





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: September 28, 2022

Department: Public Works Agenda Planning Date: 9/22/2022 Time required: 10 min

Audio/Visual aids

Contact: Brian May, Environmental Services Manager Phone: 503.365.3147

Department Head Signature: [Handwritten signature]

TITLE Franchise Agreement Between Marion County and Capital Recycling and Disposal, Inc. for Operation, Hauling, and Acceptance of Solid Waste and Recyclables at the Salem-Keizer Transfer Facility

Issue, Description & Background Capital Recycling and Disposal, Inc. dba Republic Services owns and operates the Salem-Keizer Recycling and Transfer Station (SKRTS) under a franchise agreement with Marion County. The facility receives and transports municipal solid waste, recyclables and household hazardous waste from residential and business customers throughout Marion County, serving an essential role in the county-wide solid waste disposal system. The existing agreement expires on September 30, 2022. Staff have negotiated a new, proposed franchise agreement that would continue the operation of SKRTS through September 2027 with optional extensions through September 2032. The proposed agreement establishes updated fees per ton for providing and operating the facility, and hauling fees for transportation of material from the facility. Under the proposed agreement, Republic would continue to staff and operate the facility and Marion County would contribute up to \$1,000,000 in funds for essential capital improvements to the facility. If approved, the proposed agreement will ensure uninterrupted operation of SKRTS.

Financial Impacts: The proposed agreement will result in approximately \$1,000,000 in additional annual cost to the Environmental Services Fund (Fund 510).

Impacts to Department & External Agencies: The proposed agreement will maintain operation of SKRTS and will result in no impacts to other departments or external agencies.

Options for Consideration: Option 1: Approve the proposed franchise agreement Option 2: Reject the proposed franchise agreement

Recommendation: Staff recommends approval of the proposed franchise agreement between Marion County and Capital Recycling and Disposal, Inc. maintaining uninterrupted operation of SKRTS at the current level of service to the public.

List of attachments: Franchise Agreement Between Marion County and Capital Recycling and Disposal, Inc. for Operation, Hauling, and Acceptance of Solid Waste and Recyclables at the Salem-Keizer Transfer Facility

Presenter: Brian May, Environmental Services Manager

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

---

Copies to:

bmay@co.marion.or.us  
bnicholas@co.marion.or.us  
dmansfield@co.marion.or.us

*[Faint handwritten signature]*

**FRANCHISE AGREEMENT BETWEEN  
MARION COUNTY  
AND  
CAPITAL RECYCLING AND DISPOSAL, INC.  
FOR  
OPERATION, HAULING, AND ACCEPTANCE  
OF SOLID WASTE AND RECYCLABLES  
AT THE  
SALEM-KEIZER TRANSFER FACILITY**

THIS AGREEMENT is made and entered into by and between MARION COUNTY, a political subdivision of the State of Oregon, hereinafter called "County", and CAPITAL RECYCLING AND DISPOSAL, INC., an Oregon corporation, hereinafter called "Company", to provide a Transfer Facility, hereinafter called "Facility", for acceptance, processing, and hauling of solid waste and recyclables, according to the franchise granted to the Company by order of the Marion County Board of Commissioners dated March 21, 2012. The Company will provide equipment and operate and maintain the Facility all in accordance with the terms and conditions set forth in the Agreement and provisions under Marion County Code, Chapter 8.05, and its amendments thereto.

The County and Company agree as follows:

**I. DEFINITIONS**

As used in the Agreement, the following terms have the meanings set forth below:

1.1 "Agreement" means this document titled Franchise Agreement between Marion County and Capital Recycling and Disposal, Inc. for Operation, Hauling and Acceptance of Solid Waste and Recyclables at the Salem-Keizer Transfer Facility.

1.2 "Alternative Disposal Facility" means any disposal facility permitted by the Oregon Department of Environmental Quality to accept Solid Waste must be approved by Marion County.

1.3 "Coffin Butte" means the Coffin Butte Landfill operated by Republic Services, located at 29175 Coffin Butte Rd, Corvallis, Oregon.

1.4 "Facility" means the transfer station and recycling area, together with all structures, paving, equipment, trucks, transfer trailers or boxes, and improvements at the Facility Site pursuant to the Agreement.

1.5 "Facility Site" means all the real property described in Volume 265, Pages 259 and 261, Marion County Deed Records, Marion County, Oregon.

1.6 "Hazardous Waste" means that portion of Solid Waste defined as hazardous waste in the Oregon Administration Rules (OAR) Chapter 340, Division 101, Section 003, which excludes "Household Waste" as defined in ORS 466.005.

1.7 "Marion Resource Recovery Facility" means the resource recovery facility operated by Marion Recycling Center, Inc., located at 3680 Brooklake Road NE, Salem, Oregon.

1.8 "Public Hauler" means any person who transports waste to the Facility and is not franchised by the County or other public jurisdiction.

1.9 "Recyclable Material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

1.10 "Solid Waste" means all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owner at the time of such discard including, but not limited to, all putrescible and non-putrescible wastes, garbage, rubbish, refuse, ashes, waste paper, and cardboard; commercial, industrial, demolition, and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semi solid wastes, dead animals, and other wastes; but the term does not include those exceptions in ORS 459.005 and any materials not permitted at the Facility by the Department of Environmental Quality.

1.11 "Tons" means a "short ton" of 2,000 pounds avoirdupois.

1.12 "Unacceptable Waste" means any waste excluded from the definition of Solid Waste, including Hazardous Waste and highly flammable substances, liquid wastes, special wastes, explosives, asbestos, toxic materials, radioactive materials and other materials deemed to be dangerous or threatening to human health or the environment in the reasonable discretion of both the Company and the County.

## **II. THE FACILITY**

### **2.1 Property and Easements**

2.1.1 The Company shall hold rights to all easements and property as may be necessary to provide the Facility.

2.1.2 The Company shall own the Facility Site property in fee simple. Title shall be maintained free and clear throughout the term of the Agreement. In the alternative, the Company shall have an irrevocable lease giving the Company exclusive control of the Facility Site property for the term of the Agreement, unless the Agreement is terminated earlier. The lease shall provide that the County shall be notified of any breach or default of the lease terms by the Company.

2.13 The County will operate a permanent household hazardous waste (HHW) collection facility on property owned or leased by the Company. The County will be responsible for ongoing operations and maintenance of the HHW collection facility. The County shall maintain ownership of the building and associated appurtenances related to the HHW collection facility.

## 2.2 Permits and Licenses

The Company shall hold all applicable environmental and other governmental permits, licenses, and authorizations that are necessary for the operation of the Facility, and that are required to be issued under law. County holds all applicable permits for the HHW collection facility.

## 2.3 Items To Be Provided By The County

2.3.1 The County will provide, at its cost, the gatehouse, scale facility, and the household hazardous waste (HHW) collection facility. This will include the scales, scale foundations, gatehouse, computer, radiation monitor, phone lines, HHW facility building, loading dock, antifreeze tank, and other appurtenances. For purpose of the Agreement, these items shall not be considered a part of the Facility but rather County property, and the County will indemnify and hold the Company harmless from any claim of County's employees or any other third party arising in any manner from County property as specified in this paragraph.

2.3.2 The computer equipment, radiation monitor, and other installed appurtenances shall remain the property of the County and may be removed by the County upon termination of the Agreement.

## **III. OPERATION AND MAINTENANCE**

### 3.1 Acceptance of Waste

3.1.1 The Company agrees to accept, process, and haul to the Marion Resource Recovery Facility (MRRF) or an Alternate Disposal Facility (approved by Marion County), solid waste received from Public Haulers caused to be delivered by the County. The Company however, shall have no obligation to accept Unacceptable Waste. The Company shall operate the recycling depot at the Facility and at a minimum perform the work for the commodities described in Exhibit A.

3.1.2 Any damage or related expense, including fines, fees, and mitigation/remediation/abatement efforts caused by the County knowingly accepting non-conforming material are the responsibility of the County.

3.1.3 The County reserves the right to determine what forms of Solid Waste or yard debris may be received at the Facility; however, in no event shall the Company be obligated to accept Unacceptable Waste. The County will provide the Company 30 days advance written notice of any change in material acceptance.

### 3.2 Operation of Facility

321 The Company shall operate and maintain the Facility in such a manner to ensure that the Facility is able to accept, process, and haul Solid Waste to a DEQ permitted disposal site or another facility as directed by the County.

322 The Facility shall be kept, as reasonably possible, free of blown litter. The Company shall at a minimum have Company personnel provide pickup of the area on a weekly basis.

3.2.3 No salvaging of any material by the Company, County, or members of the public is permitted.

### 3.3 Repair and Maintenance

331 Except as described in section 3.3.2 below, the Company shall at its cost and expense maintain the Facility and Facility Site at all times in good, clean, orderly condition, including implementing necessary repairs and purchasing necessary replacement equipment or parts for the Facility, except for the County facilities listed in 2.3.

332 Attached to this Agreement as Exhibit B is a list of identified Facility repairs. Upon the Company's completion of the identified Facility repairs listed in Exhibit B, the County shall reimburse the Company for the identified Facility repairs equal to the cost of the identified Facility repairs or \$1,000,000, whichever is less. Company agrees that it will use its best efforts to contract for all identified Facility repairs listed on Exhibit B by December 31, 2023; and by December 31, 2024, complete all identified Facility repairs listed in Exhibit B up to the amount of \$1,000,000 that the County will reimburse Republic. If Company has not contracted for all identified Facility repairs listed on Exhibit B up to the amount of \$1,000,000 by December 31, 2023, the County shall be excused from reimbursing the Company for the identified Facility repairs listed on Exhibit B.

### 3.4 Employees

341 The Company shall, at its cost and expense, staff the Facility during the term of the Agreement, with the number of employees which, in its judgment, are necessary to ensure the successful operation of the Facility, with the exception of the staff required for the gatehouse. The County shall provide, at its cost and expense, for the number of employees which are, in the County's judgment, required to run the gatehouse.

342 The Company and its employees are not employees of Marion County. The Company is responsible to pay for all social security, unemployment compensation, and workers' compensation assessments, payments or taxes.

343 The Company shall pay and be responsible for any and all federal and/or state taxes of whatever kind. The Company shall provide workers' compensation insurance coverage in compliance with ORS chapter 656 at all times during the term of this Agreement for all individuals

who perform labor under the Agreement for the Company. The Company shall be responsible to verify employment eligibility for all persons performing labor for it pursuant to the Immigration Reform and Control Act of 1986, as amended. Upon request of the County, the Company shall provide County with properly executed copies of form I-9.

344 The Company agrees to comply with the Civil Rights Acts of 1964 and 1991, Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4 which states in part, "No qualified person shall on the basis of handicap 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," and the Americans with Disabilities Act of 1990.

### 3.5 County Visits and Inspections

351 The County and its representatives shall have the right to visit the site and inspect the operation of the Facility at any time during the term of the Agreement. In addition, the County has the right to have on the Facility Site County employees to operate the gatehouse and collect disposal fees and monitor persons and vehicles using the Facility for compliance with Marion County Code chapter 8.05.

352 Marion County employees, to the best of their ability, shall take reasonable care to inspect loads for Unacceptable Waste. County employees shall be trained in recognition of Unacceptable Waste. The County will maintain documented processes on properly handling customers who bring Unacceptable Waste to the Facility, which will be supplied by the County to the Company upon request. Title to Unacceptable Waste delivered to the Facility shall never be deemed to pass to Company.

### 3.6 Receiving Times

The Company shall keep the Facility open to the public for receiving of waste 7 days a week, from 8:00 a.m. until 5:00 p.m. with the exception of the following holidays: New Year's Day, Martin Luther King Day, Presidents Day, Easter Sunday, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. If the County requests, the Company shall provide for extended hours of operation from 7:30 a.m., 7 days a week, from May 1st through September 30th.

### 3.7 Weighing, Payment, and Free Disposal of Waste

371 The County shall maintain the weighing facilities, which will include the scales, computer, and gatehouse; and pay the electric and telephone utilities for these facilities. These facilities will be used to determine the weight of waste materials delivered to the Facility, as well as recyclable material hauled by the Company from the Facility. County and Company agree that there will be a need for a periodic reconciliation between inbound and outbound tons. County and Company shall work in good faith to resolve any such discrepancies.



3.72 Payment by the County to the Company shall be based on the total tonnage received and recorded by the County on a calendar monthly period. In cases of computer or scale malfunction at the gate, the parties agree to compute the weight of waste delivered based upon an average weight of 300 pounds per cubic yard of solid waste and 250 pounds per cubic yard of yard debris.

3.73 Payment by the County to the Company for waste received at the Facility Site will be made on or before the 30th day of each month for the preceding month's receipts.

3.74 All disposal rate fees at the Facility shall be set by the County. The County will collect such fees and receipts from the operation of the gate and handle billings of all accounts receivable for persons using the Facility.

3.75 The County may deposit at the Facility, free of charge, any material(s) collected by the County or its agents, as part of a roadside litter program.

3.76 The County shall pay the Company a per ton fee for providing and operating the Facility, and a hauling fee for transporting material from the Facility. These fees shall consist of a tonnage fee plus hauling fees as outlined below.

- a. The tonnage fee shall be \$26.00 per ton for the first 5,000 tons of material (solid waste and yard debris) accepted at the Facility each month, as recorded at the Facility scales, or up to \$28.00 per ton for the first 5,000 tons of material if the Company meets the performance incentives described in section 3.11 below. The rate per ton for each ton of material over 5,000 tons per month shall be \$35.00 per ton.
- b. The hauling fee for Solid Waste to the Marion Resource Recovery Facility shall be \$16.50 per ton. Tons are based on the amount recorded as received at the MRRF.
- c. The hauling fee for Solid Waste to Coffin Butte Landfill (CBL) shall be \$25.00 per ton. Tons are based on the amount recorded as received at CBL. If an Alternate Disposal Site is approved by the County, both parties agree to negotiate a hauling fee in good faith.
- d. The hauling fee for yard debris shall be \$22.00 per ton to the Pacific Region Compost (PRC) Facility in Camp Adair, Oregon. The hauling fee for yard debris shall be \$16.50 per ton to the Brown's Island Compost site on Homestead Road in Salem, Oregon. Tons are based on amount recorded as received at SKRTS.

3.77 The fees in subsection 3.7.6, excluding the performance incentives referenced in subsection 3.7.6(a) and described in section 3.11 below, are subject to escalation each contract year. The fees shall be adjusted at the beginning of each contract year (beginning October 1, 2023), during the term of this Agreement. Such adjustment shall be equal to 2.75% of the previous contract year's fee.

3.78 The County shall pay the following rates for disposal of the waste designated below at the following destinations:

- a. The disposal fee shall be \$46.45 per ton for solid waste delivered to CBL. Tons are based on the amount recorded as received at CBL.
- b. The disposal fee shall be \$44.00 per ton for yard debris delivered to the Pacific Region Compost (PRC) Facility in Camp Adair, Oregon. Tons are based on amount recorded as received at the PRC.

3.79 The fees in subsection 3.7.8 are subject to escalation each calendar year. The fees shall be adjusted on January 1 of each calendar year, beginning January 1, 2023, during the term of this Agreement. Such adjustment shall be equal to \$1.00 per ton per calendar year.

### 3.8 Solid Waste Hauling, Mileage Reimbursement, and Disposal Charges

3.81 The Company shall be responsible for removing, transporting, and disposing of all Solid Waste or other materials received at the Facility. Removal, transportation, and/or disposal shall be accomplished in accordance with all applicable federal, state, and local laws.

3.82 The County will reimburse the Company for the actual fee paid by the Company to an Alternative Disposal Facility requested by the County for disposal of Solid Waste.

3.83 At the County's discretion, the County may direct the Company to use an Alternative Disposal Facility. If the County directs the Company to use an Alternative Disposal Facility other than Coffin Butte Landfill, the County shall pay the Company for the additional transportation cost over and above that which is provided in the hauling fee in Section 3.7.6. The rate shall be negotiated in good faith with both parties. This fee shall be subject to escalation as described in Section 3.7.7 of this Agreement. Such payment will be based on use of equipment normally used for such purposes at full hauling capacities. If such equipment cannot be used or fully loaded, the Company and the County shall agree to adjust the rate appropriately. Any conflict with County franchised haulers about hauling waste from the Facility shall be resolved by the County.

County and Company agree that the direct haul of material to CBL will not occur routinely but instead only under exceptional circumstances.

The Company shall deliver the source-separated yard debris material at Brown's Island Compost Facility for composting. The Company shall deliver the material to an alternate site approved by the County, if needed.

3.84 A fuel fee shall be added to the hauling fees set forth in section 3.7.6(b), (c), and (d) above. The fuel fee is calculated on a base diesel price of \$3.40 per gallon. For each round trip haul from the Facility, for every \$0.01 per gallon increase or decrease in diesel fuel cost, the round trip transportation cost per load will be adjusted by \$0.04 per trip.

385 The Company and County agree to use the U.S. Energy Information Administration (EIA) weekly retail diesel price for the West Coast less California for a gallon of diesel fuel as the base for calculating fuel fees under this Agreement. The U.S. EIA weekly retail diesel price for the West Coast less California is issued each Monday. The fuel fee will be calculated monthly with the final Monday price for the month being used for calculation of the fuel fee for that month. The EIA weekly retail diesel price for the West Coast less California may be found on the internet at: [https://www.eia.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_r5xca\\_w.htm](https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r5xca_w.htm)

### 3.9 Recyclable materials

391 The Company shall provide for and incur all costs associated with the collection of source-separated recyclable materials, as required by Department of Environmental Quality.

392 The Company may not remove materials from the waste unless written approval has been granted by the County. Should the County and the Company agree to provide processing of waste to remove materials for recycling at the Facility, the County and the Company shall amend the Agreement to compensate the Company for this activity.

393 The Company shall transfer all recyclable materials which are collected at the Facility to the appropriate marketplace. The Company shall receive any and all revenues and expenses generated through the sale of those source-separated materials.

### 3.10 Operation Guarantee

The Company guarantees that waste will be hauled from the Facility within 48 hours from the time it was delivered.

### 3.11 Performance Incentives

The Company may earn performance incentives of up to \$2 per ton per month on the operation fee set forth in section 3.7.6(a) above in accordance with Exhibit C to this Agreement. If the Company satisfies 3 of the 5 performance measures listed in Exhibit C during a calendar month, the Company will receive an additional \$1 per ton on the operation fee set forth in section 3.7.6(a) above, or \$27.00 per ton, for that month. If the Company satisfies 4 of the 5 performance measures listed in Exhibit C during a calendar month, the Company will receive an additional \$1.50 per ton on the operation fee set forth in section 3.7.6(a) above, or \$27.50 per ton, for that month. If the Company satisfies all 5 performance measures listed in Exhibit C during a calendar month, the Company will receive an additional \$2 per ton on the operation fee set forth in section 3.7.6(a) above, or \$28.00 per ton, for that month. Performance Incentives are only applied to the first 5,000 tons per month. The Company and the County shall agree upon the documentation which the Company shall provide to the County no later than the 10<sup>th</sup> day of each month for the preceding month's receipts. Payment by the County to the Company for any performance incentives will be made on or before the 30th day of each month for the preceding month's receipts.

### 3.12 Audits

3.121 The parties shall maintain books and records reflecting gross receipts, expenditures, and net weight information for services rendered at the Facility, and said books and records shall be available for audit during regular working hours and upon reasonable notice by either party to the other party. The parties shall retain all such books and records for a minimum of 3 fiscal years for this purpose.

3.122 The Company may audit the County records pertaining to the scales, scalehouse procedures and scalehouse tickets to ensure proper recording of tonnage and corresponding billings. The County shall retain records pertaining to the scales, scalehouse procedures and scalehouse tickets for a minimum of 3 fiscal years for this purpose.

### 3.13 Reporting

Within 60 days of the close of the Company's fiscal year, the Company shall submit a detail summary profit and loss statement for the operation of the Facility and the transportation of materials from the Facility, and a complete asset list to the County for the preceding fiscal year. The profit and loss statement shall provide information that is sufficient to determine the revenue received from all sources, the expenses incurred by category, and the amount of pre- and post-tax profit received.

## **IV. DEFAULT, TERMINATION, AND FURTHER AGREEMENTS AND COST INCREASES**

### 4.1 Termination of Agreement

This Agreement may be terminated as follows:

- a. The County and the Company, by mutual written agreement, may terminate this Agreement at any time.
- b. The County may terminate this Agreement if the County fails to lawfully appropriate funds to be applied to payments due under the Agreement by delivering written notice of termination (specifying the actual termination date) to Company 180 days prior to the specified termination date.
- c. Either the County or the Company may terminate this Contract in the event of a breach of the Agreement by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 30 days of the date of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. If such breach is not capable of being cured in the 30-day period, the Agreement may not be terminated provided the party in breach is

diligently pursuing the appropriate cure. In no event shall the appropriate cure take longer than 60 days from the date of the written notice of the breach, unless agreed to otherwise by the parties.

- d. The County may terminate this Agreement immediately by written notice to the Company upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that the Company must hold to provide services under this Agreement. The Company shall not be considered terminated under this section if it provides proof that it is actively appealing the imposition or amount of any such denial, suspension, revocation or non-renewal in an appropriate judicial or administrative forum.

Termination of the Agreement shall automatically terminate the solid waste franchise granted to the Company. The Company shall retain its title or leasehold to the Facility site property and any and all improvements thereon.

#### 4.3 Further Agreements

The County may request the Company to undertake certain projects at the Facility. Such projects may or may not directly relate to operation of the Facility, but the intent will be to improve the service, convenience, functioning, and programs to better address waste processing and disposal. If the County makes such a request, the County and Company shall agree on terms in writing in advance as to any such additional work, including the amount of payment for same. The County may contract with other persons to undertake projects at the Facility which do not relate to or interfere with Company's operation of the Facility as described in this Agreement.

#### 4.4 Further Cost Adjustments

The fees to be paid to the Company under the Agreement have been based on the Company's expenses for providing the Facility and performing the operations and maintenance thereof, pursuant to existing laws, ordinances, regulations, and Department of Environmental Quality requirements as of the execution date of the Agreement. The Agreement requires the Company to comply with any changes in laws, changes in interpretation of law impacting enforcement or compliance, ordinances, regulations, or Department of Environmental Quality requirements. Company and the County may negotiate in good faith the fees to cover increases in costs arising or resulting from (a) the adoption or change in any applicable federal, state or local law, rule, regulation, ordinance, regulatory requirement or guideline (including changes in interpretation thereof or changes in the manner or method of enforcement thereof); or (b) issuance, change or modification of any permit, license or approval regarding the use or operation of the Facility.

#### 4.5 Force Majeure

Neither the County nor the Company shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching Party's reasonable control. The

Company, or the County as case may be, shall, however, make all reasonable efforts to remove or eliminate the cause of the Company's delay or breach and shall, upon the cessation of the cause, continue performing under this Agreement. The County or the Company may terminate this Contract upon written notice to the other party after reasonably determining that the delay or breach attributable to Force Majeure will likely prevent successful performance of this Agreement for a period exceeding 60 days.

## **V. MISCELLANEOUS**

### **5.1 Agreement Duration**

5.1.1 Unless sooner terminated in accordance with the terms hereof, the Agreement shall commence on October 1, 2022, and continue in effect until September 30, 2027. The payment terms contained in sections 3.7, 3.8, and 3.11 above shall be effective retroactively to April 1, 2022. County and Company agree that Company has satisfied 3 of the 5 performance measures referenced in Section 3.11 and listed in Exhibit C during each calendar month since April 1, 2022. All other terms and conditions of this Agreement become effective October 1, 2022.

5.1.2 The County may request one 3-year extension of the Agreement to be effective October 1, 2027. If the County and the Company agree to a 3-year extension as described in the previous sentence, the County may request an additional one-year extension, to be effective October 1, 2030. If the County and the Company agree to a one-year extension as described in the previous sentence, the County may request an additional one-year extension, to be effective October 1, 2031. If the County requests a 3-year extension as described in the first sentence in this subsection 5.1.2, the County shall give notice of its request no later than September 30, 2026. If the County requests a one-year extension as described in the second or third sentences in this subsection 5.1.2, the County shall give notice of its request no later than six months from the expiration of the then-current term.

5.1.3 The County and the Company shall meet annually at a mutually agreed-upon time and place to discuss the status of the Agreement and any extensions thereto.

### **5.2 Assignment**

5.2.1 The Agreement may not be assigned by the Company to any entity that is not a wholly owned subsidiary of Company's parent corporation without prior written approval of the County, which consent shall be exercised in the County's sole discretion. The Company may sub-contract for the services described in Exhibit A.

5.2.2 Any transfer of the franchise shall be pursuant to Marion County Code Chapter 8.05 and amendments thereto.

////

### 5.3 Compliance of Laws, Ordinances, and Regulations

5.3.1 At all times during the Agreement, the Company shall comply with Marion County Code Chapter 8.05, any applicable provisions of ORS Chapter 459, any rules or regulations issued pursuant to ORS Chapter 459 by the Department of Environmental Quality or the Environmental Quality Commission, and Chapter 386, Oregon Laws 1981.

5.3.2 The County is liable for all fees, fines, mitigation, and corrective actions associated with permit violations related to the operations of the household hazardous waste collection facility. This includes, but is not limited to, stormwater, groundwater, and run-off contamination.

### 5.4 Indemnification

5.4.1 The Company shall indemnify and hold harmless the County and its officials, officers, employees, and agents from damages arising out of the tortious acts of Company, its officers, agents and employees acting within the scope of their employment and duties in the performance of this Agreement; provided, however, that Company shall not be obligated to indemnify the County from any against any claims or damages to the extent resulting from the negligence or tortious acts of the County and its officials, officers, employees and agents to the extent resulting from any breach by County of its obligations, representations or undertakings under this Agreement.

5.4.2 Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution Article XI, Section 7, the County hereby agrees to defend, indemnify, and hold harmless the Company, its employees, officers, agents, partners, members, managers, and affiliates (collectively, the "Indemnified Parties"), for, from and against any and all claims, demands, losses, penalties, fines, suits, liabilities, settlements, damages, and judgments arising out of or in any way related to (i) the disposal, release, threatened release, removal or production by the County of any hazardous substances or hazardous wastes, in, from, or affecting any portion of the premises related to the operation of a permanent household hazardous waste collection facility; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any circumstances described in clause (i) immediately above; (iii) any lawsuit brought or threatened, settlement reached, or order by any governmental authority relating to any circumstances described in clause (i) immediately above; and/or (iv) any violation by the County of any Applicable Environmental Laws. The County agrees, upon notice and request by an Indemnified Party, to contest and defend any demand, claim, suit, proceeding, or action with respect to which the County has hereinabove indemnified and held the Indemnified Parties harmless and to bear all costs and expenses of such contest and defense. The provisions of this paragraph shall be in addition to any other obligations and liabilities the County may have to the Company at common law, in equity, or under this Agreement. As used above, the term "Applicable Environmental Laws" shall mean any statutes, laws, rules, regulations, ordinances, orders, or directives now or hereafter in effect pertaining to health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation

and Recovery Act of 1987, as amended (“RCRA”), and the Toxic Substances Control Act, the Clean Air Act, and the Clean Water Act, and applicable state, county, and municipal statutes, laws, rules, regulations, ordinances, orders, or directives. The County’s indemnity obligations contained in this Section shall pertain to Claims arising out of, related to, or in connection with, matters occurring at any time on or subsequent to the initial operation of a permanent household hazardous waste collection facility.

## 5.5 Notices

Any notices or communication relating to the Agreement shall be given as follows:

To the County:  
Director  
Marion County Public Works  
5155 Silverton Rd. NE  
Salem, OR 97305

To the Company:  
General Manager  
Capital Recycling and Disposal, Inc.  
Post Office Box 20  
Salem, OR 97308

## 5.6 Insurance

5.6.1 The Company shall maintain in effect during the term of the Agreement:

- a. Automobile liability insurance in the amount of \$2,000,000 per occurrence combined single limit personal injury and property damage;
- b. Comprehensive general liability in the amount of \$2,000,000 per occurrence.

5.6.2 Such amounts shall be a minimum and may be a greater amount if so directed by the County, subject to requirements of public bodies by ORS 30.270. The County shall be named as an additional insured on a separate endorsement on all such insurance and receive a certification of such insurance. If the County directs the Company to obtain insurance in amounts greater than specified herein, and this direction results in a higher premium cost for the Company, the additional premium cost will be added to the operation fee on a monthly prorate basis.

5.6.3 Each party shall provide workers' compensation coverage for its own employees.

## 5.7 Agreement

5.7.1 The provisions of the Agreement, together with the Exhibits attached and incorporated by

PW-5055-22 Franchise Agreement



reference, shall constitute the entire agreement between the parties for providing and operating the Facility.

5.7.2 In the event that any provision of the Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the validity of any other provision of the Agreement.

#### 5.8 Certification

The Company hereby certifies that they are an independent contractor and shall be responsible for, and absolve the County of, any and all payments or liability required by law for Federal and State Social Security (FICA), Worker's Compensation, Unemployment Compensation, and Public Retirement taxes of any kind, and other such benefits for its employees or any other person the Company may have assistance from in performance of the Agreement.

(The remainder of this page left intentionally blank)

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed by their duly authorized representatives as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

MARION COUNTY

CAPITAL RECYCLING AND  
DISPOSAL, INC

Recommended By:

\_\_\_\_\_  
Director of Public Works                      Date

\_\_\_\_\_  
Company

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature    Date

\_\_\_\_\_  
Marion County Contracts                      Date

\_\_\_\_\_  
Name    (Print or Type)

APPROVED AS TO FORM:

\_\_\_\_\_  
Address    (Print or Type)

\_\_\_\_\_  
Marion County Legal Counsel              Date

\_\_\_\_\_  
City, State, Zip

BOARD OF COMMISSIONERS

\_\_\_\_\_  
Commissioner                                      Date

\_\_\_\_\_  
FEIN ID# or SSN#

\_\_\_\_\_  
Commissioner                                      Date

\_\_\_\_\_  
Commissioner                                      Date

## **Exhibit A**

The Company owns and operates the recycling depot located at the Salem-Keizer Recycling and Transfer Station. The Company has the ability to sub-contract for services performed under Exhibit A. Besides the recyclables that are managed by the Company, the Company shall perform the following work at the facility for the following commodities:

### **Appliances**

The Company shall manage the appliance recycling boxes and area. The Company shall ensure that there is sufficient capacity available in the appliance recycling area for the placement of appliances at all times.

### **Tires**

The Company shall manage the tire recycling boxes and area. The Company shall ensure that there is sufficient capacity with room available in the tire recycling area for the placement of tires at all times. County shall be responsible for the costs incurred by Company for the hauling and disposal of tires delivered to the tire recycling area.

### **Computers & Electronics**

The Company shall manage the computer and electronics recycling boxes and area. This shall include the loading of electronics components into storage containers and loading those containers onto trucks for hauling to be recycled. The Company shall ensure that there is sufficient room available in the electronics recycling area for the placement of components at all times.

### **Household Batteries**

The Company shall manage the battery recycling box and area. This shall include the loading of batteries into storage containers and loading those containers onto trucks for hauling to be recycled. The Company shall ensure that there is sufficient room available in the battery recycling area for the placement of batteries at all times.

### **Fluorescent Lamps**

The Company shall accept and manage fluorescent lamps brought to the recycling area for recovery. The Company shall ensure that measures are taken to reduce the possibility of lamp breakage and shall have a DEQ-approved management plan in place for the acceptance and handling of fluorescent lamps.

## Exhibit B

### IDENTIFIED FACILITY REPAIRS

Priority	Repairs Identified that would qualify for Marion County \$1,000,000 contribution.	Engineer Opinion of Probable Cost (50% Design)	Priority Projects
1	Engineering estimate and design work.	\$ 80,000.00	\$ 80,000.00
2	Structural Repairs to Canopy - Column repairs, slab repairs at column, cap exposed corner of pit wall	\$ 309,183.80	\$ 309,183.80
3	Removal of Damaged Wall – One wall outside the pit is partially damaged and cracked creating a safety issue.	\$ 16,712.64	\$ 16,712.64
4	Repair Undercut Section of Z-Wall – Pit wall is damaged, lower wall, rebar and significant erosion to the concrete	\$ 66,850.55	\$ 66,850.55
5	Road Resurface and Widening from Scale House to Pit – Resurface Asphalt from Scale House to Pit, includes widening after scale house to three lanes, two lanes in, one lane out.	\$ 617,866.22	\$ 617,866.22
6	Road Resurface from Gaffin Road to site entrance, includes widening entrance for Truck & Trailers, replacing culvert, improve water run-off	\$ 1,193,934.13	
7	Resurface Entire Area below Pit – Entire area below the pit, where boxes are staged and loaded need new asphalt/concrete. Area has pot holes and damage that makes it difficult to drive the loader on and opens up the possibility for ground water contamination. Clarification - This is not the Pit, but it is the box storage area. Area is failing, creating large amounts of HSS (High Suspended Solids) that is impacting storm water samples, resulting in Storm Water Pollution Control Plan violations.	\$ 1,055,235.95	
		\$ 3,339,783.29	\$ 1,090,613.21

# Exhibit C

## PERFORMANCE INCENTIVES

- 1 Training
  - Customer Service
    - Difficult Customers - Annually
    - Monthly Topics - Tailgates
- 2 Drop Box Inventory
  - 20 Boxes in Service (Minimum on Site)
- 3 Staffing - Level per day
  - 1 – Person in Charge
  - 2 - Equipment Operators
  - 2 - Spotters
  - 1 - Recycle Attendant
  - 1 - Floater (Coverage for Lunches & Breaks)
- 4 Drivers - Haul 90% of MSW daily tonnage the next day if daily tonnage received is less than 225 tons. If daily tonnage exceeds 225 tons, 90% of 225 tons, or 202.5 tons, shall be hauled the next day. All daily tons in excess of 225 tons shall be hauled within seven days of receipt.
- 5 Asphalt Maintenance
  - Repair within 30-day notice from County

### Monthly

- 3 of 5 = \$1.00 per ton Inbound
- 4 of 5 = \$1.50 per ton Inbound
- 5 of 5 = \$2.00 per ton Inbound