

## CLACKAMAS COUNTY SOLID WASTE COMMISSION

Staff Report  
October 12, 2023

### **STAFF REQUESTS OF THE COMMISSION**

Make a recommendation to the Board of County Commissioners on the following franchise administrative actions: Review a subcontract for infectious waste collection.

### **EXECUTIVE SUMMARY:**

County Code allows franchisees to subcontract for the provision of solid waste collection services, with approval by the Board. Staff received notification of three requests to subcontract for infectious waste.

#### **Subcontract for infectious waste collection**

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.*”

Republic Services, Inc. and Waste Connections, Inc. are seeking approval to enter into separate subcontracts with Trilogy MedWaste, Inc. (Trilogy) to provide infectious waste collection throughout their respective franchised areas in the County.

These subcontracts are business-to-business agreements between the County franchisee and the service provider. The subcontracted service provider is required to charge the Board approved fees for service during their tenure. The County franchisee is ultimately responsible for ensuring their subcontractor provides services to customers within the franchised area.

Republic Services, Inc. has notified the County they are seeking Board approval to enter into a subcontract with Trilogy Medwaste, Inc., effective December 1, 2023, to provide infectious waste collection services. A draft contract is attached. (Attachment 1)

Arrow Sanitary Service, Canby Disposal Company, Hoodview Disposal & Recycling, Inc., and West Linn Refuse & Recycling, Inc. have notified the County they are seeking Board approval to enter into a subcontract with Trilogy Medwaste, Inc. to provide infectious waste collection services. Attachment 2 is letter of intent to enter into an agreement. If the Commission recommends approval to the Board, the companies anticipate a start date after the first of the year.

In 2021 the Board, upon recommendation of the Solid Waste Commission, approved a subcontract with Trilogy to provide services in the franchised areas held by Waste Management of Oregon, Inc. Additionally, on October 10 and 12, 2023 the Board will hear

a request for subcontracting between Trilogy Medwaste, Inc. and Recology Clackamas, Inc. The County has not had cause to initiate any disciplinary action against Trilogy.

Staff is confident the solid waste collection franchisees and Trilogy will continue to ensure customers requiring infectious waste collection in these franchises 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 solid waste collection 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 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:**

Staff and the parties involved have participated in discussions of this issue.

**OPTIONS:**

1. Require franchisee to provide the service.
2. Do not recommend approval of the subcontract to the Board.
3. Recommend approval of the five subcontracts to the Board.

**RECOMMENDATION:**

Staff respectfully recommends option 3; that the Solid Waste Commission recommend approval of the five subcontracts to the County Board of Commissioners.

**ATTACHMENTS:**

1. Republic Services DRAFT Contract
2. Waste Connections-Letter of Intent

For information on this issue or copies of attachments, please contact: Rick Winterhalter @ 503-742-4466
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## SUBCONTRACT AGREEMENT FOR REGULATED MEDICAL WASTE SERVICE

This Subcontract Agreement for Regulated Medical Waste Services (“Agreement”) is made and entered into by and between Republic Services Procurement, 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**. All capitalized terms shall have the definition set forth in Section 1.

### RECITALS

**WHEREAS** Contractor is currently granted regulatory authority to collect, store, transport, and dispose of Regulated Medical Waste (“Certificate”), within the municipalities listed in Exhibit A attached hereto (the “Municipalities”);

**WHEREAS** the Contractor may contract with another party to provide Regulated Medical Waste collection services after obtaining approval from the Municipalities

**WHEREAS** Trilogy is in the business of providing Regulated Medical Waste services 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 an agreement whereby Trilogy will have the exclusive right and duty to provide Regulated Medical Waste services within Contractor’s service area, upon the terms set forth below and in compliance with the terms of the Certificate.

### 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 and OAR 333-056-0020, including any amendments thereto. Notwithstanding the definition of “Infectious Waste” in ORS 459.386 and OAR 333-056-0020, the definition of “Medical Waste” for purposes of this Agreement does not include those materials identified herein as “Excluded Waste”, unless the Parties subsequently agree in writing to include such materials within the definition of Medical Waste for purposes of this Agreement. Except as otherwise excluded from the definition of Infectious Waste under Oregon law, examples of “Medical Waste” included in this Agreement are: sharps, gauze, bandages, containers, tubing, blood, blood products, trace chemotherapy waste, tissue, specimens generated in the course of diagnosis and medical treatment.

1.2. “Excluded Waste” means: any waste or other material not falling within the definition of Medical Waste, including (a) complete human remains; (b) radioactive waste; (c) any listed hazardous waste; (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 applicable federal, state and local laws, ordinances, orders, rules and regulations. In summary, this agreement does not grant Trilogy the right to pick up or take delivery of any waste other than the items described in section 1.1 above.

1.3. "Certificate Area" means (a) the entire territory included within the Contractor's current service area under the Certificate, 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 receipts for the period from all revenue sources, before any adjustments.

**2. Medical Waste Services to be Performed.** Trilogy shall provide collection, management, transportation, disposal, and treatment services (the "Services") for all Medical Waste generated by all commercial medical facilities located within the Certificate area, including but not limited to 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 RMW Accounts known to Contractor within the Certificate area. If Contractor becomes aware of any other RMW Accounts not listed on Exhibit A, Contractor shall promptly notify Trilogy and Trilogy shall make arrangements for Service. Trilogy shall ensure that all employees and permitted contractors performing Services under this Agreement have received all necessary training required to perform the Services hereunder including, without limitation, safety training and are qualified and able to perform the Services. Trilogy shall not use subcontractors to provide the Services without written approval of Contractor. Trilogy shall remain fully responsible for any subcontractor's performance of the Services, compliance with this Agreement and any liability arising from such performance. Trilogy shall comply with Contractor's Code of Business Ethics and Conduct found at [\\_https://www.republicservices.com/suppliers/code-of-conduct.\\_](https://www.republicservices.com/suppliers/code-of-conduct)

**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 at such time as both Parties have executed and dated this Agreement (the "Effective Date"), and shall continue for a term that shall be identical to the term of Contractor's Certificate and any extensions thereto, unless this Agreement is terminated prior to the expiration or termination of the Certificate, pursuant to **Section 5** or **Section 16** below (the "Term").

**5. Termination.** This Agreement shall automatically terminate in the event that the Certificate is terminated for any reason. In addition, either Party shall have the right to terminate this Agreement by giving the other Party at least thirty (30) days written notice prior to the termination date or in accordance with Section 16 below. Upon termination of the Agreement for

any reason, Trilogy shall continue to pay Contractor the Subcontract Fee on any gross receipts received by Trilogy for Services on any RMW Accounts and any unpaid Certificate fee.

**6. Trilogy Warranties.** Trilogy hereby represents and warrants that it will: (a) manage the RMW in a safe and workmanlike manner in full compliance with all applicable federal, state and local laws, ordinances, orders, rules and regulations (“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 federal, state or local laws or regulations (including 49 CFR § 172.302); (c) use disposal and/or treatment facilities that have been issued permits, licenses, Certificates or approvals required by applicable federal, state and local laws, ordinances, orders, rules and regulations necessary to allow the facility to accept, treat and/or dispose of the RMW; and (d) secure all applicable licenses, permits and approvals of all types as required by any Applicable Law to perform its obligations under this Agreement. Except as provided herein, Trilogy makes no other warranties and hereby disclaims any other warranty, whether implied or statutory.

**7. Compensation for Services.** Trilogy shall be solely responsible for billing charges to and collecting payment from RMW Accounts for the Services. Such charges shall be in accordance with the Certificate and with current approved rates established by the Municipalities, a copy of such rates is attached hereto as **Exhibit A** including any amendments to those rates after the Effective Date.

**8. Subcontract Fee.** As consideration for the right to provide the Services hereunder, on or before the fifteenth day of each quarter, Trilogy shall pay Contractor a subcontract fee equal to FOUR and Half PERCENT (4.5%) of the Gross Receipts collected by Trilogy from RMW Accounts during the previous quarter (“Subcontract Fee”). Subcontract fee starts on 1/1/2024.

**9. Certificate Fees.** In addition to the Subcontract Fee in **Section 8** above, Trilogy shall pay to Contractor any Certificate fee required by Contractor applicable to the Services provided by Trilogy hereunder. Contractor shall be solely responsible to remit all Certificate fees and/or any taxes payable to Contractor for solid waste collection services provided under the Certificate, including any that are or may be applicable to the Services provided by Trilogy under this Agreement.

**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)	\$1,000,000 per occurrence \$2,000,000 annual aggregate
Automobile Liability	\$1,000,000 combined single limit per occurrence
Employer’s Liability	\$1,000,000 per occurrence
Workers’ Compensation	Statutory Limit

**11.** Trilogy shall name Contractor and the Municipality as primary additional insured parties under the liability insurance policies. Upon request, Trilogy shall provide to Contractor and/or the Municipality certificates evidencing such insurance. Such coverage and policies shall not be canceled or revoked without providing Contractor thirty (30) days advance written notice. All such insurance policies will be primary without the right of contribution from any other insurance coverage or self-insurance maintained by Trilogy. The fact that insurance is obtained by Trilogy shall not release or diminish the liability of Trilogy, including liability under the indemnity

provisions of this Agreement. Trilogy agrees to waive any and all rights of subrogation it may have against Contractor or Contractor affiliates and obtain a waiver of subrogation in favor of Contractor on all policies. Insurance certificates (Acord form) evidencing the above requirements will be required by Contractor before commencing Services, or anytime during the term of this Agreement. Trilogy will provide not less than 30 days prior notice to Contractor of any cancellation of the policies. In addition, the following requirements apply: (i) the Commercial General Liability (including the Umbrella/Excess policy) policy must include Contractual Liability assumed under an insured contract coverage specifically covering Trilogy's indemnification of Contractor, and (ii) any liability policy shall also contain a Cross Liability/Severability of Interests provision assuring that the acts of one insured do not affect the applicability of coverage to another insured. Insurance similar to that required for Trilogy shall be required by Trilogy of any subcontractors to cover their operations performed under this Agreement. Trilogy shall be held legally responsible for ensuring that any and all subcontractors meet all of the insurance, indemnification and other obligations contained in this Agreement. Trilogy shall be held responsible for any modifications in these insurance, indemnification and other requirements as they apply to subcontractors, unless such modifications are approved by Contractor in writing.

**12. Indemnification.** Trilogy agrees to indemnify, defend and save Contractor, its Affiliates and their respective shareholders, officers, directors, employees and agents and the Municipalities, their respective officers, directors, employees and agents, (collectively, the "Indemnitees") harmless from and against any and all 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 or other liability, to the extent caused by Trilogy's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of Trilogy or its employees in providing the Services, including but not limited to liability which occurs (1) during the collection or transportation of the RMW by Trilogy or (2) as a result of the disposal of the RMW, after the date of this Agreement, in a facility owned by a subsidiary or affiliate of Trilogy MedWaste West, LLC. Such indemnity shall exclude damages to the extent they arise as a result of the negligence or willful or reckless misconduct of Contractor or the Municipalities.

**13. Reporting; Record Keeping; and Inspection.** Trilogy shall, at all times under this Agreement and for a period of five (5) years after termination or expiration of 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, separated by franchise area, of all such information to Contractor on or before the fifteenth day of each quarter for RMW Services provided during the previous quarter. 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 Certificate. 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. Trilogy shall submit cost summary reports in the provided templates to the Contractor. Data shall be provided, by Municipality, and shall include all data as described and in the format in the detailed cost report in order for Contractor to compile and submit reports timely. Annual data shall be submitted to the Contractor for the prior year, in the format shown in Exhibit B, no later than the last business day of February.



Attention: Jeff Norton  
Fax: \_\_\_\_\_  
e-Mail: jnorton@trilogymedwaste.com

**19. 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. Furthermore, the Parties agree that this Agreement cannot be assigned without the prior written approval of Contractor. 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.

**20. 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.

**21. Survival.** Termination of this Agreement shall not relieve either Party of any claims against it that arise under this Agreement before the Agreement is terminated. The parties agree that Trilogy's warranties, confidentiality, indemnification, audit and all such similar terms which, by their substantive intent should survive the expiration or termination of this Agreement shall so survive.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

**27. 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



**28. Confidentiality.** Trilogy acknowledges and agrees that as a result of its dealings with Contractor, Trilogy may receive information that is confidential to Contractor, and that such confidential information is of special and unique value to Contractor. Trilogy agrees that it shall not without the prior written consent of Contractor disclose any such confidential information to any person, firm, corporation, or other entity for any purpose whatsoever or use such information for any purpose not provided for in this Agreement.

\* \* \*

**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.

**TRILOGY MEDWASTE WEST, LLC**

**REPUBLIC SERVICES PROCUREMENT, INC.**

By: DocuSigned by: John Earnhardt  
Name: John Earnhardt  
Title: Regional Vice President  
Date: 9/12/2023

By: DocuSigned by: Chris Stanford  
Name: Chris Stanford  
Title: VP Procurement  
Date: 9/12/2023

EXHIBIT A  
Municipalities and Rates

Municipality listing as of 8/2023						
	Municipality/Franchise	Scheduled or on call	Rates set by Municipality (Y/N)	Certificate fee (Franchise fee)	Subcontract fee (Royalty) royalty fee to Contractor	Total Fee paid to Contractor
1	Lake Oswego	either	N	5.00%	4.50%	9.50%
2	Tualatin	either	N	3.00%	4.50%	7.50%
3	Wilsonville	either	Y	5.00%	4.50%	9.50%
4	Clackamas County	either	Y	5.00%	4.50%	9.50%
5	Washington County	either	Y	3.00%	4.50%	7.50%
6	Marion County	either	N	5.00%	4.50%	9.50%
7	Aumsville	either	N	3.00%	4.50%	7.50%
8	Aurora	either	N	5.00%	4.50%	9.50%
9	Gervais	either	N	3.00%	4.50%	7.50%
10	Hubbard	either	N	5.00%	4.50%	9.50%
11	Mt. Angel	either	N	3.00%	4.50%	7.50%
12	Scotts Mills	either	N	6.00%	4.50%	10.50%
13	Silverton	either	N	7.00%	4.50%	11.50%
14	Stayton	either	N	5.00%	4.50%	9.50%
15	Sublimity	either	N	6.00%	4.50%	10.50%
16	Woodburn	either	N	5.00%	4.50%	9.50%

EXHIBIT B  
Data Report Format





## LETTER OF INTENT

October 9, 2023

Josh Brown  
District Manager  
Waste Connections dba Arrow Sanitary Service / Kahut Waste Services  
5455 NE 109<sup>th</sup> Ave  
Portland, OR 97220  
406-210-8639

Dear Mr. Winterhalter:

I would like to present this letter of intent signifying our company's interest in changing our medical waste collection subcontractor from Stericycle to Trilogy Med Waste. Both of our operating locations, Arrow Sanitary Service, and Kahut Waste Services, who hold franchises with Clackamas County currently utilize Stericycle for our subcontractor. Below I have listed the legal entities of our companies withing the franchise system:

- Waste Connections of Oregon, Inc. dba Arrow Sanitary Service
- Canby Disposal Company
- Hoodview Disposal & Recycling, Inc.
- West Linn Refuse & Recycling, Inc.

Please let me know if you have questions about this letter of intent or would like to discuss it further.

Sincerely,

*Josh Brown*

Josh Brown