement, shall be retained for a minimum of three (3) years after the end of the Agreement period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

11. Consideration: In consideration for the County agreeing to accept delivery of and to incinerate the infectious waste delivered by the Hauler, the Hauler agrees to pay the County the current rate (inclusive of the weight of any containers) as determined at the WTEF scale.
12. Term and Termination: The term of this Agreement shall commence on the date signed by all parties through September 20, 2019. This Agreement may be renewed for an additional two year term, contingent upon County renewing its contract with the WTEF.

- a. All or part of this Agreement may be terminated by mutual consent of both parties.
- b. Either party may terminate this Agreement upon 30 days' written notice given in accordance with the provisions of this Agreement.
- c. The County may also terminate all or part of this Agreement for the following reasons:
 1. With ten (10) days notice, if funding to the County from federal, state or other sources is not obtained or is not continued at levels sufficient to allow for provision of the indicated services. The County will give more notice whenever possible.
 2. Upon notice of denial, revocation, or non-renewal of any license or certification required by law or regulation to be held by Hauler to provide a service under this Agreement.
 3. Upon notice that the WTEF will no longer accept and incinerate infectious waste.
 4. Immediately upon violation of the prohibition of acceptance and delivery of human fetal tissue for disposal at the WTEF.

Any termination shall be without prejudice to the accrued obligations or liabilities of either party.

13. Governmental Regulations: The Hauler shall be responsible for, and agrees to comply with, all applicable local, state, and federal regulations which govern collection and transportation of solid waste inclusive of medical or infectious waste. The Hauler shall also obtain all necessary permits required in connection with collection and transportation of infectious waste.
14. Indemnification: The Hauler shall defend, indemnify, and hold harmless the COUNTY, its officers, agents, and employees and the WTEF Operator, its officers, agents, and employees, from damages arising out of the tortious acts of the HAULER, its officers, agents, and employees acting within the scope of their employment and duties arising out of or in connections with or resulting from the performance of this agreement.
15. Insurance: During the term of this Agreement, or such other time period provided herein, the Hauler shall maintain in force at its own expense, each insurance coverage or policy noted below. Any and all insurers and guarantors are subject to the approval of the County. The County reserves the right to reject any and all insurers that are not licensed to provide coverage in the State of Oregon or who are deemed by the County to present an unacceptable risk of being unable to perform according to the policies proffered. The County may reject any policy of insurance containing unacceptable provisions including but not limited to provisions applying the laws of a jurisdiction other than Oregon, provisions requiring mandatory arbitration, provisions requiring the

use of specific arbitration or mediation services, or, provisions requiring dispute resolution to take place more than 50 miles from Salem, Oregon.

a. ☒ **Required by the Owner of Consultants under the following circumstances:**

Workers' Compensation insurance. The Hauler shall obtain and maintain at all times during the term of this Agreement, workers' compensation insurance with statutory limits and employers' liability insurance. The Hauler shall provide the County with evidence that it is a carrier-insured or self-insured employer in full compliance with the requirements of ORS Chapter 656, or that it employs no persons subject to the requirements of ORS 656, Workers' Compensation Coverage. The Hauler shall ensure that each of its subcontractors complies with these requirements.

b. ☒ **Required by the Owner** ☐ **Not required by the Owner**

General Liability insurance with a combined single limit, or the equivalent, of not less than: ☐ \$200,000; ☐ \$500,000; ☐ \$1,000,000; ☒ \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement. The policy, or an endorsement or amendment to the policy, must provide that the County and its agents, board members, officers, employees and volunteers, and the WTEF Operator, its agents, board members, officers, and employees are named as "additional insureds", but only with respect to the HAULER's Services to be provided under this Agreement.

c. ☒ **Required by the Owner** ☐ **Not required by the Owner**

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than:

☐ Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070);

☐ \$200,000; ☒ \$500,000; or ☐ \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the County and its board members, officers, agents, employees and volunteers are "additional insureds", but only with respect to the HAULER's Services to be provided under this Agreement.

d. **Notice of Cancellation or Change:** Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

e. **Certificates of Insurance:** Hauler shall furnish acceptable insurance certificates to County prior to commencing performance of the Services. Certificates shall be sent to Marion County Attention: Contracts, 5155 Silverton Road NE, Salem, OR 97305, via email to tbeaver@co.marion.or.us or by faxing to 503-588-7970. The certificate(s) will specify all of the parties who are "additional insureds" and must contain terms indicating that the relevant policies (except for Workers' Compensation coverage or Professional Liability/Errors & Omissions coverage)

has been endorsed or amended to name the County and its board members, agents, officers, employees and volunteers, and the WTEF Operator, its officers, agents and employees are named as "additional insureds" under the Hauler's policies. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The HAULER shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

16. Assignments: Neither party hereto shall assign its rights or delegate its duties under this Agreement or any part hereof without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon the parties' respective successors and assigns.
17. Notices: Any notice given pursuant to this Agreement shall be in writing and deemed given when received or delivered personally, or within three days, if deposited in the U.S. mail, certified or registered mail, return receipt requested, with postage prepaid, at the address set forth below the signature of such party hereto, or at such other address as such party may designate by written communication to the other party in accordance with this Agreement.

Notice to County:
 Department of Public Works
 Public Works Director
 5155 Silverton Rd. NE
 Salem, OR 97305-3802

18. Civil Rights, Rehabilitation Act, Americans with Disabilities Act and Title VI of the Civil Rights Act:

The Hauler agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

19. Independent Contractor: The Hauler is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Hauler's activities and responsibilities for the purpose of implementing the provisions of this Agreement, and maintains the appropriate license/certifications, if required under Oregon Law. This Agreement shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Hauler is acting as an "independent contractor" and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an "independent contractor", Hauler will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Hauler is free to enter into agreements with other parties for the duration of the Agreement provided that such agreements do not violate the franchise provisions of Marion County Code Chapter 8.05.

HAULER, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT HAULER HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE LEGAL AUTHORITY TO BIND, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

MARION COUNTY:**CITY OF PORTLAND, OREGON:****BOARD OF COMMISSIONERS****APPROVED BY:**

Chair

Commissioner Dan Saltzman Date

Commissioner

Auditor Mary Hull Caballero Date

Commissioner

City Attorney Date

Date: _____

Recommended by:

Department Head Date

APPROVED AS TO FORM:

Marion County Legal Counsel Date

Marion County Contracts Date