

## CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

### Policy Session Worksheet

**Presentation Date:** Sept 14, 2021 **Approx. Start Time:** 2:00 **Approx. Length:** 30 minutes

**Presentation Title:** Approving a Subcontract for Infectious Waste Collection

**Department:** Transportation and Development - Sustainability & Solid Waste Program

**Presenters:** Rick Winterhalter, Senior Sustainability Analyst; Eben Polk, Sustainability Supervisor

**Other Invitees:** Dan Johnson, DTD Director; Cheryl Bell, DTD-Assistant Director; Beth Vargas Duncan representing *Clackamas County Refuse & Recycling Assoc.*; Jeff Norton, Trilogy MedWaste, Inc.; Dean Kampfer, Waste Management of Oregon, Inc.;

### STAFF REQUEST OF THE BOARD

To take action on the August 18, 2021 recommendation from the Solid Waste Commission to approve a subcontract for infectious waste collection.

### EXECUTIVE SUMMARY:

County Code allows solid waste collection franchisees to subcontract for the provision of solid waste collection services, with approval by the Board. This requires a recommendation, to the Board, by the Solid Waste Commission.

Waste Management of Oregon, Inc. is seeking approval to enter into a subcontract with Trilogy Medwaste, Inc. to provide infectious waste collection throughout their franchised areas in the County and Cities within the County. The Solid Waste Commission recommended approval.

ORS 459A.085 provides that, in order to ensure reliable and affordable collection of solid waste, counties may “displace competition with a system of regulated [integrated solid waste] collection service by issuing franchises which may be exclusive if service areas are allocated.” The 1989 Legislature added ORS 459.386-400, requiring local governments to regulate the collection and disposal of infectious wastes including medical waste and “sharps.” County Code 10.03.260 A.3. allows a solid waste collection franchise holder to *...subcontract with another person to provide service, or a particular type of service, within a Service Area ...*

In 2011 Waste Management of Oregon, Inc. (WM) notified the County of the termination of their Board approved subcontract with BioMed of Oregon, and on or about October 1, 2011, WM assumed the infectious solid waste collection responsibilities within their franchise areas. Because WM was providing collection service within their Board approved franchise areas, no further Board action was required.

This May, WM verbally notified the County they intended to enter into a subcontract with Trilogy Medwaste in the future. On July 6, 2021 staff was notified by Ron Adams National Sales Director of Trilogy Medwaste (<https://www.trilogymedwaste.com/>) based in Houston, Texas that Trilogy was seeking Board approval allowing Trilogy to provide infectious waste collection (regulated medical waste) within WM’s franchised areas within Clackamas County. Since that time staff has worked with WM staff to prepare for the transition.

Waste Management of Oregon, Inc. is a franchisee in good standing. Since 2011 when they began providing infectious waste collection in their service area, the County has not had cause to initiate any disciplinary action against the company. Brief research by staff reveals Trilogy Medwaste provides infectious waste collection services nationwide.

Trilogy has hired WM's district manager for infectious waste collections, Jeff Norton, who has served in that capacity since 2011. County staff has found Mr. Norton to be responsive and cooperative throughout his tenure working with the County. Mr. Adams also worked with the County when he was with Stericycle, Inc. the infectious waste subcontractor for several other franchisees.

Staff is confident WM and Trilogy will continue to ensure customers requiring infectious waste collection in WM's franchised areas receive safe and efficient service.

**FINANCIAL IMPLICATIONS:**

Is this item in your current budget? N/A

What is the cost? N/A

What is the funding source? N/A

**STRATEGIC PLAN ALIGNMENT:**

- **How does this item align with your Department's Strategic Business Plan goals?**  
This item is a result of providing oversight of the County's solid waste system to ensure franchisees have the ability to provide safe, efficient and timely garbage and recycling services to customers.
- **How does this item align with the County's Performance Clackamas goals?**  
Access to safe, convenient solid waste collection services helps promote community health, livability, and responsible stewardship of natural resources. Ensuring solid waste collection franchisees, and their subcontractors, have the equipment, labor and management acumen to provide services required by the County.

**LEGAL/POLICY REQUIREMENTS:**

ORS 459 and 459A authorize the County to franchise solid waste collection services. County Code Chapter 10.03 further allows franchisees to subcontract with another person to provide service, or a particular type of service.

**STAFF PARTICIPATION:**

The Solid Waste Commission met August 18, 2021 to discuss the issue and unanimously voted to approve the subcontract. Staff reviewed the subcontract and found it in order. Staff also met with the district manager to ensure services to the customer, reporting and franchise fee payments would continue as currently provided.

**OPTIONS:**

1. Require franchisee to provide the service.
2. Do not recommend approval of the subcontract to the Board.
3. Approve the Trilogy Medwaste, Inc. subcontract to provide infectious waste collection services within the franchises held by Waste Management of Oregon, Inc.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners select option 3 to approve the Trilogy Medwaste, Inc. subcontract to provide infectious waste collection services within the franchises held by Waste Management of Oregon, Inc.

**ATTACHMENTS:**

1. Contract

<p>For information on this issue or copies of attachments, please contact: Rick Winterhalter @ 503-742-4466</p>
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**SUBCONTRACT AGREEMENT FOR  
REGULATED MEDICAL WASTE SERVICE  
FOR WASTE MANAGEMENT IN CLACKAMAS COUNTY, OREGON**

This Subcontract Agreement for Regulated Medical Waste Services (“Agreement”) is made and entered into by and between Waste Management of Oregon, Inc. (“Contractor”) and Trilogy Medwaste West, LLC (“TRILOGY”). The parties shall be collectively referred to herein as the “Parties” and individually as a “Party”, unless specifically identified otherwise. This Agreement shall be effective upon the Effective Date as defined below in **Section 4**.

**RECITALS**

**WHEREAS** Contractor is a Collection Service Franchisee as defined in Clackamas County Code 10.03.030 to provide collection service for solid waste, within the Franchised Area (as defined below), including without limitation, Regulated Medical Waste (as defined below)

**WHEREAS** the Contractor may subcontract with another party to provide Regulated Medical Waste collection services after obtaining approval from the Board of County Commissioners for Clackamas County in accordance with Clackamas County Code 10.03.260A.3;

**WHEREAS** TRILOGY is in the business of providing Regulated Medical Waste services, including Regulated Medical Waste collection, storage, transportation and disposal, and has the necessary expertise, equipment, and resources to provide such services in the State of Oregon; and

**WHEREAS** the Parties hereto desire to enter into a subcontract whereby Trilogy will have the exclusive right and duty to collect Regulated Medical Waste within the Solid Waste Franchise Area, upon the terms set forth below and in compliance with the terms of the Solid Waste Franchise.

**TERMS AND CONDITIONS**

**NOW, THEREFORE**, Contractor and TRILOGY, for the consideration hereinafter named, agree as follows:

**1. Definitions.**

1.1. “Regulated Medical Waste” or “RMW” means “Infectious Waste” as defined in ORS 459.386, OAR 333-056-0020 and Clackamas County Code 10.03.030.32 , including any amendments thereto, but specifically excluding “Excluded Waste”, unless the Parties subsequently agree in writing to include any materials that would otherwise be Excluded Waste within the definition of Regulated Medical Waste for purposes of this Agreement. Except as otherwise excluded from the definition of Infectious Waste under Oregon law, examples of “Regulated Medical Waste” included in this Agreement include, without limitation: sharps, gauze and bandages that have been in contact with bodily fluids, containers, tubing, blood, blood products, trace chemotherapy waste, tissue, specimens generated in the course of diagnosis and medical treatment and anatomical parts that emanate from surgeries, autopsies and obstetrical and laboratory procedures.

1.2. “Excluded Waste” means: (a) any waste or other material not falling within the definition of Medical Waste, including complete human remains; (b) radioactive waste; (c) any hazardous waste, as defined or regulated under applicable Law; (d) containers that are

damaged, leaking or could cause harm or exposure to employees, the general public or others; (e) waste that has been incorrectly identified, labeled and/or segregated; (f) any waste or device containing mercury including amalgam, vacuum pumps and other medical devices; (g) pharmaceutical waste (except what is accepted by TRILOGY under its pharmaceutical disposal program, if any); (8) boxes that exceed approved TRILOGY and DOT standards; or (h) any other waste that cannot be collected, transported or treated by TRILOGY in accordance with any and all applicable Laws.

1.3. "Franchised Area" means (a) the entire territory included within the Contractor's current service area under the Clackamas County Solid Waste Franchise Authority, and (b) such additional area as may thereafter become included with the Contractor's service area from time to time due to annexation, incorporation, or other means but only from and after the time as TRILOGY is able to provide collection services in such additional area.

1.4. "Gross Receipts" means all gross receipts (including cash and cash equivalents) for the period from all Franchised Area RMW revenue sources, before any adjustments.

1.5. "Law" means any law, rule, regulation, ordinance, requirement, guideline, action, order, permit, license, approval, authorization, consent or entitlement enacted or issued by a governmental authority.

**2. Medical Waste Services to be Performed.** TRILOGY shall provide collection, management, transportation, disposal, and treatment services for all Regulated Medical Waste within the Franchised Area (the "Services"), including but not limited to Regulated Medical Waste from hospitals, medical clinics, dental offices, outpatient and inpatient care facilities, nursing homes, and veterinary clinics (collectively, the "RMW Accounts"). **Exhibit A** attached hereto lists all current RMW Accounts known to Contractor within the Franchise Area. If Contractor becomes aware of any other RMW Accounts not listed on Exhibit A or receives any requests for new RMW Accounts in the Franchised Area, Contractor shall promptly notify TRILOGY and TRILOGY shall make arrangements with the customer to provide Services.

**3. Rejection of Excluded Waste.** Title to and liability for Excluded Waste shall remain with customer at all times. TRILOGY shall have the right to inspect, analyze or test any waste collected from customer. If customer's waste is Excluded Waste, TRILOGY can, at its option, reject the Excluded Waste and return it to customer or require customer to remove and dispose of the Excluded Waste at Customer's expense.

**4. Effective Date; Term.** This Agreement shall commence as of and from the date both Parties have executed and dated this Agreement (the "Effective Date") and shall continue for a term that shall run concurrently with the term of Contractor's Franchise, unless this Agreement is terminated prior to the expiration or termination of the Franchise, pursuant to **Section 5** below (the "Term").

**5. Termination.** This Agreement shall automatically and immediately terminate without any further action by either Party in the event that the Franchise expires or is terminated for any reason. In addition, either Party shall have the right to terminate this Agreement by giving the other Party at least One Hundred Twenty (120) days' advance written notice.

**6. TRILOGY Representations, Warranties and Covenants.** TRILOGY hereby represents, warrants and covenants that it will:

(a) provide the Services and manage the RMW in a safe, professional and workmanlike manner in accordance with industry standards and in full compliance with all applicable Laws;

(b) obtain documents, shipping papers, or manifests from RMW Accounts as required for the lawful transfer of the special or hazardous waste under all applicable Laws (including, without limitation, 49 CFR § 172.302);

(c) use treatment, storage and disposal (“TSD”) facilities approved by the Contractor for the Regulated Medical Waste that have been issued all permits, licenses, Franchised Area or approvals required by applicable Laws necessary to allow the TSD facility to accept, treat and/or dispose of the RMW;

(d) provide all supervision, labor, materials, tools, vehicles and other items for the performance of the Services; and

(e) obtain and maintain all necessary permits and licenses under applicable Law required for performance of the Services.

**7. Customer Service; Compensation for Services.** TRILOGY shall be solely responsible for all customer service to the RMW Accounts, including without limitation, customer complaints, set up of new accounts, service questions, billing charges and collecting payment from RMW Accounts for the Services. Such charges shall be in compliance with the Franchise and with current approved rates established by Clackamas County. A copy of such rates as of the Effective Date is attached hereto as **Exhibit B**, and any amendments to those rates after the Effective Date shall be added to **Exhibit B**.

**8. Subcontract Fee.** As consideration for the right to provide the Services hereunder, on or before the fifteenth (15<sup>th</sup>) day of the first month of each quarter, TRILOGY shall pay Contractor a subcontract fee equal to Five Percent (5%) of the Gross Receipts collected by TRILOGY from RMW Accounts during the previous quarter (“Subcontract Fee”). TRILOGY shall submit an accounting with each Subcontract Fee paid to Contractor, and remit such Subcontract Fee in full. TRILOGY shall promptly provide all backup documentation for such Subcontract Fee upon reasonable request of Contractor. Any disputes between Contractor and TRILOGY regarding the calculation of the Subcontract Fee shall be negotiated in good faith between the Parties.

**9. Franchise Fees.** In addition to the Subcontract Fee in **Section 8** above, TRILOGY shall pay to Contractor an amount equal to the Franchise fee required by Clackamas County under Contractor's franchise that is attributable to the RMW Services performed by TRILOGY hereunder. TRILOGY will deliver to Contractor on or before the Fifteenth (15<sup>th</sup>) day of each Quarter a report showing the RMW collection services actually performed and the calculation of the franchise fee attributable thereto for the preceding quarter along with TRILOGY's payment of such Franchise fee. TRILOGY shall promptly provide all backup documentation for such Subcontract Fee upon reasonable request of Contractor. Contractor shall be solely responsible to remit all Franchise fees and/or any taxes payable to Clackamas County for solid waste collection services provided under the Franchise, including any that are or may be applicable to the Services provided by TRILOGY under this Agreement. Any disputes between Contractor and TRILOGY regarding the calculation of the Franchise fee payable by TRILOGY shall be negotiated in good faith between the Parties. Contractor shall indemnify and hold TRILOGY harmless from any and all claims against

TRILOGY resulting from the failure of Contractor to remit to Clackamas County all or any portion of the Franchise fee actually paid to Contractor by TRILOGY.

**10. Insurance.** TRILOGY shall maintain throughout the term of this Agreement the following types of insurance coverage with limits that are required by appropriate regulatory agencies or the following, whichever are greater:

Coverage	Limits
Commercial General Liability (bodily injury & property damage)	\$2,000,000 per occurrence \$3,000,000 annual aggregate
Automobile Liability	\$2,000,000 combined single limit per occurrence
Employer's Liability	\$1,000,000 per occurrence
Workers' Compensation	Statutory Limit
Pollution Liability	\$6 million annual aggregate

TRILOGY shall name Contractor and Clackamas County as primary additional insured parties under the liability insurance policies. Upon request, TRILOGY shall provide to Contractor and/or Clackamas County a certificate evidencing such insurance. Such coverage and policies shall not be canceled or revoked without providing Contractor thirty (30) days advance written notice.

**11. Indemnification.** TRILOGY agrees to indemnify, defend and hold harmless Contractor, its shareholders, officers, directors, employees, contractors and agents (collectively, the "Indemnitees") from and against any and all damages, costs or liability (including reasonable attorneys' fees) which the Indemnitees may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of Law, to the extent related to or arising out of TRILOGY 's performance of the Services, caused by TRILOGY's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of TRILOGY or its employees, including, without limitation, damages, costs or liability related to or arising out of (1) the collection or transportation of the RMW by TRILOGY or (2) the disposal of the RMW, after the date of this Agreement, in a facility owned by a subsidiary or affiliate of Contractor. Such indemnity shall exclude damages to the extent they arise as a result of the negligence or willful or reckless misconduct of Contractor or Clackamas County. This Section 11 shall survive the expiration or earlier termination of this Agreement.

**12. Reporting; Record Keeping; and Inspection.** TRILOGY shall at all times under this Agreement, maintain records of (a) the amount (by volume) of RMW received, processed, and disposed of under this Agreement, (b) names, addresses and service specifications of RMW Accounts, and (c) revenue billed to and collected from RMW Accounts, and shall submit a summary of all such information to Contractor on or before the fifteenth (15<sup>th</sup>) day of each quarter for RMW Services provided during the previous quarter. TRILOGY shall submit to the Contractor an annual detailed cost report and any other reports requested by the County according to the schedule set by the County. TRILOGY shall provide other non-proprietary data which may be requested by Contractor regarding the RMW handled by TRILOGY under this Agreement and which is reasonably necessary to assist Contractor in complying with its reporting requirements under the Franchise. Contractor shall have access to and the right to examine TRILOGY's books and records reasonably relevant to the RMW services performed by TRILOGY under this Agreement.

**13. Communications with Clackamas County; Cooperation.** Except as otherwise agreed to by the Parties, the Contractor shall be responsible for all communications with Clackamas County regarding the Services under this Agreement. Contractor shall cooperate with and assist

TRILOGY in submitting to Clackamas County and seeking approval of all reasonable, substantiated requests for increases in the approved rates for the Services provided by TRILOGY hereunder (but in no event shall Contractor be obligated to submit increases to Clackamas County more frequently than one (1) time per calendar year) and for all reasonable requests to modify the nature and scope of Services provided hereunder.

**14. Relationship of the Parties.** TRILOGY and its employees, agents, representatives or subcontractors are not and shall not be considered the agents, employees or servants of Contractor under this Agreement or otherwise. TRILOGY shall perform the Services as an independent contractor and employ agents and/or employees under the exclusive management and control of TRILOGY, and shall at all times have the exclusive control over the performance of the Services. Nothing in this Agreement shall be construed to give WM any right or duty to supervise or control TRILOGY, its officers, employees, agents, contractors, or subcontractors, nor to determine the manner in which TRILOGY shall perform its obligations under the Agreement. TRILOGY shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance, retirement benefits, life insurance, pensions, annuities and similar benefits, which may now or hereafter be imposed by law or collective bargaining agreements with respect to persons employed or contracted with by TRILOGY for performance of Services under this Agreement.

**15. Uncontrollable Circumstances.** TRILOGY shall not be in default of this Agreement for its failure to perform or delay in performance caused by circumstances reasonably beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government related to and materially and adversely affecting the Services or Trilogy's ability to perform them in a timely manner ("Force Majeure"). If TRILOGY claims Force Majeure, it shall promptly notify the Contractor when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated.

**16. Notice of Default and Right to Cure.** The failure of either Party to perform a material obligation under this Agreement shall be considered a breach of this Agreement, and the breaching Party shall be in default. If either Party is in default of this Agreement and has failed to cure such breach within thirty (30) days after receipt of written notice of such breach from any other Party, the non-breaching Party may, at its option, immediately terminate this Agreement at the end of the 30-day cure period. In the event of a default, the defaulting Party agrees to pay all damages suffered by the other party caused by said default, except under no circumstances shall the Parties be liable for consequential, indirect, punitive or special damages for any alleged default under this Agreement.

**17. Notice.** Any notice required or permitted hereunder shall be in writing and sent via personal delivery, certified or registered mail (return receipt requested) or by facsimile transmission) and sent to the address shown below:



**If to Trilogy:** Trilogy Medwaste, LLC  
8554 Katy Freeway Suite 200  
Houston, TX 77024  
Attention: Ron Adams  
Fax: \_\_\_\_\_  
e-Mail: Radams@trilogymedwaste.com

**If to Contractor:** Waste Management of Oregon  
7227 NE 55<sup>th</sup>  
Portland, OR 97218  
Attention: Adam Winston  
Fax: \_\_\_\_\_  
e-Mail: awinston@wm.com

**18. Successors and Assigns.** Neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that Contractor may assign this Agreement to any Contractor affiliate without TRILOGY's consent. If Clackamas County is required to consent to the assignment of this Agreement, the Parties shall work cooperatively obtain such consents. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

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

**20. Survival of Claims.** Termination of this Agreement shall not relieve either Party of any claims against it that arise under this Agreement before the Agreement is terminated.

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

**22. Governing Law.** This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Oregon.

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

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

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

**26. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature by any Party received via .pdf file or facsimile shall be treated as an original.

\* \* \*

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

**WASTE MANAGEMENT OF  
OREGON, INC.**

**TRILOGY MEDWASTE WEST, LLC**

By: Jason Rose  
Name: Jason Rose  
Title: Area Vice President  
Date: 6/28/21

By: Bill Avery  
Name: Bill Avery  
Title: Corporate VP of Sales  
Date: 6-25-2021

Clackamas County Board of Commissioners  
Approval of a Subcontract to Provide  
Infectious Waste Collection

This subcontract comes before the Board on \_\_\_\_\_.  
“After having reviewed all materials and considering the  
recommendations of staff, the Solid Waste Commission, and  
anyone else submitting comments or information, the Board  
hereby approves the attached subcontract to provide infectious  
waste collection in the franchises held by Waste Management of  
Oregon, Inc.”

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary