AGENDA COVER MEMO

Memorandum Date: 12/3/23

Order Date: 12/5/23

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| TO: | Board of County Commissioners |
| DEPARTMENT: | Public Works |
| PRESENTED BY: | Dan Hurley, Public Works Director<br>Jeff Orlandini, Waste Management Division Manager |
| AGENDA ITEM TITLE: | ORDER/RESOLUTION In the Matter of Approving a Contract with Bulk Handling Systems (BHS) for the Construction and Operation of an Integrated Materials & Energy Recovery Facility (IMERF) and Delegating Authority to the County Administrator to Execute the Approved Contract; Approving the Purchase of Property in Goshen from Cecil D. Saxon Revocable Trust for Siting the IMERF ($1,500,000); and Approving Adjustments to Fees for Solid Waste Services. |

## I. MOTION

Move to approve a contract with Bulk Handling Systems (BHS) for the construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF) and delegating authority to the County Administrator to execute the approved contract; to approve the Purchase of Property in Goshen from Cecil D. Saxon Revocable Trust for siting the IMERF ($1,500,000); and to approve adjustments to fees for Solid Waste Services in the amount of 11% in 2024 and 11% in 2025.

## II. AGENDA ITEM SUMMARY

The Waste Management Division has completed the Strategic Plan objective to "*Fully vet the construction of a waste processing facility for the Short Mountain Landfill"* and is recommending approval of a contract with Bulk Handling Systems (BHS) for the construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF), to purchase property in Goshen for siting the facility, and to increase solid waste fees to pay for the infrastructure investment. The proposed facility would include equipment for mixed waste processing, sorting lines for processing commingled recycling, and an anaerobic digestion facility to produce biogas from diverted organic waste.

## III. BACKGROUND/IMPLICATIONS OF ACTION

### A. Board Action and Other History

In 2015, the Oregon State Legislature passed legislation updating the Opportunity to Recycle Act. As a part of this process, Lane County was required to provide a materials recovery goal to be achieved for 2025 and beyond. Recovery goals are used to encourage waste reduction, recycling, and diversion of waste from landfills. Lane County selected 63% recovery rate for this voluntary goal. This goal is listed in ORS 459A.010. Lane County currently achieves an approximate 49.7% recovery rate.

In July 2019, the Board adopted the updated Solid Waste Management Plan (SWMP) as a Special Purpose Plan of the County's Rural Comprehensive Plan (Ordinance No. PA 1377 & 19-04). The SWMP outlines goals and actions to reduce waste entering the landfill and increase the recovery of recyclable materials.

In February 2020, the Board adopted Order and Resolution 20-02-04-04, establishing a Climate Change Strategy for Lane County that included goals to reduce greenhouse gas emissions from County operations.

In October 2020, the Board approved the Climate Action Plan Phase 1: Operations Recommendations Report (B.O. 2 0-10-20-08). The plan identified the Short Mountain Landfill as the highest contributor (77%) of greenhouse gas emissions from County operations. The Action Plan recommended construction of an Anaerobic Digestion system at the Short Mountain Landfill as a key action for lowering emissions from the landfill.

In December 2021, Waste Management Division staff presented on past action taken and next steps in advancing materials management in Lane County. A local manufacturing company, Bulk Handling Systems (BHS), presented on waste processing technologies in use in other communities that may be viable in Lane County.

In March 2022, the Waste Management Division issued a Request for Proposals for Waste Recovery Facilities to help the Division meet or exceed its 63% recovery goal. After a competitive process, the Division selected BHS to enter into a contract to further explore building a Waste Processing Facility located near Short Mountain Landfill.

In April 2022, the Board added the following objective to the 2022-2024 Strategic Plan*: Fully vet the construction of a waste processing facility for the Short Mountain Landfill.*

In July 2023, the Division identified a potential property in Goshen for the IMERF and entered into a Purchase & Sale Agreement (PSA) pending approval by the Board of County Commissioners.

In September and November 2023, County staff provided updates to the Board of Commissioners on the vetting status for constructing a waste processing facility including cost estimates from the 30% design plans for the facility.

B. Policy Issues

Oregon Revised Statute (ORS) 459.015 (1) (d): "It is in the best interests of the people of Oregon to extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials, and by requiring solid waste to undergo volume reduction through recycling and reuse measures to the maximum extent feasible before disposal. Implementation of waste prevention and recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with the operation of disposal sites."

Lane County is the Solid Waste Authority for Lane County. Lane County owns and operates the Short Mountain Landfill as well as 15 transfer stations serving all of Lane County's residents. Per ORS 459.085, with respect to areas outside of cities, the Board of County commissioners may adopt ordinances to provide for the regulation, licensing or franchising of salvage businesses or the operation of salvage sites where such action is found necessary to implement any part of a solid waste management plan applicable in the county.

C. Board Goals

In December 2019, the Board approved the revised 2018-2021 Lane County Strategic Plan adding the following Key Strategic Initiatives and Key Activity Area under the *Vibrant Communities* priority:

*2.b. Protect and enhance our natural and built environments*

> *2.b.2 Pursue programs to reach a 63% waste recovery rate by 2025*

In 2022, the Board added the following objective to the 2022-2024 Strategic Plan.

> *2.b.7 Fully vet the construction of a waste processing facility for the Short Mountain Landfill.*

D. Financial and/or Resource Considerations

The proposed contract with BHS will require the County to develop the site and construct a suitable building to house the sorting equipment. The 30% design for the facility estimated costs for site preparation and building construction at approximately $50 million. A federal tax credit of approximately $15 million is available to offset the construction cost for the building if construction begins before the end of 2024.

Revenues to the County include an annual recycling host fee of $1,000,000 and revenue share of $250,000 and an annual RNG revenue share of $200,000. The County will also receive $2.4 million annually in disposal fees for discards from the processing facility.

The contract will require the County to ensure a minimum of 160,000 tons of waste is delivered to the facility annually or risk financial penalties. The processing fee for the waste is $83/ton.

BHS will be responsible for supplying the sorting equipment and operating the facility to meet established performance thresholds. BHS estimates the processing equipment costs to be approximately $100 million.

The Division has negotiated a Purchase & Sale Agreement (PSA) for a 26-acre property in Goshen to site the facility. The sale price is $1,500,000 and the agreement is contingent on approval by the Board.

Approval of the Waste Processing Facility would require tipping fee increases in order to maintain current Division levels of service while supporting the new facility operations. The Division is proposing fee increases in 2024 and 2025 to begin accruing funds for the facility. Fee increases will be needed beyond 2025, however the Division recommends waiting on future increases to account for actual CPI increases and to analyze actual construction costs which may be reduced through tax credits, grant opportunities, and possible funding assistance from the State. A 3% CPI increase plus an 8% increase for the IMERF (total increase of 11%) is proposed to be effective July 1, 2024 and an identical increase to be effective July 1, 2025.

E. Health Implications

Organic material in the landfill decays anaerobically - producing methane, carbon dioxide, and other trace gases. Methane and carbon dioxide are categorized as pollutants due to their warming potential in the atmosphere. Additionally, carbon monoxide and particulates are produced when landfill gas is burned as fuel at the current gas-to-energy facility. The proposed waste processing facility would improve local air quality by reducing the output of gases and particulates from the landfill. The project would improve water quality by reducing the load strength of leachate (landfill wastewater) requiring treatment.

F. Analysis

The Waste Management Division's Solid Waste Management Plan was completed and presented to the Board for adoption in 2019. The plan guides the work of the division, with a large emphasis on waste reduction strategies, modernizing transfer stations, expanding services, and exploring waste diversion technologies and practices. With a main component of this plan being achieving our 63% diversion goal, and with the landfill being recognized as the highest internal contributor to greenhouse gas emissions in the County climate action plan, the Division has

focused on a mixed waste processing facility as a means to exceed the diversion goal and reduce greenhouse gas emissions.

To fully vet the construction of a mixed waste processing facility, the project has been evaluated through the Strategic Lenses outlined Board's strategic plan: Stewardship of Resources, Equity, and Collective Impact. Strategic lenses are perspectives from which strategic priorities and goals should be viewed, as well as questions that should be asked before strategies are implemented.

Stewardship of Resources

*How will we pay for this?*

The Waste Management Division operates out an Enterprise Fund. It is self-supported through user fees, known as tipping fees in the waste industry. The fund does not receive any money from taxes or the General Fund. The Division estimates an increase in tipping fees of 8% per year for the first two years, and 6% for the two subsequent years would be needed in order to cover the costs of constructing and operating the new facility.

These increases do not include an estimated 3% CPI adjustment that would be proposed regardless of the construction of the facility to maintain current levels of service amidst rising inflationary costs of expenses. Including CPI, anticipated fee increases would be 11% in 2024 and 2025, and 9% in 2026 and 2027.

It has been estimated that for the typical customer using curbside waste collection, an 11% landfill tip fee increase would result in a monthly curbside increase of 50-60 cents, or a 2.1% overall increase. The impact on commercial customers would vary based on size of container and frequency of pick up. It has been estimated that an 11% landfill tip fee increase would result in a monthly commercial rate increase of 3-5%.

*Is what we are proposing sustainable?*

The proposed tipping fee increases would provide sustainable funding for the life of the facility. The processing facility is estimated to extend the life of the landfill by 20+ years while producing 1-million diesel gallon equivalent of natural gas per year via anaerobic digestion. Additionally, the facility will house a process line for recyclable materials that will be able to handle all of Lane County's recycling as well as take from neighboring counties, meeting the standards of the Recycling Modernization Act. Siting a processing facility in Lane County will avoid transportation of recyclable materials that are currently trucked to Portland/Vancouver area recovery facilities.

Equity

*How does this impact everyone in our community?*

The landfill is a resource for all residents to meet our community's long-term needs for safe and responsible solid waste disposal. Extending the life of the landfill is a benefit for everyone and succeeding generations. Likewise, reducing the emissions and the long-term environmental liability of the landfill benefits everyone. Increasing fees also carries an impact. However, a $2.30/month increase spread over four years seems reasonable for the multiple benefits to be gained.

To help offset the impact to low-income residents, a new discount is proposed at County transfer stations to offer a $1 off per load discount for customers receiving Supplemental Nutrition Assistance Program (SNAP) benefits by showing their Oregon Trail Card (EBT).

The Division acknowledges that the proposed fee increases would have a larger financial impact to large commercial accounts. The Board may wish to consider additional discounts for non-profits or public institutions. Such action would require coordination with haulers to determine how to separate out these accounts. The County currently offers a 33.3% discount to non-profit organizations that process donated goods for resale or reuse.

*Have we sought feedback from key stakeholders?*

The Waste Management Division has held regular meetings with the Solid Waste Stakeholder Group which comprises of representatives from cities, waste haulers, and businesses and non-profits connected to the waste and recycling industries. County staff have regularly provided updates and solicited feedback since the inception of this project. Since the last presentation to the Board of Commissioners on September 26, 2023, the Division has held meetings with local waste haulers, the Mayor and City Manager of Springfield, the Springfield City Club, the Springfield City Council, East Lane County City Leaders, West Lane County City Leaders, and EcoSort. The Division has also corresponded with representatives from Cottage Grove Garbage, Sanipac, Royal Refuse, the City of Eugene, and Garten Services.

<u>Collective Impact</u>

*Are we including the right partners?*

BHS was selected through a competitive process over two other proposals because of the quality of the proposal in achieving desired outcomes and the proven track record of the company. Each of following outcomes were met or exceeded with the proposed solution:

- *Increase diversion of materials from the landfill to achieve a 63% county-wide recovery rate.*

- The solution will enable the County to achieve over a 70% recovery rate.

- *Significantly reduce greenhouse gas emissions from Short Mountain.*

  - The processing facility is estimated to reduce over 88,000 tons of CO2 equivalent emissions annually.

- *Create local, sustainable economic development and jobs.*

  - The project will provide approximately 190 construction jobs and 65 ongoing jobs to operate the facility.

  - A third-party economic analysis estimated over $270 million in economic impacts benefiting Lane County over the life of the project.

- *Construct and operate at an affordable cost to the rate payer*.

  - Annual fee increases will be kept to 50-60 cents per month for an average household using curbside garbage service.

- *Use proven processing systems.*

  - BHS is a worldwide leader in supplying waste processing equipment. The company has constructed numerous waste processing facilities, including several in California that staff have visited to observe the facilities in operation.

- *Achieve the above in a Public-Private Partnership format.*

  - The proposed agreement would partner Lane County as the owner of the facility and the landfill with BHS, as a private firm supplying and operating the equipment. BHS would shoulder approximately 70% of the investment into the facility.

*Is this the most effective solution?*

  - Lane County's recycling rate has plateaued in recent years, with the most recent annual analysis indicating a decrease in the recovery rate, despite numerous initiatives and education campaigns. A waste processing facility is the only solution anticipated to enable the County to meet the goals described above. The Division requested proposals and evaluated two other potential solutions. The BHS proposal was evaluated to be the most effective solution.

G. <u>Alternatives/Options</u>

<u>Option 1:</u>

Proceed with the IMERF project by approving a contract with Bulk Handling Systems (BHS) for the construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF) and delegating authority to the County Administrator to execute the approved contract; approving the purchase of property in Goshen from Cecil D. Saxon Revocable Trust for siting the IMERF ($1,500,000); and approving adjustments to fees for solid waste services by 11% in 2024 and 11% in 2025.

Option 2:

Do not proceed with the IMERF project and continue to explore other strategies to increase waste diversion and methane gas capture at the landfill.

## IV. RECOMMENDATION

Staff recommends Option 1 to approve a contract with Bulk Handling Systems (BHS) for the construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF) and delegating authority to the County Administrator to execute the approved contract; to approve the purchase of property in Goshen from Cecil D. Saxon Revocable Trust for siting the IMERF ($1,500,000); and to approve adjustments to fees for solid waste services by 11% in 2024 and 11% in 2025.

## V. TIMING/IMPLEMENTATION

If approved, staff will:

1. Finalize the contract with Bulk Handling Systems and deliver to County Administrator to execute the approved contract.

2. Finalize the purchase of the property in Goshen and deliver an agreement to the County Administrator to execute.

3. Announce future solid waste fee increases to customers and stakeholders.

## VI. FOLLOW-UP

Follow-up discussions with the Board may be needed to evaluate zoning and land use for the proposed property.

If approved, the Division would return in the spring of 2024 to request approval of a $35 million bond to pay for the construction of the building.

## VII. ATTACHMENTS

Board Order

Processing & Services Agreement with Bulk Handling Systems

Property Sale Agreement

Table of Fees

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

| RESOLUTION & ORDER NO: | IN THE MATTER OF APPROVING A CONTRACT WITH BULK HANDLING SYSTEMS FOR THE CONSTRUCTION AND OPERATION OF AN INTEGRATED MATERIALS & ENERGY RECOVERY FACILITY (IMERF) AND DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO EXECUTE THE APPROVED CONTRACT; APPROVING THE PURCHASE OF PROPERTY IN GOSHEN FROM CECIL D. SAXON REVOCABLE TRUST FOR SITING THE IMERF ($1,500,000); AND APPROVING ADJUSTMENTS TO FEES FOR SOLID WASTE SERVICES. |
|---|---|

**WHEREAS**, in 2015, Lane County established a materials recovery goal to achieve a 63% recovery rate for 2025 as listed in ORS 459A.010; and

**WHEREAS,** in July 2019, the Board adopted the updated Solid Waste Management Plan (SWMP) as a Special Purpose Plan of the County's Rural Comprehensive Plan (Ordinance No. PA 1377 & 19-04) outlining and actions to reduce waste entering the landfill and increase the recovery of recyclable materials; and

**WHEREAS,** in December 2019, the Board approved the revised 2018-2021 Lane County Strategic Plan adding a Key Strategic Initiative and Key Activity Area under the *Vibrant Communities* priority: (*2.b.) Protect and enhance our natural and built environments* and (*2.b.2) Pursue programs to reach a 63% waste recovery rate by 2025*; and

**WHEREAS,** in February 2020, the Board adopted Order and Resolution 20-02-04-04, establishing a Climate Change Strategy for Lane County that included goals to reduce greenhouse gas emissions from County operations; and

**WHEREAS,** in October 2020, the Board approved the Climate Action Plan Phase 1: Operations Recommendations Report (B.O. 2 0-10-20-08) identifying the Short Mountain Landfill as the highest contributor (77%) of greenhouse gas emissions from County operations and recommending construction of an Anaerobic Digestion system at the Short Mountain Landfill as a key action for lowering emissions from the landfill; and

**WHEREAS,** in March 2022 Waste Management Division issued a Request for Proposals for Waste Recovery Facilities to help the Division meet or exceed its 63% recovery goal and selected Bulk Handling Systems (BHS) to enter into a contract to further explore building a Waste Processing Facility located near Short Mountain Landfill; and

**WHEREAS,** in April 2022, the Board added the objective (*2.b.7)* to *Fully vet the construction of a waste processing facility for the Short Mountain Landfill* to the 2022-2024 Strategic Plan; and

**WHEREAS,** in July 2023, the Division identified a potential property in Goshen for the IMERF and entered into a Purchase & Sale Agreement (PSA) pending approval by the Board of County Commissioners; and

**WHEREAS,** in September and November 2023, County staff provided updates to the Board of Commissioners completing the vetting status for constructing a waste processing facility; and

**WHEREAS,** per Oregon Revised Statute (ORS) 459.015 (1) (d): "It is in the best interests of the people of Oregon to extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials, and by requiring solid waste to undergo volume reduction through recycling and reuse measures to the maximum extent feasible before disposal. Implementation of waste prevention and recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with the operation of disposal sites."

**WHEREAS,** construction of an Integrated Materials & Energy Recovery Facility (IMERF) will enable Lane County to preserve the useful life of the Short Mountain Landfill, to promote economic development and the creation of well-paying jobs in the community, and will mitigate the largest source of greenhouse gas emissions from Lane County operations.

**NOW, THEREFORE,** the Board of County Commissioners of Lane County **ORDERS** as follows:

1. Approval of a contract with Bulk Handling Systems for construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF) and delegating authority to the County Administrator to execute the necessary agreements and contracts.
2. Approval to purchase a property in Goshen from Cecil D. Saxon Revocable Trust for siting the IMERF and delegating authority to the County Administrator to execute the agreement.
3. Approval of adjustments to fees for solid waste services including an 8% increase for the IMERF plus a 3% inflationary adjustment in fiscal year 2024-25 and fiscal year 2025-26.

**ADOPTED** this ___ day of_____, 2023.

_____
Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date_____ Lane County

_____
OFFICE OF LEGAL COUNSEL

# PROCESSING AND SERVICES AGREEMENT

**BY AND BETWEEN**

**LANE COUNTY OREGON**

**and**

**BHS PROJECTS @ LANE COUNTY LLC**

12.1.23 Draft

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**PROCESSING AND SERVICES AGREEMENT**

THIS PROCESSING AND SERVICES AGREEMENT (this "***Agreement***") is made as of [DATE] (the "***Effective Date***"), by and between LANE COUNTY, OREGON (the "***County***"), and BHS PROJECTS @ LANE COUNTY LLC, an Oregon limited liability company (the "***Company***"). The County and Company are collectively referred to herein as the "***Parties***" and each as a "***Party***."

**RECITALS**

A. In March 2022, the County issued a Requests for Proposals (the "***RFP***") for the Conceptual Design and Operational Services for a Materials Recovery Facility;

B. The Company provides certain services relating to municipal solid waste facilities, including composting facilities, and has extensive experience operating and managing such facilities and submitted a proposal in response to the RFP; and

C. The County desires to exclusively partner with the Company to develop and manage the project proposed under the RFP, as further described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Definitions.** The following words and phrases are used as defined throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 "***Acceptable Materials***" means materials from the collection of residential and commercial Municipal Solid Waste. Acceptable Materials does not include Commingled Recyclable Materials, or Source Separated Organics.

1.2 "***Acceptance Tests***" means the acceptance tests and protocols described on **Schedule 1.2** hereto.

1.3 "***ADC***" means material that is approved by the State of Oregon Department of Environmental Quality to be used for cover over the exposed solid waste at a landfill.

1.4 ***"Alternate Site"*** has the meaning set forth in Section 8.3(c).

1.5 "***Annual Projections***" means the annual projections provided by the County to the Company with respect to the projected Acceptable Materials to be delivered to the Facility in a Contract Year.

1.6 "***Applicable Law***" means Federal, State, or local law, ordinance, code, rule, or regulation or other similar legislation which in any manner affects Facility operations, collection, employment, site conditions, and all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

1.7 "***Change in Law***" means any of the following events or conditions occurring after the Effective Date which is demonstrated to have, or which may upon showing of reasonable basis be expected to have, a material adverse effect on the County's or the Company's ability to perform pursuant to this Agreement, or on the Project Site or Facility, or the acquisition, design, construction, equipping, start-up, operation, ownership, or possession of any or all of them, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or failure to act of the party relying thereon as justification for not performing (the "***Non-Performing Party***") any obligation or complying with any condition required of such party under this Agreement:

(a) the adoption, promulgation, issuance, modification, or official change in interpretation of any Applicable Law;

(b) the order and/or judgment of any federal, state, or local court, administrative agency, or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Non-Performing Party, provided that the contesting in good faith of any such order and/or judgment shall not constitute or be construed as a willful or negligent action or failure to act of such Non-Performing Party; or

(c) the suspension, termination, interruption, or failure of renewal of any permit, license, consent, authorization, or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership, or possession of the Project Site or Facility, as provided for herein or required with respect hereto, if it is not also the result of willful or negligent action or failure to act of the Non-Performing Party, provided that the contesting in good faith of any such suspension, termination, interruption, or failure of renewal shall not be construed as willful or negligent action or failure to act of such Non-Performing Party.

1.8 "***Cleaning and Housekeeping Services***" means the cleaning and housekeeping services to be provided by the Company with respect to the Facility as further described on **Schedule 1.8** hereto.

1.9 "***Commercial Operations Date"*** means the first date after the Acceptance Tests have been completed and confirmed by the CC.

1.10 "***Commingled Recyclable Materials***" means Recyclable Materials of more than one type that are combined together and that have been separated from the solid waste stream at the source of generation. The term does not include Recyclable Materials that are combined in such a manner that makes the material non-recyclable.

1.12 "***Commissioning Contractor***" or "***CC***" has the meaning provided to the term "CC" in Schedule 1.2.

1.13 "***CC Agreement***" means that certain agreement between the CC/IC and the County in the form attached hereto as **Exhibit 2**.

1.14 ***"Company's Incurred Costs"*** has the meaning set forth in Section 13.1(e).

1.15 "***Construction Contract***" means the Contract between the County and Chambers Construction Co. for the construction of the Facility and related improvements at the Project Site.

1.17 ***"Contingency Plan"*** has the meaning set forth in Section 13.3(a).

1.18 ***"Contract Year"*** has the meaning set forth in Section 2.1.

1.19 ***"County Indemnitees"*** has the meaning set forth in Section 14.1.

1.20 "***CPI***" means the consumer price index for All Urban Consumers (CPI-U), West Region; All Items, not seasonally adjusted, 1982-1984=100 reference base published by the United States Department of Labor, Bureau of Labor Statistics.

1.21 "***Daily Maximum Acceptable Materials***" means, with respect to a calendar day in which the Facility is required to operate for at least 8 hours pursuant to Schedule 1.32, the lesser of (i) the actual tons of Acceptable Materials received at the Facility on such day and (ii) 1,100 tons.

1.22 "***Deficiency***" means the Company's failure to complete defined, scheduled cleaning, preventative maintenance, and/or repair of mechanical systems, MRF buildings and ancillary structures, and/or facility parking lots, roadways, and grounds.

1.23 **"*Divert*" "*Diverted*"** and **"*Diversion*"** mean the capture and successful marketing and/or beneficial use of Acceptable Materials such that the Acceptable Materials are not landfilled, stockpiled, or otherwise not successfully marketed or beneficially used. For purposes of the Minimum AD Facility Diversion Guarantee, processed and dried digestate that meets any/all State and Federal requirements for ADC or Soil Amendment shall qualify as successfully marketed/beneficially used and not counted as disposal.

1.24 "***Dry Run System Test***" shall have the meaning provided in Schedule 1.2.

1.25 ***"DWM"*** means the Lane County Division of Waste Management.

1.26 "***Eligible Acceptable Materials***" means during a calendar year the sum of the Weekly Maximum Acceptable Material for each week of such calendar year.

1.27 "***Environmental Laws***" means collectively, all present and future laws (whether common law, statute, rule, regulation, ordinance or otherwise), the requirements of governmental authorities and any permits and guidance issued pursuant thereto relating to Hazardous Substances, human health, or the environment, as heretofore or hereafter

amended, and in any regulations promulgated pursuant thereto. For purposes of this definition, the term "***Hazardous Substances***" means at any time, (i) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Laws or any occupational safety and health laws as a "hazardous substance ," "hazardous contaminants," "hazardous constituents," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant," "toxic emission," "air contaminant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity," (ii) any oil, gas, and other petroleum hydrocarbons or any products, by-products, or fractions thereof (including, without limitation, gasoline, diesel fuel, and solvents), (iii) PCBs, (iv) urea formaldehyde, (v) any substance potentially injurious to the public health, safety, or welfare, the environment or the Project Site, (vi) asbestos, lead, cadmium, mercury, and other heavy metals, cyanide, pesticides, chlorinated hydrocarbons, and (vii) any substance which is a basis for liability to any governmental authority or third party under any applicable statute, regulation, or common law theory.

1.29 "***Equipment***" means the equipment to be located and operated at the Facility, as further described on **Schedule 1.29** hereto.

1.30 ***"Equipment Financing"*** has the meaning set forth in Section 2.4.

1.31 ***"Equipment Lender"*** has the meaning set forth in Section 6.1.

1.32 "***Excluded Material***" means waste delivered to the Facility that is not Acceptable Material.

1.33 ***"Excess RNG Revenue"*** has the meaning set forth in Section 8.5.

1.34 ***"Extension Period"*** has the meaning set forth in Section 2.2.

1.35 "***Facility***" means the material recovery facility (MRF) proposed to be constructed by the [Company] at the Project Site as described in the Facility Design Specifications.

1.36 "***Facility Design Specifications***" means the specifications for the construction and design of the Facility as described on **Exhibit 1** hereto.

1.37 ***"Facility Operations Manual"*** means the specified document containing the list of items required as described in Schedule 1.2 hereto.

1.38 "***Fully Process or Fully Processed***" means (i) with respect to MSW, such MSW has been processed through the mechanical processing system at the Facility and has been appropriately discharged and (ii) with respect to organic materials, such organic materials have been processed through the digestive process at the Facility.

1.39 "***General Contractor***" means the general contractor retained by the [Company] for the construction of the Project.

1.40 "***Hauler(s)***" means any person or entity that collects MSW within the County's boundaries and delivers such MSW to the Facility.

1.41 "***Hazardous Substances***" means:

(a) Any waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" pursuant to any state or federal law, including but not limited to the Resource Conservation Recovery Act, 42 United States Code section 6901 et seq., as amended, and the regulations promulgated thereunder;

(b) Any waste that contains polychlorinated biphenyls (PCBs) or any other substance whose storage, treatment or disposal is subject to regulation of the Toxic Substances Control Act, 15 United States Code section 2601 et seq., as amended, and the regulations promulgated thereunder;

(c) Any water that contains a "reportable quantity" of one or more "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 United States Code section 9601 et seq., as amended, similar provisions under the laws of the State of Oregon, and the regulations promulgated thereunder;

(d) Any substance that contains actionable levels of radioactive material; or

(e) Any waste resulting from medical procedures that may cause or is capable of causing a disease, such as biological waste, cultures, and stocks of etiologic agents and associated biologicals, pathological waste, and sharps that have been removed from their original sterile containers.

1.42 "***Hazardous Waste Exclusion and Safety Program***" means the programs for exclusion of Hazardous Waste from and safety at the Facility as further described in **Schedule 1.42** hereto.

1.43 ***"Housekeeping Plan"*** has the meaning set forth in Schedule 1.8**.**

1.44 "***Independent Consultant" or "IC"*** means a qualified independent third party to be engaged by the Company, as necessary, to provide a finding either sustaining or reversing the County's determination of Liquidated Damages as further described in Schedule 1.53**.**

1.45 "***IC Agreement***" means that certain agreement between the CC/IC and the County in the form attached hereto as **Exhibit [2]**.

1.46 ***"Initial Term"*** has the meaning set forth in Section 2.1.

1.47 "***Insurance Schedule*****"** means **Schedule 1.47** of this Agreement.

1.48 "***Labor Unrest***" means strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company.

1.49 "***Land Use Regulation***" means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes, or other actions of the County which affect, govern, or apply to the Facility, the Project Site, or the Landfill.

1.51 "***Landfill***" means that certain landfill owned and operated by the County which is located at 84777 Dillard Access Rd, Eugene, Oregon 97405.

1.52 "***Lease***" means the Commercial Lease between the County and the Company with respect the Project Site in the form attached hereto as **Exhibit 3**.

1.53 "***Liquidated Damages Schedule***" means **Schedule 1.53** of this Agreement.

1.54 "***Management and Operational Services***" means the management and operations services to be provided by the Company with respect to the Facility as further described on Schedule 1.54 hereto.

1.55 "***Minimum AD Facility Guarantee***" has the meaning set forth on Schedule 1.55.

1.56 "***Minimum MRF Diversion Guarantee***" has the meaning set forth on Schedule 1.55.

1.57 ***"Minimum Tonnage"*** has the meaning set forth in Section 8.1.

1.58 ***"MMBTU"*** means one million British Thermal Units.

1.59 "***Municipal Solid Waste***" or "***MSW***" means waste and discarded or rejected material produced by or as a result of human habitation, including, but not limited to wastepaper, plastics, metal, glass, fiber materials, garbage and other like materials; provided, however that MSW expressly excludes Hazardous Substances and any other Unpermitted Waste.

1.60 "***Nuisance Control Standards***" means the procedures and programs to minimize odor and dust resulting from operations and to control vectors as further described on Schedule 1.60 hereto.

1.61 ***"Occupancy Date"*** means the date the Company is entitled to occupy the Facility pursuant to the Lease.

1.62 *"**Operating Hours Schedule***" means the operating hours the Company shall maintain for the receipt of waste at the Facility as further described on Schedule 1.61 hereto.

1.63 *"**Operating Cost Component**"* has the meaning sort forth in Schedule 1.82.

1.64 ***"Operations Manager"*** has the meaning set forth in Schedule 1.60**.**

1.65 ***"Pass Through Component"*** has the meaning sort forth in Schedule 1.82**.**

1.66 "***Performance Bond***" means a performance bond meeting the standards set forth on Schedule 1.66 hereto.

1.67 "***Preventive Maintenance Program***" has the meaning set forth in Schedule 1.67.

1.68 "***Project"*** means the cooperative undertaking set forth in this Agreement for construction of the Facility, installation and commissioning of the Equipment, and commencement of operations thereat.

1.69 "***Project Site***" means the real property described in the Lease.

1.70 "***Rate Year***" means the period from July 1st through June 30th of the following year.

1.71 "***Recyclable Materials***" means the materials described on Schedule 1.71 hereto, which schedule may be updated by the County and the Company by mutual agreement from time to time.

1.72 "***Reasonable Amount of Time***" means the time for emergency health and safety events that the Company shall be required to take action immediately upon verbal notice by the County. For cleaning, preventative maintenance, and repair events for which the County has issued a timestamped, written notice, the Company shall have two business days to develop and submit a written plan of action that will be executed within the timeframe called out in the plan.

1.73 "***Reasonable Business Efforts***" those efforts a reasonably prudent business person would expend under the same or similar circumstances in the exercise of such person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such person has undertaken to satisfy, taking into account the economic effect of such efforts.

1.74 "***Renewable Natural Gas (RNG)"*** means natural gas that is a pipeline-quality gas which has been processed to purity standards and is fully interchangeable with conventional natural gas.

1.75 "***Renewable Natural Gas Standards***" means the standards for Renewable Natural Gas (RNG) produced at the Facility set forth on Schedule 1.75 hereto.

1.76 "***Residue***" means that portion of Acceptable Materials delivered to the Facility that is left over and must be disposed of after processing.

1.77 "***Residue Disposal Rate***" means the per ton rate, described in Section 8.3 and Schedule 1.82**,** as set and adjusted by the County, for the disposal of Residue.

1.78 "***Reporting Requirements***" means the reporting requirements with respect to the Company's operation of the Facility as further described on Schedule 1.78 hereto.

1.79 "***Scale House***" means the scale house to be operated by the County at the Project Site, as further described in the Facility Design Specifications.

1.80 "***Schedule of Performance***" means the schedule for the completion of the Facility as further described on Schedule 1.80 hereto.

1.81 "***Services Fees***" means the services fees payable by the County to the Company for the services provided in the Services Fees Schedule.

1.82 "***Services Fees Schedule***" means **Schedule 1.82** hereto.

1.83 "***Soil Amendments***" means the processed organic material from the Anaerobic Digestion facility that has been dewatered and conveyed to the SMARTURN composting system to be used as daily cover and a soil erosion product. It has achieved a pathogen reduction as required by EPA 503 and dried sufficiently to be useful as daily cover for landfill waste and must pass the SW-846 Test Method 9095-B: Paint Filter Liquids Test.

1.84 "***Source Separated Organics***" means yard trimmings, vegetative and non-vegetative food scraps, uncontaminated scrap wood, and compostable, non-recyclable paper.

1.85 "***Technical Dispute***" has the meaning set forth in Section 12.

1.86 "***Term***" has the meaning set forth in Section 2.2.

1.87 "***Tier 1 Costs"*** has the meaning set forth in Section 13.1(c).

1.88 "***Tier 2 Costs***" has the meaning set forth in Section 13.1(c).

1.89 "***Transportation Disruption***" means any significant delay, interruption, or stoppage in the flow of trade caused by a natural disaster, heightened threat level, an act of terrorism, or any transportation security incident.

1.90 ***"Uncontrollable Circumstance"*** has the meaning set forth in Section 13.1(a).

1.91 "***Unpermitted Waste***" means Hazardous Substances and any material that the Facility is not allowed to accept under Applicable Laws and MSW which are hard to handle, including, without limitation, tires, large appliances, waste from construction, demolition, or cleanup activities, or any material that because of size requires special handling.

1.92 "***Weekly Maximum Acceptable Materials***" means, with respect to a calendar week, the lesser of (i) sum of the Daily Maximum Acceptable Material for each day of such week and (ii) 5,100 tons.

2. **Term of This Agreement.**

2.1 Term. The initial term ("***Initial Term***") of this Agreement shall commence on the date of this Agreement and shall extend for a period of twenty-five (25) years after the Commercial Operations Date. Each year commencing with the date of this Agreement shall be a "***Contract Year***."

2.2 Extension of Term. This Agreement may be extended upon written agreement of the Parties up to two extensions of five (5) years each (each an "***Extension Period***" and, as applicable, together with the Initial Term, the "***Term***"). If either Party desires to extend the Term, such Party shall provide written notice to the other Party no later than 365 days before the end of the then-current Term. If the Company wishes to extend the Agreement, it shall provide in its notice to the County under this subsection an estimate of new capital costs that will be required or are advisable for the replacement or refurbishment of existing Equipment necessary for the continued operation of the Facility during an Extension Period, if any. In the event that the Company determines in its reasonable judgment that replacement or refurbishment of the existing Equipment is necessary, the Company shall be entitled to an adjustment of the Services Fees in an amount necessary to cover any additional costs related to installation and operation of any such new or refurbished Equipment.

2.3 Title to Equipment following Term. Upon expiration of the Term, the Company shall deliver title to the Equipment to the County without encumbrance, for the payment of ONE UNITED STATES DOLLAR ($1.00).

2.4 Conditions to Effectiveness. The obligations of the Company to perform under this Agreement shall be subject to satisfaction of the following conditions on or before July 1, 2024, which conditions may be waived only by the Company in writing:

(a) The Company shall have obtained financing for the purchase of the Equipment (the "***Equipment Financing***") in form and substance acceptable to the Company;

(b) This Agreement shall have been approved by the governing body of the County, with such approval in a form acceptable to the Company; and

(c) The Construction Contract shall have been approved by the governing body of the County, with such Construction Contract and approval in a form acceptable to the Company.

3. **County Obligations.**

3.1 Design and Construction. The County shall be responsible for:

(a) obtaining title to the Project Site and all necessary easements and land use approvals related to the operation of the Project at the Project Site as contemplated by this Agreement;

(b) [the design and construction of the Project, in reasonable consultation with the Company];

(c) obtaining and maintaining (i) all required permits and approvals for the construction of the Property and (ii) all required land use approvals to allow the operation of the Facility by the Company as contemplated by this Agreement. The County shall provide copies of all permits and approvals (and any renewals or amendments) to the Company within seven (7) days of the Company's request;

(d) engaging as CC a firm with professional experience in the solid waste industry, pursuant to the CC Agreement. The Cost of the CC will be equally shared between the County and the Company during the initial 120 and 180 days of acceptance testing. After that period Company pays the County $5,000 per day

(e) causing the CC to (i) prior to the commencement of construction of the Facility, render an opinion as to (A) the final design and the feasibility of the Facility to process material in accordance with this Agreement and (B) the suitability of the Equipment for its intended purpose, and (ii) monitor, conduct, and support the Company in completing the Acceptance Tests;

(f) ensuring that the Facility meets the Facility Design Specifications, which shall be in conformance with all Applicable Laws and Land Use Regulations;

(g) providing all utility connections to the Facility as may be reasonably required by the Company, including, without limitation, water, sewage, and electrical at no cost to the Company in accordance with the Lease;

(h) ensuring the completion of the Facility in accordance with the Schedule of Performance;

(i) obtaining all required certificates for occupancy and use of the Facility following completion of construction;

(j) maintaining insurance as required under the Insurance Schedule; and

(k) ensuring all required access to the Project Site, including roadway improvements and traffic control.

3.2 [County's Payment for the Facility. The County will pay the Company for the approved construction cost of the Facility, which may upon request from the Company include making payments during construction to reimburse the Company's payments to the contractor on a monthly basis. Final payment will be due within 30 days of completion and acceptance of the Facility.]

3.3 Equipment. The County shall cooperate with the Company in providing access to the Facility and Project Site during the construction period for the purposes of designing, engineering, manufacturing, and installing the Equipment.

3.4 Service Fees. Commencing with the first date that any Acceptable Materials are delivered to the Facility for processing, the County shall pay to the Company the Service Fees in accordance with the Services Fees Schedule.

3.5 Operational Services (County). During the Term of this Agreement, the County shall

(a) (i) operate the Scale House for acceptance of material and record the tonnage of each vehicle directed to the Facility (net of tare weight); (ii) provide such information to the Company via [METHOD] or other electronic means on a daily basis; (iii) provide the Company with read-only access to the scale system and reasonable access to audit records related to the Scale House; and (iv) before the Commercial Operation Date, provide the Company with its standard methodology for determining tare weights, which shall be subject to approval by the Company; and

(b) transport all Residue and Soil Amendment from the Facility to the Landfill.

4. **Company Obligations; Exclusive Services.** The Company shall comply with all requirements of this Agreement including but not limited to the following:

4.1 Construction and Completion of Facility. In connection with the construction and completion of the Facility, the Company shall:

(a) use commercially reasonable efforts to cooperate with the County on the design, financing, and construction of the Facility;

(b) together with the CC, conduct the Acceptance Tests related to the Equipment. The Acceptance Tests shall be completed and such completion to be confirmed by the CC before the Commercial Operations Date; and

(c) Deliver title to the Facility to the County without encumbrance, upon receipt of final payment from the County pursuance to Section 3.2. [TO DISCUSS CONCERNS REGARDING IMPACT ON ITC]

4.2 Equipment. The Company shall arrange for the design, engineering, manufacturing, and installation of the Equipment. All Equipment will be financed and purchased by the Company. The Company shall have the sole discretion to select and design the Equipment and determine the placement of the Equipment at the Facility.

4.3 Operational Services (Company). During the Term, the Company shall:

(a) obtain and maintain all required Facility operating and environmental permits;

(b) [provided that the County and its general contractor have met their schedule of major milestones set forth in the Schedule of Performance, ]deliver and install the Equipment by the deadline set forth in the Schedule of Performance;

(c) provide the Management and Operational Services, the Cleaning and Housekeeping Services, and the Preventive Maintenance Services;

(d) meet the Minimum Diversion Guarantees;

(e) maintain operating hours for the Facility as set forth in Operating Hours Schedule;

(f) staff the Facility appropriately and train personnel periodically to ensure safe, environmentally sound operations;

(g) operate the Facility in conformance with all applicable permit conditions relating to Environmental Laws;

(h) compile and provide to the County the reports set forth in the Reporting Requirements;

(i) provide the Hazardous Waste Exclusion and Safety Program in accordance with the timelines and standards set forth therein;

(j) adopt and comply with the Nuisance Control Standards;

(k) comply with Oregon Revised Statutes Section 279C.800 *et seq.* related to payment of prevailing wages offered to employees providing services under this Agreement; provided that qualified persons and entities are available at competitive costs and salaries, the Company will endeavor to maximize hiring and participation from entities based in Oregon to the extent necessary to meet its obligations under this Agreement;

(l) permit County employees or agents to monitor Facility operations by the Company and enter the Facility upon reasonable notice at any time, provided that any such monitoring or inspection does not disrupt the operations of the Facility;

(m) maintain in full force and effect insurance in the amounts and coverages set forth in the Insurance Schedule; and

(n) maintain in full force and effect the Performance Bond.

4.4 Host Fee. The Company shall pay to the County a host fee in consideration of the delivery of Commingled Recyclable Materials in the amount of TWENTY DOLLARS ($20.00) per ton of such material accepted at the Facility on a monthly basis.

5. **Facility Lease and Ownership.** The Company shall lease the Facility from the County pursuant to the Lease. The County shall be the sole owner of the Facility and will purchase or contract for all professional services, materials, and labor for the development, construction, and operation of the Facility, except as otherwise stated in this Agreement.

6. **Lender Rights.**

6.1 Collateral Assignment. The Company may grant a security interest in the Lease and this Agreement in favor any lender financing the purchase by the Company of the Equipment (the "***Equipment Lender***"). The County agrees to execute and deliver any documents or consents required by the Equipment Lender in connection with the financing of the Equipment, including a non-disturbance agreement in favor of the Equipment Lender.

6.2 Cure Right. Notwithstanding any provision of this Agreement to the contrary, the Equipment Lender shall have the right to cure any default by the Company and additional time to either cure or, if necessary to gain control of Facility or foreclose its security interest in the Equipment.

6.3 New Agreement. Upon the Equipment Lender's request, the County shall enter into a new agreement with the Equipment Lender or its successors or assigns under substantially the same terms and conditions of this Agreement upon a termination of this Agreement. The Equipment Lender may assign this Agreement or any new agreement to a third-party operator subject to approval by the County of the identity and qualifications of operator.

7. **Billing and Payment.**

7.1 Issuance. The Company shall invoice the County for all tons of Acceptable Material delivered and accepted at the Facility on a monthly basis within fifteen (15) days of the end of each month.

7.2 Payment. The County shall pay such invoices no later than thirty (30) days after receipt thereof.

7.3 Year-End Billing. Within thirty (30) days of the end of each Contract Year, if the Minimum Tonnage shall not have been delivered by the County in the previous Contract Year, the Company shall invoice the County for an amount equal to the shortfall in Tonnage multiplied by the per ton Service Fee then in effect. The County shall pay such invoice within thirty (30) days of receipt.

7.4 Disputes. In the event of a dispute regarding any such invoice, any disputed amounts shall be paid to the Company by the County during the pendency of any dispute. Once

resolved, the Company shall either (i) credit the County on its next invoice with an amount equal to any amounts incorrectly charged to the County, if any or (ii) provide the County an additional invoice if the dispute relates to a shortfall in payment by the County.

8. **Waste Volume and Processing.**

8.1 Minimum Tonnage. The County shall deliver or cause to be delivered to the Facility at least 160,000 tons of Acceptable Materials per Contract Year (the "***Minimum Tonnage***"), on a monthly basis as set forth in the Annual Projections. In the event the County fails to deliver the monthly Minimum Tonnage in any month as set forth in the Annual Projections, the County shall pay the Operating Cost Component on the number of tons of the shortfall below the Minimum Tonnage for such month.

8.2 Excluded Materials. The County shall direct all Haulers to use reasonable care to prevent delivery of Excluded Materials to the Facility. If Excluded Material is discovered by the Company at the Facility and the Hauler thereof can be identified, the Company will return such Excluded Material to the Hauler. The County shall cooperate with the Company to identify the Hauler of any Excluded Materials. If the Hauler cannot be identified, the Company will segregate it and the County shall re-deliver the Excluded Material to the Landfill if is of a type that may be accepted there. If it is not acceptable at the Landfill, the County shall remove the Excluded Material and dispose of it in accordance with Applicable Law at its sole cost and expense. Notwithstanding the foregoing, if Excluded Material is accepted at the Facility as a result of the Company's failure to comply with the Hazardous Waste Exclusion and Safety Program, the Company shall pay for disposal of such Excluded Material.

8.3 Disposal of Post-Processing Residue from Facility.

(a) *Recyclable Residue*. The Company may dispose of Residue generated from the operation of the Facility in the Landfill and shall pay the County for such disposal at a cost of $31.51/ton (such amount to be adjusted each year at the same rate of increase as the CPI); *provided*, *however,* the County shall be responsible for transporting all Residue from the Facility to the Landfill.

(b) *Soil Amendments.* The Company may deliver all Soil Amendments generated from anaerobic digestion at the Facility to the County for use as soil stabilization at the Landfill, with such delivery at the County's sole cost and expense. If the amount of Soil Amendments generated exceeds the amount required by the County, the Company shall use Reasonable Business Efforts to further process the material to a saleable product and the County shall reimburse the Company for any costs incurred by the Company to do so, including amortization of any additional equipment necessary to process the Soil Amendments to a saleable product, plus a commercially reasonable fee determined by Company.

(c) *Delivery to Alternate Site*. In the event that the Landfill is temporarily not available to the Company for disposal of residue or soil amendments generated

at the Facility, the Company will notify the County and thereafter deliver such material to an alternate disposal site identified by the Company (the "***Alternate Site***") until the Landfill is available. The County shall reimburse the Company within thirty (30) days of invoicing for all costs incurred for delivery of such material to the Alternate Site or may directly pay all such costs.

(d) *Permanent Unavailability of Landfill*. In the event the Landfill is, or is expected to be, permanently unavailable for any reason, the Parties shall meet and confer to determine whether the Company can still provide the Services at the Facility. In the event that the Company cannot reasonably provide the services, the Company may terminate this Agreement in accordance with Section 11.3(d).

8.4 Recycling and Diversion. The Company will use reasonable efforts to recycle as many Recyclable Materials as possible from the Acceptable Material. The Company will guarantee that provided that at least 35.55% of Acceptable Materials shall be diverted from the Landfill. The Company shall retain all revenue generated from the recycling or sale of Recyclable Materials, and such revenue shall have no impact on the Service Fees owed to the Company under this Agreement. Notwithstanding the foregoing, in the event the gross revenue from such sales of Recyclable Materials is greater than $5,000,000 in any year (such amount to be adjusted each year at the same rate of increase as the CPI, the "***Excess Recyclable Revenues***"), then the Company shall pay to the County 25 percent of such Excess Recyclable Revenues within ninety (90) days of the end of each of each Contract Year.

8.5 Production and Sale of Biogas. The Company shall cause the production of Renewable Natural Gas (RNG) meeting the Renewable Natural Gas Standards. The Company shall retain all revenue from the sale of RNG and such revenue will not affect Service Fee Component calculation. Notwithstanding the foregoing, if the gross revenue from the sales of RNG is greater than $5,000,000 in any year (such amount to be adjusted each year in accordance with the CPI, the "***Excess RNG Revenue***"), the Company shall pay to the County 25 percent of the Excess RNG Revenues within ninety (90) days of the end of each Contract Year.

9. **County Representations and Warranties.** As of the Effective Date, the County represents and warrants to the Company as follows:

9.1 Status. The County is duly organized and validly existing county of the State of Oregon. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

9.2 Authorization. The County has the authority to enter into and perform its obligations under this Agreement. The County taken all actions required by Applicable Law, its charter, or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of the County have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of the County enforceable against the County in accordance with its terms.

9.3 Environmental. The Project Site is not in violation of any Environmental Laws and is not subject to any existing, pending, or threatened investigation by and federal, state, or local governmental authority and is not subject to any remedial obligation or lien under or in connection with any Environmental Laws.

9.4 Zoning and Land Use Approvals. The Project Site is appropriate zoned for the conduct of the activities contemplated under this Agreement and the County has obtained all required land use approvals for the construction and operation of the Project.

9.5 Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or, to the County's knowledge, threatened against the County, or otherwise affecting the County, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the County's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of the County.

10. **Representations and Warranties of the Company.**

10.1 Corporate Status. The Company is duly organized, validly existing, and in good standing under the laws of the State of Oregon and is qualified to do business in the State of Oregon. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

10.2 Corporate Authorization. The Company has the authority to enter into and perform its obligations under this Agreement. The Company (and its members, if necessary) have taken all actions required by law, its organizational documents, or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of the Company have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of the Company enforceable against the Company in accordance with its terms.

10.3 No Conflict. Neither the execution and delivery by the Company of this Agreement, nor the performance by the Company of its obligations hereunder (i) conflicts with, violates, or will result in a violation of any existing Applicable Law; or, (ii) conflicts with, violates, or will result in a breach or default under any term or condition of any existing judgment, order, or decree of any court, administrative agency, or other governmental authority, or of any existing contract or instrument to which the Company is a party, or by which the Company is bound.

10.4 Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or, to the Company's knowledge, threatened against the Company, or otherwise affecting the Company, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the Company's performance hereunder, or which, in any way, would adversely

affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of the Company.

11. **Default; Cure**

11.1 Company Default. The occurrence of any of the following shall constitute a default of this Agreement by the Company:

(a) *Failure to Successfully Complete Acceptance Tests*. The Company fails to successfully complete, as determined by the independently "CC" both the MRF and AD acceptance tests as described in Schedule 1.2.

(b) *Failure to Perform Obligations*. The Company fails to perform any of its obligations under any provision of this Agreement.

(c) *Insolvency or Bankruptcy (Voluntary Petition)*. The Company files a voluntary petition for relief under any bankruptcy, insolvency, or similar law.

(d) *Insolvency or Bankruptcy (Involuntary Petition)*. An involuntary petition is brought against the Company under any bankruptcy, insolvency, or similar law which remains undismissed or unstayed for ninety (90) Days.

11.2 County Default. The occurrence of any of the following shall constitute a default of this Agreement by the County:

(a) *Failure to Pay Service Fees*. The County fails to pay any Service Fee as and when due and its failure is not cured within fourteen (14) days after written notice from the Company;

(b) *Failure to Perform Other Obligations*. The County fails to perform any of its obligations under any other provision of this Agreement and its failure to perform is not cured within thirty (30) days after written notice from the Company, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, the County shall not be in default so long as it supplies to the Company a plan for cure within such thirty (30) day period and takes reasonable steps to cure in accordance with such plan;

(c) *Insolvency or Bankruptcy (Voluntary Petition)*. The County files a voluntary petition for relief under any bankruptcy, insolvency, or similar law; or

(d) *Insolvency or Bankruptcy (Involuntary Petition)*. An involuntary petition is brought against the County under any bankruptcy, insolvency, or similar law which remains undismissed or unstayed for ninety (90) Days.

11.3 Remedies Upon Default.

(a) *Failure to Successfully Complete Acceptance Tests.* Should the Company fail to successfully complete either the MRF or AD acceptance tests, at the County's sole discretion that constitute a default of this Agreement by the Company [NEEDS TO INCLUDE WHAT REMEDY IS].

(b) *Failure to Accept Materials*. If the Company is in breach of this Agreement as a result of its inability to accept Acceptable Material at the Facility, the Company shall pay damages to the County in an amount set forth in the Liquidated Damages Schedule. In such an event, County may not terminate the Agreement and such damages shall be the sole and exclusive remedy to County.

(c) *Non-Material Breaches*. If the Company is in breach of this Agreement and such breach is accounted for in the Liquidated Damages Schedule, the Company shall pay damages to the County in an amount set forth in the Liquidated Damages Schedule under "B.2. Failure to Cure". In such an event, County may not terminate the Agreement and such damages shall be the sole and exclusive remedy to County.

(d) *Company's Insolvency, Bankruptcy, or Cease of Operations.* If the Company is in breach of this Agreement and a petition for bankruptcy is filed as described in subsections 11.2(d) or (e), or if the Company has ceased operations, the County will have the immediate right to terminate this Agreement and assume the Company's operations and Equipment to maintain continuity of materials processing.

(e) *Other Breaches*. Subject to the requirements of Section 12, if a default occurs other than as provided in paragraphs (a)-(c) of this Subsection 11.3 and such default is not cured within a reasonable period agreed to by the Parties, then the non-defaulting party may serve notice upon the defaulting party that this Agreement and the then unexpired Term shall cease and expire on the date specified in such notice, without any right on the part of the defaulting party to save the forfeiture by payment of any sum due or by the performance of any term or condition broken.

(f) *Damages*. No Party shall be liable to any other Party for any indirect, consequential, or similar damages.

11.4 Effect of Termination; Survival.

(a) *Effect of Termination*. Upon expiration or termination of this Agreement, the Parties' obligations with respect to this Agreement will terminate, except as to liabilities or claims of either Party that have accrued or arisen before the termination date and the rights under this Subsection 11.4.

(b) *Purchase of Equipment*. Upon a termination of this Agreement by any Party, within 90 days of receipt or delivery of the termination notice, the County shall either assume the Company's obligations to the Equipment Lender pursuant to Section 11.3(d) or, at the County's option pay (i) to the Equipment Lender (as their interests may appear) an amount equal to all outstanding indebtedness related to the construction and delivery of the Equipment PLUS (ii) if this Agreement is terminated by the Company as a result of the County's default, an amount sufficient to compensate the Company for the loss of the tonnage during the remaining term of the Agreement. Upon payments of the amounts set forth in this paragraph, the Company shall deliver title to the Equipment. Until payment of the amounts set forth herein, the Company and the Equipment Lender shall retain the continued right to access the Facility and Project Site and remove any Equipment therefrom.

(c) *Survival*. Subject to the limitations and other provisions of this Agreement, Section 11, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement.

11.5 Duty to Mitigate. The Parties shall have an obligation to mitigate their damages hereunder.

12. **Dispute Resolution.** Except in those cases where this Agreement references the use of a Commissioning Contractor or Independent Consultant to resolve a dispute between the Parties, in which case any such disputes shall be resolved based on the decision of the CC or IC, the parties are required to exert commercially reasonable efforts to cooperatively resolve any disagreements that may arise under this Agreement. This may be done at any management level, including at a level higher than the persons directly responsible for administration of the Agreement. In the event that the Parties alone are unable to resolve any conflict under this Agreement, they are encouraged to resolve their differences through mediation or another cooperative dispute resolution process. All matters remaining in dispute between the Parties to this Agreement arising from or relating to the Agreement, including without limitation alleged tort or violation, are governed by, construed, and enforced in accordance with the laws of the State of Oregon without regard to principles of conflict of laws. All disputes and litigation arising out of this Contract will be decided by the state or federal courts of Oregon. BOTH THE COUNTY AND THE COMPANY HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVE ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Venue for all disputes and litigation will be in Lane County, Oregon. This section does not constitute a waiver by County of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court. In the event an action, suit of proceeding, including appeals, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal.

Notwithstanding the foregoing, for a controversy, dispute, or claim arising out of, or related in any way to the technical specifications of the Equipment or the operation thereof (a "***Technical Dispute***"), the parties shall cooperate with one another in selecting an independent engineer to resolve such Technical Dispute. Each Party shall cooperate with such independent engineer and with one another in selecting the independent engineer to resolve the Technical Dispute. The parties covenant that they will use commercially reasonable efforts in participating in such resolution.

13. **Excuses From Performance.**

13.1 Uncontrollable Circumstances.

(a) *Force Majeure*. The Parties shall be excused from performing their respective obligations under this Agreement in the event they are prevented from so performing by reason of floods, Transportation Disruptions, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government (including legislative or judicial action), pandemic, epidemic, and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder (an "***Uncontrollable Circumstance***").

(b) *Notice*. The Party claiming excuse from performance as a result of Uncontrollable Circumstances shall, within two (2) Business Days after such Party has notice of such circumstances, give the other Party notice of the facts constituting such circumstances, the proposed solution, an estimate of the costs and time necessary to resume its obligations, and asserting its claim to excuse under this subsection. When the Facility resumes operation, such Party's obligations under this Agreement shall resume.

(c) *Tolling; Conferral*. In the event of an Uncontrollable Circumstance during construction of the Facility, the Parties may agree to toll the completion date and other milestones related thereto. If an Uncontrollable Circumstance causes major damage or destruction of the uncompleted Facility:

(i) If available insurance will recover the cost to repair or rebuild the facility, the County shall repair or rebuild the Facility;

(ii) If available insurance is insufficient to cover the cost to repair or rebuild the Facility, the County may elect to repair or rebuild the Facility if the County assumes all excess, uninsured costs in an amount not to exceed ONE MILLION UNITED STATES DOLLARS ($1,000,000) (the "***Tier 1 Costs***");

(iii) If uninsured costs to repair or rebuild the Facility exceed the Tier 1 Costs the Company may repair or rebuild the Facility if (i) the total costs above the Tier 1 Costs do not exceed FIVE MILLION UNITED STATES DOLLARS ($5,000,000) (the "***Tier 2 Costs***") and (ii) the County agrees to an

adjustment to the Service Fees in an amount sufficient to enable the Company to recover such excess costs; or

(iv) If uninsured costs exceed the Tier 2 Costs, the County or the Company may choose to terminate this Agreement.

(d) *Conferral*. The Parties shall meet and confer to determine whether repair or rebuilding of the Facility is feasible if insurance will cover all costs to do so or, in the event that insurance will not cover the total amount cost to repair or rebuild the Facility, if either or both Parties are willing to provide additional funds to repair or rebuild the Facility. If the Parties cannot come to an agreement within thirty (30) days of beginning such discussions, either Party may terminate this Agreement.

(e) *Mitigation of Damages*. In the event this Agreement is terminated in accordance with this subsection, the Company shall attempt to mitigate costs incurred by the Company resulting from the Uncontrollable Circumstance, including, without limitation, the costs of the Equipment already purchased, costs related to Equipment under construction at the Facility, design of the Equipment, and any other costs (the "***Company's Incurred Costs***"). The Company shall, as soon as reasonably practicable, provide an assessment of the Company's Incurred Costs to the County and the County shall pay to the Company the total of those costs in a lump sum within thirty (30) days of invoicing by the Company or over a payment schedule to be agreed upon by the Parties.

13.2 Change in Law.

(a) *Good Faith Conferral*. If there is a Change in Law that is reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated under this Agreement or which shall make this Agreement or any related agreements unlawful or unenforceable, or which would be reasonably likely to subject either Party to this Agreement, or any member, manager, officer, director, employee, agent, or affiliated organization to any civil or criminal penalties or administrative sanctions, the Parties shall immediately use their best efforts to enter into a new service arrangement or basis for compensation for the services furnished pursuant to this Agreement that complies with the applicable laws, regulations, or policies, or which eliminates the possibility of any penalties, sanctions, or unenforceability, and that approximates as closely as possible the economic position of the Parties prior to the change.

(b) *Termination Right*. *Conferral*. If the Parties cannot come to an agreement within thirty (30) days of beginning such discussions, either Party may terminate this Agreement.

(c) *Mitigation of Damages*. In the event this Agreement is terminated in accordance with this paragraph, the Company shall attempt to mitigate the Company's Incurred Costs. The Company shall, as soon as reasonably practicable, provide an assessment of the Company's Incurred Costs to the County and the County shall pay to the Company the total of those costs in a lump sum within thirty (30) days of invoicing by the Company or over a payment schedule to be agreed upon by the Parties.

13.3 Labor Unrest. In the event of Labor Unrest, the Company shall be excused from performance under this Agreement to the extent that the Company has:

(a) provided to the County a contingency plan (the "***Contingency Plan***") within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The Contingency Plan shall address, at a minimum, the priority of collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized, and communications procedures to be used; and

(b) Meet the requirements of the Contingency Plan.

In the event that such Labor Unrest lasts for a period of 90 days, Company shall pay to the County compensatory damages in the amount set forth in the Schedule 1.53.

14. **Indemnification.**

14.1 Company Indemnity. The Company shall indemnify, protect, defend, and hold harmless the County and each and every officer, director, member, partner, employee, manager, affiliate, subsidiary, and agent of County, and the respective heirs, personal representatives, successors, and assigns (together the "***County Indemnitees***"), against and from all liabilities, obligations, damages, judgments, penalties, claims, actual losses, reasonable costs and expenses of every nature, including, without limitation, reasonable and documented out-of-pocket attorney fees, which may be imposed on or incurred by or asserted against them or any of them in connection with, arising out of or relating to the negligence or willful misconduct of Company or its agents, employees, or contractors, except to the extent resulting from the negligence or misconduct of the County Indemnitees. The obligation to indemnify, protect, defend, and hold harmless under this subsection shall survive the termination of this Agreement.

14.2 County Indemnity. To the extent permitted by the Oregon Constitution, ORS 32.320, and by the Oregon Tort Claims Act, the County shall indemnify, protect, defend, and hold harmless the Company and each and every shareholder, officer, director, member, partner, employee, manager, affiliate, subsidiary, and agent of the Company, and the respective heirs, personal representatives, successors, and assigns (together the "***Company Indemnitees***"), against and from all liabilities, obligations, damages, judgments, penalties,

claims, actual losses, reasonable costs, and expenses of every nature, including, without limitation, reasonable and documented out-of-pocket attorney fees, which may be imposed on or incurred by or asserted against them or any of them in connection with, arising out of or relating to the negligence or willful misconduct of the County or its agents, employees or contractors, except to the extent resulting from the negligence or misconduct of the Company Indemnitees. The obligation to indemnify, protect, defend, and hold harmless under this subsection shall survive the termination of this Agreement.

15. **Waiver of Governmental Rights**.

15.1 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any statute, ordinance, or other limitation enacted after the Effective Date. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the development or operation of the Facility in any way contrary to the terms and intent of this Agreement shall not apply to the Facility.

15.2 Fees, Taxes, and Assessments. The County shall not, without the prior written consent of the Company, impose any additional fees, taxes, or assessments on all or any portion of the Project, other than fees and taxes imposed on a county-wide basis.

15.3 Moratorium. No County-imposed moratorium, ordinance, resolution, or other Land Use Regulation or limitation shall apply to or govern the development or operation of the Facility.

15.4 Waiver of Right of Condemnation. The County hereby waives all rights to acquire the Equipment and any other property of the Company utilized in the performance of its obligations under this Agreement through the exercise of condemnation or eminent domain.

16. **Intellectual Property**. The Company shall be the sole owner of all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion.

17. **Miscellaneous**

17.1 Relationship of the Parties. The Parties intend that the Company shall perform the services required by this Agreement as an independent contractor engaged by the County and not as an officer or employee of the County nor as a partner of or joint venturer with the County. No employee or agent of the Company shall be deemed to be an employee or agent of the County and no employee or agent of the County shall be deemed to be an employee or agent of the Company. Except as expressly provided herein, (i) the County shall have the exclusive control over the construction of the Project and (ii) the Contractor shall have the exclusive control over the manner and means of conducting the services performed under this

Agreement, and over all persons performing such services. Each Party shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents.

17.2 Assignment. Except as provided in Section 6 and in this subsection, either Party may assign their rights and obligations under this Agreement in accordance with this subsection. The County may assign this Agreement upon written consent of the Company to another governmental entity provided the successor governmental entity has financial capability to perform and agrees to be bound by the terms of this Agreement. The Company may assign this Agreement upon written consent of the County to a third-party of similar size, experience in operating similar facilities, and financial capability to carry out all of the Company's obligations under this Agreement. Consent to an assignment under this subsection shall not be unreasonably withheld by either Party.

17.3 Notices or Demands. All notices, waivers, demands, requests, or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a)if mailed, on the third (3rd) business day after deposit in the United States certified or registered mail, postage prepaid, return receipt requested, or (b)if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier, or (c)if delivered by electronic mail with a verified receipt, the next business day after transmittal, in every case addressed to the Party to be notified as following:

If to Company:_____
_____

With copy to: _____
_____

If to County: _____
_____

With copy to: _____
_____

or to such other address(es) or addressee(s) as any Party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection, refusal to accept, or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

17.4 Headings. The headings and captions of this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of the provisions hereof.

17.5 Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not

be affected thereby, but each term and provisions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17.6 Governing Law. With regard to any dispute between the Parties concerning this Agreement, the terms of the Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to any choice of law provisions rules (whether of the State of Oregon or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Oregon.

17.7 Injunctive Relief. To the extent Company seeks injunctive or other equitable relief pursuant to one or more applicable sections of this Agreement, the dispute resolutions requirements under Section 12 do not apply and Company shall be entitled to seek all such injunctive or other equitable relief.

17.8 Waiver of County's Right to Exclude. County grants, acknowledges, and confirms that Company and its representatives retain an irrevocable right of access to the Facility during the Term of the Agreement including, without limitation, access to all records and information related the operation of the Facility and, in the event of expiration or termination of this Agreement, the right of access to the Facility for the limited purpose of retrieving Equipment, documents, or records of the Company.

17.9 Entire Agreement. This Agreement, including the Exhibits and Schedules, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

17.10 Waiver. The failure of any Party hereto to enforce any term, covenant, condition, or agreement hereof shall not be deemed to avoid or affect the right of such Party to enforce the same term, covenant, condition, or agreement on the occasion of the subsequent default or breach.

17.11 Counterparts. This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the Parties. Delivery of an executed counterpart's signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

17.12 Further Assurances. Each Party agrees to execute and deliver to the other Party such certificates, documents and agreements as the other Party may reasonably request in order otherwise to carry out the intents and purposes of this Agreement.

17.13 Attorney Fees. If either party brings an action or proceeding involving to enforce the terms of this Lease or to declare rights hereunder, then the Prevailing Party in any such action or proceeding shall be entitled to reasonable attorney fees, including upon appeal. The

term, “Prevailing Party” shall include, without limitation, a party that substantially obtains or defeats the relief sought whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorney fees award shall not be computed in accordance with any court fee schedule but shall be such as to fully reimburse all attorney fees reasonably incurred. In addition, the Prevailing Party shall be entitled to attorney fees, costs, and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default.

17.14 Amendment. This Agreement may not be altered, changed, or amended, except by an instrument in writing, signed by the party against whom enforcement is sought. This Agreement and any exhibits contain the entire agreement reached in all previous negotiations between the parties hereto and there are no other representations, agreements or understandings of any kind, either written or oral, except as specifically set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first hereinabove written.

| **COUNTY:** | **BHS PROJECTS @ LANE COUNTY, LLC:** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

**SCHEDULE 1.2**

**Acceptance Tests**


**A MRF SYSTEM COMMISSIONING AND PERFORMANCE TESTING REQUIREMENTS**

**A.1 Phase 1 - Component Testing**

**A.2 Phase 2 - Dry Run System Test (not loaded):**

**A.3 Phase 3 - Function Testing (loaded):**

**A.4 Phase 4 - MRF System Performance Test:**

**A.4.1 Performance Testing Schedule**

**A.4.2 Performance Tests**

**A.4.2.1 Hourly Production Rate**

**A.4.2.2 Target Product Recovery Percentages**

**I Minimum Recovery Percentages**

**II Product Definitions and Qualifications**

**II Testing Protocol**

**A.4.3 Test Failure**

**A.5 Miscellaneous**

**B ORGANIC SYSTEM TESTING REQUIREMENTS**

**B.1 Phase 5 – Component Testing:**

**B.2 Phase 6 – Digester Commissioning**

**B.3 Phase 7 – Lane Turner Commissioning**

**B.4 Phase 8 – Organic System Performance**

**B.4.1 Performance Test Schedule**

**B.4.2 Performance Tests**

**B.4.3 Test Failure**


# A MATERIAL RECOVERY SYSTEM COMMISSIONING AND PERFORMANCE TESTING REQUIREMENTS

## A.1 Phase 1 – Component Testing:

1. Included in Phase I of the commissioning protocol, the Company will cause Bulk Handling Systems ("***BHS***") to test each piece of equipment in the processing lines, using BHS's standard commissioning protocol, and shall provide written verification to the County that each piece of equipment has been properly installed and is ready for further testing. Given that there is both a Single Stream "SS" line and a Municipal Solid Waste "MSW" line, BHS will work with Company to determine if all MRF testing will be tested separately by line or together. This phase of the commissioning and performance test program is referred to as "Component Testing". Phase I, will be directed, monitored, measured, and reported to the County by BHS on behalf of the Company during the

defined 120-day testing period. The County will work cooperatively with BHS and the Company to minimize the impact of the Phase 1 commissioning process upon BHS's installation and system start-up process.

2. BHS's field testing and motor control programming will include Emergency stops / interlocks testing, with results reported to the County and Company by BHS.

3. Documentation of event and results will be included within an overall monitoring report which includes all four of the MRF testing phases. The following items are expected for the Phase 1 report:

    a. Listing of inter-locks and emergency stops that exist within the system, the date and time tested and the result of the test (pass/fail), and a brief description of how the test was performed.

    b. Listing of each conveyor within the system, the date and time the test was performed, and a brief description of the test.

    c. Listing of each component (other than listed above) of the system that was tested, the results of the test, and a brief description of the testing.

    d. Signed statement that BHS has completed the required testing under the guidelines of this document and that all components passed the testing protocol. Exceptions will be highlighted; for example, if a component failed a test, was repaired and retested and passed.

    e. Schedule for Phase 1 retesting in the event of failure.

4. Once testing for each of the MRF System's mechanical and electrical components has been successfully completed and equipment reports have been submitted to the County and Company for all pieces of equipment, the Company, through BHS, shall notify the County in writing, and receive the County's written acknowledgement (within 24 hours) before proceeding with Phase 2 of the Performance Test Program.

## A.2 Phase 2 – Dry Run System Test (not loaded):

1. This phase of the Commissioning Protocol shall consist of the continuous uninterrupted operation for four (4) hours of all electrical / mechanical processing systems and equipment, (the "***Dry Run System Test***"). This test run shall be conducted in the absence of feedstock and in the presence of County representatives.

2. The purpose of this Phase of the test program is to ensure that the individual pieces of equipment have been properly installed and interlocked as required, and that these pieces of equipment can operate collectively, as a system, without malfunction.

3. The Dry Run System Test shall be conducted on a continuous and uninterrupted basis for a full four (4) hours. The Company shall ensure that the Facility is adequately staffed, at all times during the test.

4. Once the Dry Run System Test has commenced, unscheduled mechanical or electrical shut down of the processing lines or any other component of the system, for any reason other than accidental E-stop activation or an observed safety emergency, shall constitute failure of the test.

5. If for any reason the Dry Run System Test is not successfully completed, the Dry Run System Test shall be repeated until it is completed successfully for the four (4) hours duration as specified.

6. BHS will record and document the testing event and the results. Documentation of event and results will be included within an overall monitoring report which includes all four phases of the MRF testing protocol. The following items are expected for the Phase 2 report:

    a. Report outlining the Dry Run test(s) and the results (pass/fail).

    b. Description of the test (details).

    c. Description of any failure causing the test to be suspended, canceled, or otherwise not completed in full.

    d. Repairs required to correct the failure.

    e. Schedule for Phase 2 retesting in the event of failure.

## A.3 Phase 3 - Function Testing (loaded):

1. The purpose of this Phase of the test program is to provide the MRF-system staff involved in the commissioning of the Facility (including sorters and mobile/fixed equipment operators) with an opportunity to become familiar with the processing systems prior to the start of the final stage of the Commissioning Protocol, and to demonstrate to the County and Company that the equipment has been properly installed and functions as intended.

2. BHS shall not commence the Phase 3 test until Phase 2 has been successfully completed and the County has provided written acknowledgement (within 24 hours) to proceed with Phase 3.

3. The County shall provide testing material, consistent with the material characterization in the BHS RFP response, required during the Phase 3 Function Test. Before starting

testing on Phase 3, the County shall assure that sufficient appropriate testing material is available for each day's testing.

4. At a minimum, this phase of testing shall be conducted over two (2) consecutive days, five (5) consecutive hours per day. If BHS requires a longer period of time to make system adjustments, the County will endeavor to continue to provide the required testing materials up to a maximum of four (4) working days during a 6 (six) day period, Monday through Saturday.

5. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.

6. BHS will record and document the testing events and the results. Documentation of the events and results will be included within an overall monitoring report which includes all four phases of the MRF testing protocol. The following items are expected for the Phase 3 report:

    a. Report outlining the results of standard operations of the System and any system corrections to be resolved before Phase 4.

    b. Date and times of each day of processing, approximate MSW processed, TPH, number of sorters on the line and their positions..

    f.

## A.4 Phase 4 – MRF System Performance Test:

1. Phase 3 must be completed prior to the start of Phase 4 and the County has provided written acknowledgement (within 24 hours) to proceed with Phase 4. The notification shall certify that all individual mechanical and electrical components of the MRF system have been properly installed and collectively are functioning as a system.
2. During the Phase 4 stage, the Company shall have available all necessary personnel formed and ready to operate the plant (sorters, equipment mechanical and operator, supervisor, etc.
3. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.
4. The County shall provide all of the required testing materials during the scheduled testing period. Before starting test on Phase 4, the County shall assure that sufficient testing material is available for each day's testing.
5. The performance requirements for each of the four (4) testing days must be chronologically and independently achieved.

6. Phase 4 Performance testing shall be scheduled and completed during a single, six-day period (Monday – Saturday).

### A.4.1 Performance Testing Schedule

The Performance Run Test shall be conducted over a total of four (4) consecutive, daily work shifts. During Phase 4, the shift schedule will be as follows:

| | |
|---|---|
| 7:00 A.M. | Shift commencement and system start-up |
| 9:00 A.M. | Break |
| 11:30 A.M. | Lunch |
| 2:00 P.M. | Break |
| 3:30 P.M. | System shut-down and commencement of plant clean-up |
| 4:00 P.M. | End Shift |

The four (4) testing days will be scheduled, as follows:

| | |
|---|---|
| Day One | Independent testing of the MSW processing system for hourly rate of production (throughput) |
| Day Two | Independent testing of the MSW processing system for target product recovery percentages. |
| Day Three | Day One retest, if needed. |
| Day Four | Day Two retest, if needed. |

### A.4.2 Performance Tests

The Phase 4 Performance Test involves the assessment of the following two (2) individual tests:

1. Hourly Rate of Production
2. Target Product Recovery Percentages

#### A.4.2.1 Hourly Rate of Production

The mechanical waste processing system will process Municipal Solid Waste (MSW) at an average rate of fifty tons per hour (50 TPH). The average rate of production will be calculated by dividing the total weight (tonnage) of MSW processed during the testing period by the total amount of time (hours and minutes) that was required to process the MSW during the testing period.

Before commencement of the Production/Throughput test, the operator will thoroughly empty the facility of all MSW, MSW derivatives, and recyclable materials except for baled fiber, plastics, and metals that must be set aside and isolated from materials (commodities) produced during the testing period. Specifically, bunkers and silos, storage bins and boxes, compactors and balers will be emptied (with exception for bales lodged in the extrusion chamber of a single-ram baler). The platforms, walkways, and warehouse floors will be thoroughly cleaned. The entire system will be emptied; the infeed apparatus, screens, conveyor belts, et al.
Then, at the end of the testing period, all of the outputs produced by the mechanical processing system during the testing period will be gathered and weighed. Outputs include all baled commodities, loosely stored commodities, other locally salable materials such as mixed inert materials, wood, engineered fuel, digestible organic materials, and all process residue including materials gathered from the stairs, platforms, and the warehouse floor. The total weight of the combined outputs during the testing period shall be considered the total weight of all material processed during the testing period.

### A.4.2.2 Target Product Recovery Percentages

#### I Minimum Recovery Percentages

The following Minimum Recovery Percentages shall be the Diversion Guarantees from Schedule 1.29.

#### II Product Definitions and Qualifications

Recoverable commodities for the purposes of determining the Minimum Recovery Percentages as established above, shall be defined as follows**:**

1. **OCC** – Paperboard containers consisting of kraft linerboard with corrugated fillings.

    a. Recovery rate applies to OCC larger than 64 square inches with each outside dimension being 8 inches or larger. Wet, crumpled, or contaminated materials will be excluded from the residue audit for purposes of calculating recovery rate.

2. **Mixed Paper** – Miscellaneous recyclable paper including newspaper, magazines, non-corrugated boxboard and mixed household paper.

    a. Recovery rate applies to paper that is larger than 6 inches in both of the larger dimensions. Wet, crumpled, contaminated materials will be excluded from the residue audit for purposes of calculating recovery rate.

3. **Plastic Bottles and Containers** – Clean beverage and food containers comprised of standard recyclable polymer types (marked any of #1, #2, #5).

    a. Recovery rate apply only to clean, whole plastic bottles that do not contain more than two (2) ounces of liquid or other contaminates. The residue audit for purposes of calculating recovery rates will exclude clumped or interlocked containers, shredded or torn containers, black or dark colored containers, containers that are muddy, dirty, or obscured more than 50% by a label or other

item, containers smaller than 3 inches in more than one dimension, thin or lightweight objects with unpredictable aerodynamics and indeterminate polymer types (not marked with a recycling symbol #1-#7).

4. **Ferrous Cans** – Steel food and beverage cans

    a. Recovery rate applies only to empty steel food and beverage cans sized between 3 inches in at least 2 dimensions. Clumped, interlocked, shredded or torn, contaminated and multi-material objects or items that are not steel food or beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.

5. **Aluminum Cans** – Used aluminum beverage cans (UBC)

    a. Recovery rate applies only to empty aluminum (AL) beverage cans having at least 2 dimensions larger than 2.5 inches. Clumped, interlocked, shredded or torn, contaminated and multi-material objects and items that are not used aluminum beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.

6. **Anaerobic Digester Organic Material** Solid wastes containing material originating from living organisms and their metabolic waste produces including, but not limited to food discards, plant trimming and other materials less than 3 inches in size, with a bulk density greater than 800 pounds per cubic yard, and non-organic contaminants of less than 20%.

## III Testing Protocol

BHS will prepare the testing protocol and provide field supervision to complete the tests. The Company will provide sorters to assist in the testing.

Residue Characterization and Quantification

BHS will randomly select a minimum of one sample each hour of residue samples during steady state conditions excluding right before or after startup/shutdown or break times during the course of the Phase 4 testing period and complete a composition analysis of the residue, as follows:

BHS will randomly collect the samples from the Facility residue. The sample size will be approximately one (1) cubic yard. The materials will be sorted into the following categories:

1. Recoverable testing materials and Recoverable Anaerobic Digester Material
2. All other materials (residue)

The segregated materials will be weighed, and a composition table will be created to indicate the number of pounds and percentage of each material category.

The purpose of the residue testing is to ascertain the types and amounts of materials targeted for recovery that are not recovered.

Recovered Material Quantification

BHS will quantify the amount of each of the following categories recovered during the test period:

1. Recoverable testing materials
2. Recoverable Anaerobic Digester Material

Calculation of Minimum Recovery Percentages

The Minimum Recovery Percentage shall be calculated based on the material sent as residue to the landfill in comparison to the total material deleiverd to the facility.. For Example:

Recovered + Unrecovered MSW Material during Testing Period (Total MSW) 400 Tons

Calculation of MSW Material Recovery

250 Tons Residue to Landfill / 400 Tons Total Acceptable Materials delivered to Facility(inbound MSW)

1 – (250/400) = .375 (37.5% Recovery)

### A.4.3 Test Failure

All four phases of MRF system testing shall be successfully completed within 120 calendar days following the scheduled commencement of Phase 1 testing. At the County's discretion, failure to successfully complete the requirements of all four phases of testing within the defined 120-day period, shall constitute an Event of Default.

In the event of a test failure, at any time during or after the defined 120-day testing period, the resumption of testing and rescheduling of the failed test(s) shall be determined by agreement between the County and BHS.

In the event of failure to complete all testing requirements within the defined 120 day period, at the County's discretion, BHS will pay the County an amount not-to-exceed $5,000.00 (five thousand dollars) per retest to offset the ongoing costs of testing until all testing requirements are successfully completed.

[Placeholder] – Articles of Default; Cure and Liquidated Damages to be reviewed by R3 & County Counsel

Within seventy -two (72) hours of completing the Phase 4 testing program, BHS will inform the Company of the results of the Performance Test (Phase 4):

(a) Did the MSW processing system meet the hourly throughput requirements (hourly design capacity)?

(b) Did the system achieve the guaranteed recovery specifications of the contract?

In the event of failure, the Company shall advise the County as to the cause(s) of failure and shall cause BHS to take corrective measures as required. Once the problems have been corrected, BHS will be entitled to re-run failed tests indicated in Phase 4 of the test program as outlined above.

The continuation of testing after a failed attempt of the Phase 4 test program will be permitted upon agreement between the Company and County that the cause(s) for the initial failure have been remedied to their satisfaction with consent to continuation not to be unreasonably withheld.

## A.5 Miscellaneous:

**Commissioning Phase Planning:**

Each phase shall be timely planned by the Company and BHS and agreed by the County in concordance with operating and administrative constraint to consider during the commissioning protocol.

**On-Site Authority:**

During each phase of the commissioning protocol, the Company shall have authority on all personnel on site in order to guide the protocol phases adequately.

**TRAINING, OVERSIGHT, AND MANUALS**

**Training:**

The Company shall provide to the County proof of training regarding the equipment and system operation prior to scheduling testing. The Company shall supply sufficient and competent personnel, as agreed between the Company and the County, during the testing period.

**County's Participation:**

The County shall provide a dedicated person or person(s) to coordinate with Company and BHS during the entire commissioning protocol so that continuity is maintained and there is no unnecessary downtime.

**Preparation of a Facility Operations Manual**

The Company shall cause BHS to submit to the County, within 60 days prior to commissioning and startup an Operations Manual. The Operations Manual will include:

(a) Safety

(b) Operations and Mechanical

(c) Maintenance

(d) System Control & TIP

**Additional Items:**

The following items will be delivered in the specified document.

(a) Operations setting and system "recipes" for handling desired through-put quantities will be included in the Site Acceptance Test document.

(b) Sorter placement and responsibilities will be included in this contract.

(c) Sorter production by sorting station will be included in this contract.

(d) Tip floor management procedures will be included in Tip Floor training documents.

(e) Baling sequence and procedures will be included in operations training document

(f) Overview of Operations will be included in the Operations and Mechanical section of manual.

# B) ORGANICS SYSTEM TESTING REQUIREMENTS

## B.1 Phase 5 – Component Testing:

1. Included in Phase 5 of the commissioning protocol, the Company will cause Zero Waste Energy and Bulk Handling Systems ("**ZWE**/***BHS***") to test each piece of equipment in the processing lines, using ZWE/BHS's standard commissioning protocol, and shall provide written verification to the County that each piece of equipment has been properly installed and is ready for further testing. This phase of the commissioning and performance test program is referred to as "Component Testing". Phase 5 will be directed, monitored, measured, and reported to the County by BHS on behalf of the Company during the defined 180-day testing period. The County will work cooperatively with BHS and the Company to minimize the impact of the Phase 5 commissioning process upon BHS's installation and system start-up process.

2. ZWE/BHS's field testing and motor control programming will include Emergency stops / interlocks testing, with results reported to the County and Company by BHS.

3. Documentation of events and results will be included within an overall monitoring report which includes all four of the Organic testing phases. The following items are expected for the Phase 5 report:

    a. Listing of inter-locks and emergency stops that exist within the system, the date and time tested and the result of the test (pass/fail), and a brief description of how the test was performed.

    b. Listing of each conveyor within the system, the date and time the test was performed, and a brief description of the test.

    c. Listing of each component (other than listed above) of the system that was tested, the results of the test, and a brief description of the testing.

d. Signed statement that ZWE/BHS has completed the required testing under the guidelines of this document and that all components passed the testing protocol. Exceptions will be highlighted; for example, if a component failed a test, was repaired and retested and passed.

e. Schedule for Phase 5 retesting in the event of failure.

4. Once testing for each of the Organic System's mechanical and electrical components has been successfully completed and equipment reports have been submitted to the County and Company for all pieces of equipment, the Company, through BHS, shall notify the County in writing, and receive the County's written acknowledgement (within 24 hours) before proceeding with Phase 6 of the Performance Test Program.

## B.2 Phase 6 – Digester Commissioning

1. This phase of the Commissioning Protocol shall consist of the continuous uninterrupted operation for four (4) hours of all electrical / mechanical processing systems and equipment, (the "***Dry Run System Test***"). This test run shall be conducted in the absence of feedstock and in the presence of County representatives.

2. The purpose of this Phase of the test program is to ensure that the individual pieces of equipment have been properly installed and interlocked as required, and that these pieces of equipment can operate collectively, as a system, without malfunction.

3. The Dry Run System Test shall be conducted on a continuous and uninterrupted basis for a full four (4) hours. The Company shall ensure that the Facility is adequately staffed, at all times during the test.

4. Once the Dry Run System Test has commenced, unscheduled mechanical or electrical shut down of the processing lines or any other component of the system, for any reason other than accidental E-stop activation or an observed safety emergency, shall constitute failure of the test.

5. If for any reason the Dry Run System Test is not successfully completed, the Dry Run System Test shall be repeated until it is completed successfully for the four (4) hours duration as specified.

6. BHS will record and document the testing event and the results. Documentation of event and results will be included within an overall monitoring report which includes all four phases of the Organic testing protocol. The following items are expected for the Phase 6 report:

   a. Report outlining the Dry Run test(s) and the results (pass/fail).

b. Description of the test (details).

c. Description of any failure causing the test to be suspended, canceled, or otherwise not completed in full.

d. Repairs required to correct the failure.

e. Schedule for Phase 6 retesting in the event of failure.

7. primary objective of this Phase 6 of the test program is to provide the Organic-system staff involved in the commissioning of the Facility (including sorters and mobile/fixed equipment operators) with an opportunity to become familiar with the processing systems prior to the start of the final stages of the Commissioning Protocol, and to demonstrate to the County and Company that the equipment has been properly installed and functions as intended.

8. BHS shall not commence the Phase 7 test until Phase 6 has been successfully completed and the County has provided written acknowledgement (within 24 hours) to proceed with Phase 3.

9. The County shall provide testing material, consistent with the material characterization in the BHS RFP response, required during the Phase 7 Function Test. Before starting testing on Phase 7, the County shall assure that sufficient appropriate testing material is available for each day's testing.

10. At a minimum, this phase of testing shall be conducted over two (2) consecutive days, five (5) consecutive hours per day. If BHS requires a longer period of time to make system adjustments, the County will endeavor to continue to provide the required testing materials up to a maximum of four (4) working days during a 6 (six) day period, Monday through Saturday.

11. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.

12. BHS will record and document the testing events and the results. Documentation of the events and results will be included within an overall monitoring report which includes all four phases of the Organic testing protocol. The following items are expected for the Phase 6 report:

    a. Report outlining the results of standard operations of the System and any system corrections to be resolved before Phase 7.

    b. Date and times of each day of processing, approximate Organics processed, TPD, number of operators and their positions.

## B.3 Phase 7 – Lane Turner Commissioning

1. This phase of the Commissioning Protocol shall consist of the continuous uninterrupted operation for four (4) hours of all electrical / mechanical processing systems and equipment, and the loading and heat up of the digesters, (the "Loading and Ramp Up"). This test run shall be conducted first in the absence of feedstock and then with water, and then organic waste and in the presence of County representatives.

2. The purpose of this Phase of the test program is to ensure that the individual pieces of equipment have been properly installed and interlocked as required, and that these pieces of equipment can operate collectively, as a system, without malfunction.

3. The Lane Turner Commissioning Test shall be conducted on a continuous and uninterrupted basis for a full four (4) hours. The Company shall ensure that the Facility is adequately staffed, at all times during the test.

4. Once the Lane Turner Commissioning Test has commenced, unscheduled mechanical or electrical shut down of the processing lines or any other component of the system, for any reason other than accidental E-stop activation or an observed safety emergency, shall constitute failure of the test.

5. If for any reason the Lane Turner Commissioning Test is not successfully completed, the Lane Turner Commissioning Test shall be repeated until it is completed successfully for the four (4) hours duration as specified.

6. ZWE/BHS will record and document the testing event and the results. Documentation of event and results will be included within an overall monitoring report which includes all four phases of the Organic testing protocol. The following items are expected for the Phase 7 report:

    a. Report outlining the Lane Turner Commissioning test(s) and the results (pass/fail).

    b. Description of the test (details).

    c. Description of any failure causing the test to be suspended, canceled, or otherwise not completed in full.

d. Repairs required to correct the failure.

e. Schedule for Phase 7 retesting in the event of failure.

7. The purpose of this hase of the test program is to provide the Organics system staff involved in the commissioning of the Facility (including operators) with an opportunity to become familiar with the processing systems prior to the start of the final stage of the Commissioning Protocol, and to demonstrate to the County and Company that the equipment has been properly installed and functions as intended.

8. BHS shall not commence the Phase 7 test until Phase 6 has been successfully completed and the County has provided written acknowledgement (within 24 hours) to proceed with Phase 7.

9. At a minimum, this phase of testing shall be conducted over two (2) consecutive days, five (5) consecutive hours per day. If BHS requires a longer period of time to make system adjustments, the County will endeavor to continue to provide the required testing materials up to a maximum of four (4) working days during a 6 (six) day period, Monday through Saturday.

10. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.

11. BHS will record and document the testing events and the results. Documentation of the events and results will be included within an overall monitoring report which includes all four phases of the rganics testing protocol. The following items are expected for the Phase 7 report:

    a. Report outlining the results of standard operations of the System and any system corrections to be resolved before Phase 8.

    b. Date and times of each day of processing, approximate rganics processed, TPH, number of upport personnel on the line and their positions..

## B.4 Phase 8 – Organic System Performance

1. Phase 7 must be completed prior to the start of Phase 8 and the County has provided written acknowledgement (within 24 hours) to proceed with Phase 8. The notification shall certify that all individual mechanical and electrical components of the MRF system have been properly installed and collectively are functioning as a system.

2. During the Phase 8 stage, the Company shall have available all necessary personnel formed and ready to operate the plant (sorters, equipment mechanical and operator, supervisor, etc.
3. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.
4. The County shall provide all of the required testing materials during the scheduled testing period. Before starting test on Phase 8, the County shall assure that sufficient testing material is available for each day's testing.
5. The performance requirements for each of the four (4) testing days must be chronologically and independently achieved.
6. Phase 8 Performance testing shall be scheduled and completed during a single, six-day period (Monday – Saturday).

## B.4.1 Performance Test Schedule

The Performance Run Test shall be conducted over a total of 30 days. During Phase 8, the system will run 24/7 shift schedule.

## B.4.2 Performance Tests

*Hot Commissioning.* Once the Function Testing (see Phase 5 and Phase 6 above) has been completed, the start of Hot Commissioning may begin. The purpose for a Hot Commissioning period is to ensure that the organics system operates under full load conditions on a continuous basis. The Hot Commissioning includes a ramp-up period where the organics system is presented material at an increasing rate over the course of a few days up to the design capacity of 240 Tons Per Day (TPD).

*Waste Composition*. BHS/or Zero Waste Energy ("***ZWE***") will commence sampling material and performing waste composition analysis to verify the organic content, C:N ratio, and biomethane potential. Such tests will be conducted by a qualified laboratory jointly agreed upon by County and BHS. Five (5) samples will be taken over a continuous operating week to prepare composites that account for daily route variability. The composite samples will in turn be evaluated for material composition based on the classification and weights of materials

## B.4.3 Test Failure:

All four phases of the Organics system testing shall be successfully completed within 180 calendar days following the scheduled commencement of Phase 9 testing. At the County's discretion, failure to successfully complete the requirements of all four phases of testing within the defined 180-day period shall constitute an Event of Default.

In the event of a test failure, at any time during or after the defined 180-day testing period, the resumption of testing and rescheduling of the failed test(s) shall be determined by agreement between the County and BHS.

In the event of failure to complete all testing requirements within the defined 180-day period, at the County's discretion, BHS will pay the County an amount not-to-exceed $5,000.00 (five thousand dollars) per retest to offset the ongoing costs of testing until all testing requirements are successfully completed.

# SCHEDULE 1.8

## Cleaning and Housekeeping Services

### LANE COUNTY MRF: CLEANING AND HOUSEKEEPING REQUIREMENTS

The Company shall develop a housekeeping plan for the Facility that has a defined scope, staff, equipment, and subcontractors, if any (the "***Housekeeping Plan***"). It is expected that the Housekeeping Plan will be updated throughout the Term to meet changing conditions, cleaning needs, and outcomes of the implementation. The Housekeeping Plan shall be submitted to the County on or before the Commercial Operations Date. Any updates to the Preventative Maintenance Program shall be submitted to the County.

**Compliance Monitoring and Non-Performance**

The County staff will routinely inspect the cleanliness of the Facility and Equipment and will record the Company's results in keeping the Facility clean. If there are "Deficiencies" in the Company's cleaning that are not corrected by the Company in accordance with the timeframe specified within a Reasonable Amount of Time, the County may provide notice to Company of the cleaning Deficiency(ies). Should the Company not correct Deficiencies within a Reasonable Amount of Time it shall be subject to Liquidated Damages.

**General Requirements**

The Housekeeping Plan shall include daily, monthly, and annual cleaning elements. The listing below is representative of the areas expected to be addressed in the final Housekeeping Plan.

**Daily Cleaning**

- Employee and public areas
- MRF areas
    - Platform areas and walkways cleared of all materials
    - Processing equipment cleared of all materials
    - Areas from equipment and sort stations to warehouse floor cleared of materials dropped from the processing and sorting activities
- Tipping floor areas
    - Entrances, exits, and approaches cleaned
    - Inbound material inside of the building
    - Bulky items stored or removed
- General site areas
    - Onsite roadways, curbs, parking area, and walks swept daily
    - Areas around scales cleared of litter and debris
    - Landscape areas and perimeter of property cleared of litter
    - Oil and/or dry sweep cleaned and swept

**Monthly Cleaning**

On a rotational basis, the Company shall perform a deep clean of all Equipment and heavy-use areas. The Company shall develop a monthly Housekeeping Plan that designates zones of the Facility floors and Equipment that are to be cleaned throughout the monthly rotation so that at the end of the month all areas have received a “deep cleaning”. A “deep-cleaning” consists of: (i) cleaning surfaces with compressed water or air to remove dust, debris, and stains; and (ii) in areas where dirt and debris are stuck in place, scraping or using abrasion cleaning methods.

**Annual Cleaning**

The Company shall develop an annual Housekeeping Plan that designates zones of the Facility interiors and exteriors that are to be cleaned on a rotational basis so that at the end of each year all areas have received a cleaning. The Company shall use compressed water on the exterior of the structures and a combination of compressed air or water on the Facility interiors.

**SCHEDULE 1.29**

**Equipment**

## SCHEDULE 1.42

### Hazardous Waste Exclusion and Safety Program

HEALTH AND SAFETY REQUIREMENTS. County and Company agree that under no circumstances will any safety system or device designed or suggested by BHS be removed, be allowed or permitted to be removed, or made inoperable, without prior written consent of BHS. The Parties agree to abide by all applicable health and safety governmental rules, regulations, and laws ("Health and Safety Requirements"). During installation, Company shall notify BHS of any changes to Health and Safety Requirements as soon as commercially reasonable. Modifications required by changes to applicable Health and Safety Requirements after execution of the Agreement shall be the sole responsibility of Company and not that of BHS, and Company shall pay any related increased cost and expense to comply with such changes. Each Party agrees to indemnify and hold harmless the other for any claim arising from breach of the provisions of this schedule 1.19.

Any Party must have Material Safety Data Sheets (MSDS) available for any and all chemicals including those classified as hazardous materials under applicable environmental laws that are brought onto the Site. Parties shall ensure that all chemicals or hazardous materials are brought onto the Site only in amounts and types necessary or advisable, in Party's reasonable opinion, for the performance of the Services and are labeled, stored, maintained, transported and disposed of in accordance with applicable environmental laws.

BHS will be responsible for the development of specific practices and protocols that make up the Safety Program and will be followed by all parties on the project site.

## SCHEDULE 1.46

### Insurance

**(a) Builders' Risk**. Prior to the Occupancy Date, the County shall maintain, or cause the General Contractor to maintain, builder's risk insurance in an amount no less than the full insurable value of all Equipment located at the Facility prior to the Occupancy Date. Both the Company and the Equipment Lender shall be named as insureds on the builder's risk policy. The insurance shall be subject to a deductible not to exceed $100,000.

**(b) Casualty Insurance.** From and after Occupancy Date, the Company will maintain insurance against loss or damage to all assets constituting any part of the Facility, including the Equipment located thereon, by casualty, with extended coverage and vandalism and malicious mischief insurance. The extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. The insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost (without deduction for depreciation) of all buildings, structures and fixtures constituting any part of the Facility, including the Equipment. The insurance shall be subject to a deductible not to exceed $100,000 (5% as to the peril of wind/hail). In addition, if the Facility is in an area which has been, or is at any time during the term of this Agreement, identified by the Director of the Federal Emergency Management Agency (or a like successor agency) as being in a special flood hazards area, and in which area the sale of flood insurance has been made available under The National Flood Insurance Act of 1968 (a "***Flood Zone***"), flood insurance shall be provided in an amount not less than the greater of the aggregate amount of one hundred percent (100%) of the insurable replacement value of the Facility and the Equipment.

**(c) Business Interruption.** From and after the Commercial Operations Date, the Company will maintain business interruption insurance to cover loss, total or partial, of the use of any part of the Facility as the result of any of the hazards covered by the insurance required by Section (a) of this Schedule 1.22, in an amount sufficient to pay operating expenses for a period of at least twelve (12) months.

**(d) Liability.** From and after Occupancy Date, the Company will maintain continuously in effect with respect to the Facility and its operation comprehensive general accident and public liability insurance covering any liability arising out of or in any way relating to the maintenance, use or operation of the Facility or any part thereof, under which the Company is named as insured, in an amount not less than $1,000,000 for bodily injury or death per occurrence and $1,000,000 for property damage per occurrence and the aggregate combined limits of not less than $6,000,000.

**(e) Insurance Review.** The Company will consult with an insurance consultant to review the insurance requirements of the Company with respect to the Facility from time to time (but

not less frequently than once every three (3) years) commencing on the Commercial Operations Date. If such review indicates that the Company should increase any of the coverages required by this Schedule 1.22, the Company shall increase such coverage. All policies maintained (or caused to be maintained) by the Company pursuant to this Schedule 1.22 shall be taken out and maintained with generally recognized, responsible insurance companies rated not less than "A" by A.M. Best (or any successor), authorized to write insurance in the State of Oregon. Such policies or certificates of insurance shall provide that the insurer will mail not less than thirty (30) nor more than sixty (60) days' written notice to the County of any amendment or cancellation prior to expiration of such policy.

**(f) Other Insurance.** The Company shall maintain during the term of this Agreement such other insurance policies covering such other risks and in such amounts as the insurance consultant engaged pursuant to Section (e) of this Schedule 1.22 states are customarily maintained by waste processors similar to the Company in the ordinary course of their business.

**(g) Certificates.** The Company shall deliver to the County (i) the certificate(s) of insurance which the Company is then required to maintain pursuant to this Schedule 1.22, together with evidence as to the payment of all premiums then due thereon, (ii) at least fifteen (15) days prior to the expiration of any such policies evidence as to the renewal thereof, if then required by this Schedule 1.22, and the payment of all premiums then due with respect thereto, and (iii) promptly upon request by the insurance issuer or the County, but in any case within ninety (90) days after the end of each fiscal year, a certificate of an Authorized Representative of the Company setting forth the particulars as to all insurance policies maintained by the Company pursuant to this Schedule 1.22 and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of this Schedule 1.22 and that all premiums then due thereon have been paid.

**(h) Substitute Coverage.** Notwithstanding the foregoing, if the Company provides the County with a certificate of an insurance consultant that any of the insurance required pursuant to this Schedule 1.22 is impossible, the Company may substitute the insurance required by this Schedule 1.22 with reasonably available insurance policies constituting best practices for similarly situated entities.

## SCHEDULE 1.53

### Liquidated Damages

**Note:** In all cases, the Liquidated Damage amounts referenced below will be increased annually at the same rate as the Company's net Service Fee (e.g., if the net Service Fee increases by 3% in a given Rate Year the Liquidated Damage amounts will increase by 3%).

### A. EVENTS THAT CANNOT BE CURED

#### A.1. MRF Performance Test Failure

All four phases of MRF system testing, as specified in Schedule (1.2 – Acceptance Tests), shall be successfully completed within 120 calendar days following the scheduled commencement of Phase 1 testing. In the event of failure to complete all testing requirements within the defined 120-day period, at the County's discretion, the Company shall pay the County an amount not-to-exceed $5,000.00 (five thousand dollars) per day, with a cap of $500,000.00 (five hundred thousand dollars), until all testing requirements are successfully completed.

#### A.2 Organics System Test Failure

All phases of Organics system testing, as specified in Schedule (1.2 – Acceptance Tests), shall be successfully completed within 180 calendar days following the scheduled commencement of testing. In the event of failure to complete all testing requirements within the defined 180-day period, at the County's discretion, the Company shall pay the County an amount not-to-exceed $5,000.00 (five thousand dollars) per day, with a cap of $500,000.00 (five hundred thousand dollars), until all testing requirements are successfully completed.

#### A.2. Failure to Process Annual Maximum Acceptable Materials

For each ton of Acceptable Materials the Company fails to Fully Process in a calendar year, the Company shall pay to the County the full amount of the most recently approved per ton Service Fee.

#### A.3. Failure to Meet the Minimum MRF Diversion Guarantee

Should the Company fail to achieve the Minimum MRF Diversion Guarantee in any given calendar year it shall pay to the County the full amount of the most recently approved per ton Service Fee for each ton of material below the Minimum MRF Diversion Guarantee.

#### A.4. Failure to Meet the Minimum Gas Production Guarantee

Should the Company fail to achieve the Minimum Gas Production Guarantee in any given calendar year, it shall pay to the County $5.00. (five dollars) for each One million British Thermal Units (MMBTU)/year below the Minimum Gas Production Guarantee.

**A.5. Failure to Meet Processed Organics Quality Standards**

Should the Company fail to achieve the quality standards for pathogen reduction and moisture content required by EPA Part 503 Biosolids Rule, or should the Soil Amendment be of a quality that does not otherwise meet regulatory requirements, any such materials shall be delivered by the Company to the landfill for disposal at the then current disposal cost (currently $31.51 per ton).

**A.6 Labor Unrest**

Should the Company experience a Labor Unrest lasting for longer than 90 days, commencing on the 91st day of such Labor Unrest the Company shall pay the County an amount equal to $[1,000] day for each day the Labor Unrest continues; provided, however, the total amount payable by the Company under this provision shall be capped at $[60,000].

**A.7 Procedure for Review / Assessment of Liquidated Damages**

In the event the Company does not meet any of the above requirements, the County may assess the applicable Liquidated Damages. In such cases, the Public Works Director or his/her designee shall issue a written notice to Company ("Notice of Intention to Assess Liquidated Damages") of the Liquidated Damages assessed and the basis for each assessment.

**A.7.1** The assessment shall become final unless, within ten (10) calendar days of the date of the Notice of Intention to Assess Liquidated Damages, Company provides a written request for a meeting with the Public Works Director or his/her designee to present evidence that the assessment is not correct.

**A.7.2** If the Company provides a written request for a meeting with The Public Works Director, the Public Works Director or his/her designee shall schedule a meeting with the Company as soon as reasonably possible after timely receipt of Company's request.

**A.7.3** The Public Works Director, or his/her designee shall review Company's evidence and render a decision sustaining or reversing the Liquidated Damages within 10 days after the meeting. A written notice of the decision ("Notice of Decision") shall be provided to Company. The Public Works Director's or his/her designee's determination shall be final unless the Company takes exception to that determination as provided for in A.7.4 below.

A.7.4 Should the Company take exception to the County's decision as to the Company's non-compliance with an event that cannot be cured, the Company shall notify the County in writing within 10 business days of the County's "Notice of Decision" that it is taking exception to the County's finding of non-compliance. In that case, the Company may engage an Independent Consultant to provide a finding either sustaining or reversing the County's determination. The Independent Consultant shall issue it's written findings to both the County and the Company. The Independent Consultant's decision shall be final.

### A.8 Timing of Payment

In the event Company does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Intention to Assess Liquidated Damages, the Public Works Director's or his/her designee's determination shall be final and the Liquidated Damages shall be due within thirty (30) calendar days of the date of the Notice of Intention to Assess Liquidated Damages.

Should the Company submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Intention to Assess Liquidated Damages, and should the County again find that Liquidated Damages are due from the Company, the Company shall pay any Liquidated Damages assessed by the County. Liquidated Damages shall be due within ten (10) calendar days of the County's written Notice of Decision as provided for in Section A.7.3 above, unless the Company takes exception to the County's decision as provided for in Section A.7.4 above. Should the Company take exception to the County's decision and engage an Independent Consultant, and should the Independent Consultant find in favor of the County, the Company shall pay any Liquidated Damages assessed by the County within ten (10) calendar days of the Independent Consultant's written findings.

If Liquidated Damages are not paid within the specified period above, the County may withhold payment of the Company's Service Fees on any tons until the Liquidated Damages have been paid in full.

Should the Independent Consultant find in favor of the Company, the County shall reimburse the Company for the cost of the Independent Consultant within 30 days of the Independent Consultant's written finding.

## B. EVENTS THAT CAN BE CURED

### B.1 Notice of Non-Compliance

In the event the County identifies a term or condition of the Operating Agreement that it believes the Company is not, or has not complied with, it may issue a written "Notice of Non-Compliance" to the Company of its findings. That Notice of Non-Compliance shall specify the specific section or sections and/or schedules of the Agreement that the County believes the Company is not in compliance with and the basis for its determination of non-compliance. The Notice of Non Compliance shall also set a reasonable time within which correction of such event of non-compliance shall be made. Unless a longer or shorter time is otherwise specified by the County Public Works Director or his/her designee, a reasonable time for correction shall be forty-five (45) calendar days from the date such written notice is given.

Within ten (10) business days of receipt of the County's Notice of Non-Compliance, Company may provide a written request for a meeting with the County Public Works Director or his/her designee, to present evidence that it is in fact in compliance, present evidence of extenuating circumstances, or otherwise discuss the Notice. If the Company requests a meeting with the County Public Works Director, it shall have forty-five (45) business days from the date of such

meeting to correct the event of non-compliance, unless otherwise agreed to by the County Public Works Director or his/her designee.

### B.2 Failure to Cure

If Company fails to correct, to the reasonable satisfaction of the County Public Works Director or his/her designee, all deficiencies contained in the written Notice of Non Compliance thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Company fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the County Public Works Director may assess Liquidated Damages of up to $500 dollars (five hundred) per incident or event per day. In such cases, the Public Works Director or his/her designee shall issue a written notice to Company ("Notice of Intention to Assess Liquidated Damages"). The Company shall pay any Liquidated Damages assessed by the County within ten (10) business days of the County's Notice of Intention to Assess Liquidated Damages"). If Liquated Damages are not paid within the ten (10) business day period, the County may withhold the Company's Service Fees on any tons until the Liquidated Damages have been paid in full.

Should the Company take exception to the County's decision as to the Company's failure to cure a Non-Compliance Item, the Company shall notify the County in writing within 10 business days of the County's "Notice of Intention to Assess Liquidated Damages" that it is taking exception to the County's finding of non-compliance. In that case the Company may engage an Independent Consultant to provide a finding either sustaining or reversing the County's determination. The Independent Consultant shall issue it's written findings to both the County and the Company. The Independent Consultant's decision shall be final. Should the Independent Consultant find in favor of the Company, the County shall reimburse the Company for the cost of the Independent Consultant within 30 days of the Independent Consultant's written finding. Should the Independent Consultant find in favor of the County, the Company shall pay any Liquidated Damages assessed by the County within ten (10) calendar days of the Independent Consultant's written findings.

If Liquated Damages are not paid within the ten (10) business day period, the County may withhold the Company's Service Fees on any tons until the Liquidated Damages have been paid in full.

### B.3 Company Payment for Costs Associated with Curing Item of Non-Compliance Items

At the County's sole discretion, rather than assess Liquidated Damages as provided for above, the County may take any reasonable actions necessary to cure any item of non-compliance for which Company has failed to cure as provided for above. This may include but is not limited to engaging a third-party to cure any such deficiency. In the event that the County incurs any reasonable costs associated with curing the item of non-compliance, including the cost of any County staff time or third-party costs, the Company shall be responsible for reimbursing the County for all such costs within thirty (30) business days of receipt of a written invoice from the County for those costs. If those costs are not paid within the 30 calendar day period, the County may withhold the Company's Service Fees until the Liquidated Damages have been paid in full.

## C. INDEPENDENT CONSULTANT SELECTION PROCESS

The County will provide the Company with a list of three (3) or more qualified Independent Consultants. The Company shall select one of the IC's on the County lists to be engaged by the Company, as necessary, to provide a finding either sustaining or reversing the County's determination of Liquidated Damages as described above.

## SCHEDULE 1.54

### Management and Operational Services

- Receive and process all Acceptable Materials delivered to the Facility by the County, its contractors, and other entities.
- Use Reasonable Business Efforts to Divert and market as much Acceptable Materials as commercially reasonable from the Acceptable Materials delivered to the Facility by the County, its contractors and other entities.
- Store and ship recovered materials.
- After having removed from the Acceptable Materials any Recyclable Materials it deems appropriate for recycling or reuse, store any Residue for pick-up and disposal by the County.
- Provide all tools, supplies, and any other equipment necessary to operate and maintain the Facility, excluding rolling stock, which is to be supplied by the County.
- Use Reasonable Business Efforts to maximize RNG meeting the Renewal Natural Gas Standards.
- Meet requirements imposed through the State of Oregon MRF permitting regulations.
- Develop and enforce Health and Safety policies, appropriate for this environment.
- Develop and enforce an appropriate employee Code of Conduct policy and other policies as determined by management.
- Conform to all laws and regulations applicable to this Operation.

# SCHEDULE 1.55

## BHS Minimum Diversion Guarantees and Performance Standards

## Minimum Diversion Guarantees

### A) MINIMUM MATERIAL RECOVERY FACILITY (MRF) DIVERSION GUARANTEE

The Company shall Divert a minimum of 35.55% of Acceptable Materials in each calendar year (56,880 tons per year Diverted from the Landfill assuming 160,000 tons of Acceptable Material per year is delivered by the County as required under the Agreement) (the "***Minimum MRF Diversion Guarantee***"). The Minimum MRF Diversion Guarantee tonnage requirement shall be adjusted each year in proportion to any increase or decrease in the total number of tons of Acceptable Materials delivered by the County to the Facility.

**Example:**

If the Acceptable Materials tonnage is 175,000 tons for a given calendar year the Minimum MRF Diversion Guarantee for that calendar year shall be 62,213 tons (56,880 x (175,000/160,000)).

### B) MINIMUM ANAEROBIC DIGESTION (AD) FACILITY GUARANTEES

The Company shall ensure the production of no less than (the "***Minimum AD Diversion Guarantee***"):

- Renewable Natural Gas (RNG) quantity of 85,000 MMBTU/year based on the minimum stream of 160,000 tons per year of MSW. The Minimum Gas Production Guarantee requirement shall be adjusted each year in proportion to any increase or decrease in the total number of Acceptable Material tons delivered by the County to the Facility

**Example:**

If the Acceptable Materials tonnage is 175,000 tons for a given calendar year the Minimum Gas Production Guarantee for that calendar year shall be 92,968 MMBTU (85,000 MMBTU x (175,000/160,000)).

# SCHEDULE 1.60

## Nuisance Control Standards

The following Nuisance Control Standards are intended to minimize odor and dust resulting from operations at the Facility and to control vectors.

**(a) Odor Control.**

Reject wastes will be containerized or consolidated prior to offsite hauling.

Odors may be considered excessive if they are detected and verified at objectionable levels by the County, a regulatory agency, a bordering property owner, or the general public. Any complaint from the County, a regulatory agency, a bordering property owner, or the general public will be routed to the Company's operations manager (the "***Operations Manager***").

Upon receipt of a complaint, the Operations Manager shall follow the following protocols:

- Within 48 hours of receipt of a complaint, the Operations Manager shall investigate the complaint.
- Within 24 hours of investigating the complaint, the Operations Manager shall prepare and forward to the DWM a report of the investigation, which report shall include a proposed remedial action if the complaint is verified. Upon receipt of the report, DWM employees may submit suggestions for modification of procedures and processes to reduce or eliminate the potential for nuisance conditions.
- Following transmittal of the report, the Company shall undertake action to eliminate the order in reasonable consultation with the County. As long as the Company continues to implement reasonable remedial action and proceeds in good faith, the Company shall not be subject to any liquidated damages.
- Within seven (7) days following the conclusion of any remedial action, the Operations Manager shall provide a report to the DWM of the remedial actions taken and the result thereof.

**(b) Dust Control.**

All surfaces will be cleaned and/or wetted as required to minimize the creation of dust. Dust control equipment (water trucks and sweeper) will be utilized. Wetting of wastes will also be performed if a dust or powder problem is encountered in a load. Sweeping of the Facility's operations area will also be performed at a frequency which precludes the accumulation of dust that could give rise to a dust nuisance condition.

The effectiveness of the dust mitigation measures will be assessed during the monthly safety inspections and documented on the inspection forms. Dust suppression measures will be modified as needed to assure effectiveness.

**(c) Vector and Nuisance Animal Control.**

The following measures will be instituted to minimize potential vector and nuisance animal problems:

- Reject wastes, which contain minimal quantities of incidental putrescible waste that would be attractive to vectors and nuisance animals will be containerized or consolidated into a waste pile with the container and/or pile covered at the end of the working day and removed at the frequency as required in the operating permit.
- The Company will cause the Facility to be inspected monthly by a licensed pest inspector and in accordance with the operating permit.

**SCHEDULE 1.61**

**Operating Hours**

During the Term the Company shall maintain operating hours for the receipt of waste at the Facility as follows:

| Days | Hours |
|---|---|
| Monday – Saturday | 7 AM – 5 PM |
| Sunday | Closed |
| Holidays | Closed |

Facility operations beyond the operating hours for receipt of waste will be as required for proper processing up to and including 24 hours per day, 7 days per week.

# SCHEDULE 1.63

## Performance Bond

### Performance Bond #1 – Facility Operation

Simultaneously with the successful completion of Phases 1 and 2 of the MSW Processing System Performance Test Protocol. The Company shall file with the County a performance bond, in accordance with the terms and conditions of the Operating Agreement. The amount of the bond requirement shall be $5,000,000 (Five million dollars). The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of Oregon, regulated by the State of Oregon, and with a financial condition and record of service satisfactory to the County.

The term of the bond shall not be less than twenty-four (24) months. The bond shall be extended or replaced by a new bond in the same principal sum, adjusted by the same rate mechanism as the change in the contracted rate, for the same term (i.e., 24 months) and in the same form, bi-annually thereafter. If the County extends the term of the Agreement, BHS shall arrange for the term of the bond to be correspondingly extended.

It is the intent of this section that there be in full force and effect at all times through the Term a bond securing BHS's faithful performance of the Agreement.

### Alternative Security

The County may, it its sole discretion, allow the Company to provide security in the amount of $_____, in the form of (a) a prepaid irrevocable standby Letter of Credit in form and substance satisfactory to the County and approved by the County Attorney and issued by a financial institution acceptable to the County; or (b) a certificate of deposit in the name of the County with a term satisfactory to the County and with a financial institution acceptable to the County.

# SCHEDULE 1.67

## Preventive Maintenance Services

### LANE COUNTY MRF PREVENTATIVE MAINTENANCE PROGRAM REQUIREMENTS

The Company shall prepare and implement a preventative maintenance program for the Facility in accordance with OEM maintenance recommendations (the "***Preventative Maintenance Program***"). The Preventative Maintenance Program shall, at a minimum, conform to the manufacturers recommended preventative maintenance schedule for all Equipment. The Preventative Maintenance Program shall be submitted to the County on or before the Commercial Operations Date for review and reference. The Company will update the Preventative Maintenance Program as needed. Any updates to the Preventative Maintenance Program shall be submitted to the County.

The Preventative Maintenance Program shall include a system for tracking the on-time completion of assigned preventative maintenance tasks and to ensure accountability throughout the maintenance function. This includes parts usage, inventory, and maintenance labor hours, and be used for sending and receiving work orders. The Company shall maintain Preventative Maintenance Program records, including records of all preventative maintenance completed and the date completed, and make those records available for the County's review as requested.

### General Maintenance Staff Expectations

The Company shall train all maintenance personnel per the recommended OEM maintenance procedures for each piece of Equipment in the Facility, including the MRF system, anerobic digester system, rolling stock, and other service equipment, and other aspects of Facility management (*e.g.*, adjustment, wear, lubrication, and replacement patterns of the various components).

### Preventative Maintenance Practices

At a minimum, the Preventative Maintenance Program shall include sufficient detail as shown in the following examples:

1) All chain-belts shall receive a full-rotation inspection (both sides) each day. Look for excessive wear (metal shavings) and squared rollers. Check splice pins, cotter pins, and connector links for metal fatigue. Check belt tension and tracking at the head and tail pulleys.
2) All trough, slider, and chevron/cleated conveyors shall be inspected at least once each day for splice integrity, tracking (head and tail pulley alignment), and excessive wear (crumb rubber evidence).
3) The metering drum shall be cleaned before the commencement of each shift and inspected for worn teeth and broken welds. The drum shaft, bearings, and motor mounts shall also be inspected daily.

4) The baler and wire-tier systems shall be subject to quarterly full preventative maintenance service. The wire-tier mechanism shall be "blown-out" and lubricated between each material/grade-change.

**Maintenance Staff Expectations**

The Preventative Maintenance Program shall include expectations for performance of scheduled preventative maintenance activities. The preventative maintenance schedule shall be designed into zones in order to complete a full preventative maintenance overview of the entire MRF system during the full operating days per week.

**Example Preventative Maintenance Schedule**

The Company shall perform preventative maintenance activities in concert with the scheduled zone deep-cleaning of the MRF system in the Housekeeping Plan in Schedule 1.7. The tables below provide example preventative maintenance schedule in which the Facility is divided into five PM zones.

Zone 1

| Equip # | MRF Component Description | Type | Zone | Clean | Deep Clean | Inspect | PM Service |
|---|---|---|---|---|---|---|---|
| 1 | Lower Horizontal Infeed Conveyor | Flat Pan | 1 | Weekly | Fri | Fri | Mon |
| 2 | Drum Feeder | | 1 | Daily | M-F | Fri | Mon |
| 3 | Inclined Infeed Conveyor | Combo Belt | 1 | Weekly | Fri | Fri | Mon |
| 4 | Pre-Sort Conveyor | Troughed Slider | 1 | Weekly | Fri | Fri | Mon |
| 5 | Film Handling System | | - | - | - | Fri | Mon |
| 6 | Trash Transfer Conveyor #1 | Troughed Slider | 1 | Weekly | Fri | Fri | Mon |
| 7 | Trash Transfer Conveyor #2 - Cleated | Troughed Slider | 1 | Weekly | Fri | Fri | Mon |
| 8 | Trash Transfer Conveyor #3 | Troughed Slider | 1 | Weekly | Fri | Fri | Mon |
| 9 | Compactor Feed Conveyor - Reversible | Troughed Slider | 1 | Weekly | Fri | Fri | Mon |
| 10 | OCC Screen – 2 Deck | | 1 | Daily | Fri | Fri | Mon |
| 10 A | OCC Deck #1 | | 1 | Daily | M-F | Fri | Mon |
| 10 B | OCC Deck #2 | | 1 | Daily | M-F | Fri | Mon |
| 10 C | OCC – Lubrication System | | 1 | Weekly | Fri | Fri | Mon |

Zone 2

| Equip # | MRF Component Description | Type | Zone | Clean | Deep Clean | Inspect | PM Service |
|---|---|---|---|---|---|---|---|
| 11 | OCC Screen Unders Conveyor | Troughed Slider | 2 | Weekly | Mon | Mon | Tues |
| 12 | OCC Sort Conveyor | Troughed Slider | 2 | Weekly | Mon | Mon | Tuesday |
| 13 | Trash Transfer Conveyor | Troughed Slider | 2 | Weekly | Mon | Mon | Tuesday |
| 14 | OCC Transfer Conveyor | Troughed Slider | 2 | Weekly | Mon | Mon | Tuesday |
| 15 | OCC Walking Floor Bunker | Roller Chain Combo | 2 | Weekly | Mon | Mon | Tuesday |
| 16 | Placeholder | | | | | | |
| 17 | Glass Breaker – 2 Section | 8 Rotors | 2 | Daily | M-F | Mon | Tues |
| 17 A | Glass Breaker – Deck #1 | | 2 | Daily | M-F | Mon | Tues |
| 17 B | Glass Breaker – Deck #2 | | 2 | Daily | M-F | Mon | Tues |
| 18 | Screen Feed Conveyor | Troughed Slider | 2 | Weekly | Mon | Mon | Tues |
| 19 | Screen – 26 Rotor – Cam Disc | | 2 | Daily | M-F | Mon | Tues |
| 19 A | Incline Deck #1 | | 2 | Daily | M-F | Mon | Tues |
| 19 B | Incline Deck #2 | | 2 | Daily | M-F | Mon | Tues |
| 19 C | Articulating Service Platform | | 2 | Daily | M-F | Mon | Tues |
| 19 D | Hydraulic Power Unit (HPU) | | 2 | Daily | M-F | Mon | Tues |

Zone 3

| Equip # | MRF Component Description | Type | Zone | Clean | Deep Clean | Inspect | PM Service |
|---|---|---|---|---|---|---|---|
| 20 | Containers Transfer Conveyor – Cleated | Troughed Slider | 3 | Weekly | Tues | Tues | Wed |
| 21 | Containers Sort Conveyor | Troughed Slider | 3 | Weekly | Tues | Tues | Wed |
| 22 | Overbelt Magnet Separator | | 3 | Weekly | Tues | Tues | Wed |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 23 | Aluminum Eddy Current Separator | Jevelin | 3 | Daily | M-F | Tues | Wed |
| 23 A | Eddy Current Rotor | | 3 | Daily | M-F | Tues | Wed |
| 23 B | Eddy Current Separator Conveyor | | 3 | Weekly | Tues | Tues | Wed |
| 24 | ECS Eject Conveyor | Troughed Slider | 3 | Weekly | Tues | Tues | Wed |
| 25 | Silo Blower | | 3 | Weekly | Tues | Tues | Wed |
| 26 | ECS Pass Conveyor | Troughed Slider | 3 | Weekly | Tues | Tues | Wed |
| 27 | Trash Conveyor | Troughed Slider | 3 | Weekly | Tues | Tues | Wed |

Zone 4

| Equip # | MRF Component Description | Type | Zone | Clean | Deep Clean | Inspect | PM Service |
|---|---|---|---|---|---|---|---|
| 28 | Storage Silo - Alum | | 4 | Weekly | Wed | Wed | Thurs |
| 29 | Storage Silo - Mixed | | 4 | Weekly | Wed | Wed | Thurs |
| 30 | Storage Silo – HDPE-C | | 4 | Weekly | Wed | Wed | Thurs |
| 31 | Storage Silo - PET | | 4 | Weekly | Wed | Wed | Thurs |
| 32 | Storage Silo - Steel | | 4 | Weekly | Wed | Wed | Thurs |
| 33 | Storage Silo – HDPE - N | | 4 | Weekly | Wed | Wed | Thurs |
| 34 | 2D Transfer Conveyor | Troughed Slider | 4 | Weekly | Wed | Wed | Thurs |
| 35 | Fiber Post Sort Conveyor | Troughed Slider | 4 | Weekly | Wed | Wed | Thurs |
| 35 A | Fiber Post Sort – Nose-over | Troughed Slider | 4 | Weekly | Wed | Wed | Thurs |
| 36 | Diverter Chute - Manual | | 4 | Weekly | Wed | Wed | Thurs |
| 37 | Trash Conveyor #1 | Troughed Slider | 4 | Weekly | Wed | Wed | Thurs |
| 38 | Trash Conveyor #2 | Troughed Slider | 4 | Weekly | Wed | Wed | Thurs |

Zone 5

| Equip # | MRF Component Description | Type | Zone | Clean | Deep Clean | Inspect | PM Service |
|---|---|---|---|---|---|---|---|

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 39 | Mixed Paper Bunker Conveyor | Combo | 5 | Weekly | Thurs | Thurs | Friday |
| 40 | Inclined Baler Feed Conveyor | | 5 | Weekly | Thurs | Thurs | Friday |
| 41 | Baler | | 5 | Daily | M-F | Thurs | Friday |
| 42 | Container Return Conveyor | Troughed Slider | 5 | Weekly | Thurs | Thurs | Friday |
| 43 | Advanced sorting systems | | | | | | |
| 43 A | Unit 1 - Carriage | | 5 | Daily | M-F | Thurs | Friday |
| 43 B | Unit 1 - Arms | | 5 | Daily | M-F | Thurs | Friday |
| 43 C | Unit 1 - Cups | | 5 | Daily | M-F | Thurs | Friday |
| 43 D | Unit 1 - Carriage | | 5 | Daily | M-F | Thurs | Friday |
| 43 E | Unit 1 - Arms | | 5 | Daily | M-F | Thurs | Friday |
| 43 F | Unit 1 - Cups | | 5 | Daily | M-F | Thurs | Friday |
| 44 | Air Compressor | | 5 | Weekly | Thurs | Thurs | Friday |
| 44 A | Tank, Filters, Drains | | 5 | Weekly | Thurs | Thurs | Friday |
| 45 | Trash Transfer Conveyor, Nose-over | Troughed Slider | 5 | Weekly | Thurs | Thurs | Friday |

**Spare Parts and Supplies**

All parts and components that are not available through local suppliers shall be held in inventory by the Company, including the following:

| Part/Component | Inventory |
|---|---|
| Bearings | Two (2) of every size |
| Chain | Two (2) of each small chain and sufficient links, rollers, and pins to replace a six (6) foot section of large chain |
| Sprockets | Two (2) of each size |
| Belt Splices | Two (2) of each size for each style of belt |
| Conveyor Belt | Ten (10) foot sections of each style and width of belt: 2-ply, 3-ply, cleated, chevron, chain-belt |
| Motors | One (1) of every size |
| Gear Boxes | One (1) of each size/torque |

The Company shall identify from time to time additional parts and components required for the Facility.

## SCHEDULE 1.70

### Recyclable Materials

Recoverable commodities for the purposes of this performance statement are defined as follows:

1. **OCC** – Flattened paperboard containers consisting of kraft linerboard with corrugated fillings.
    - Recovery rate applies only to 2-dimensional flattened (< 0.5" in smallest dimension) OCC larger than 64 square inches with at least one outside dimension being 8" or larger. Wet, crumpled, contaminated, and/or 3-dimensional materials will be excluded from the residue audit for purposes of calculating recovery rate.
2. **Mixed Paper** – Miscellaneous recyclable paper including newspaper, magazines, non-corrugated boxboard and mixed household paper.
    - Recovery rate applies only to 2-dimensional (< 0.5" in smallest dimension) paper that is larger than 4" in both of the larger dimensions. Wet, crumpled, contaminated and/or 3-dimensional materials will be excluded from the residue audit for purposes of calculating recovery rate.
3. **Plastic Bottles and Containers** – Clean beverage and food containers comprised of standard recyclable polymer types (marked any of #1 through #7).
    - Recovery rate apply only to clean, whole plastic bottles that do not contain liquid or other contaminates. The residue audit for purposes of calculating recovery rates will exclude clumped or interlocked containers, shredded or torn containers, black or dark colored containers, containers that are muddy, dirty, or obscured more than 50% by label or other item, containers smaller than 2" in more than one dimension, thin or lightweight objects with unpredictable aerodynamics and indeterminate polymer types (not marked with a recycling symbol #1 through #).
4. **Ferrous Cans**–Steel food and beverage cans
    - Recovery rate applies only to empty steel food and beverage cans sized between 2"— 8" in at least 2 dimensions. Clumped, interlocked, shredded or torn, contaminated and multi-material objects or items that are not steel food or beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.
5. **Aluminum Cans** – Used aluminum beverage cans (UBC)
    - Recovery rate applies only to empty aluminum (AL) beverage cans having at least 2 dimensions larger than 2". Clumped, interlocked, shredded or torn, contaminated and multi-material objects and items that are not used aluminum

beverage cans will be excluded from the residue audit for purposes of calculating recovery rate.

**6. Anaerobic Digester Organic Material**

Solid wastes containing material originating from living organisms and their metabolic waste produces including, but not limited to food discards, plant trimming and other materials less than 3 inches in size, with a bulk density greater than 800 pounds per cubic yard, and non-organic contaminants of less than 20%.

## SCHEDULE 1.74

### Renewable Natural Gas Standards

| Parameters | Value | | Action Level |
|---|---|---|---|
| | Min | Max | |
| Methane (%) | 97.3 | | < 97.3 |
| Heating Value (BTU[b]/SCF[c]) | 985 | 1155 | < 985 |
| Wobbe Number (BTU/SCF) | 1290 | 1491 | N/A |
| Temperature (°F) | 35 | 120 | > 120 |
| Carbon Dioxide (%) | | 2.0 | > 2.0 |
| Nitrogen (%) | | 2.0 | > 2.0 |
| Total Inerts[d] + Oxygen (%) | | 3.0 | > 3.0 |
| Oxygen (%) | | 0.20 | > 0.20 |
| Hydrogen Sulfide (grain/CCF[e]) | | 0.25 | > 0.25 |
| Total Sulfur (grain/CCF) | | 5.0 | > 5.0 |
| Moisture (lb/MMSCF[f]) | | 7 | > 7 |
| Hydrocarbon Dew Point (°F) | | 15 | > 15 |

# SCHEDULE 1.77

## Reporting Requirements

The Company shall provide to the County the reports with respect to the following on a quarterly basis (Quarterly Reports):

1. The quantity and general categories of Acceptable Material accepted at the Facility (to be agreed given the County operation of the Scale House);
2. The amount of Recyclable Material recovered from processing at the Facility;
3. The amount of RNG produced at the Facility and sold to NW Natural; and
4. Any other information sufficient to allow the County's compliance with any state or other requirements therefor and any other factors reasonably requested by the County.

Quarterly Reports shall be due to the County within 45 calendar days of the end of each quarter.

The Company shall provide to the County an Annual Report summarizing the quarterly reports for the Company's last fiscal year.

The Annual Report shall be due to the County within 60 calendar days of the end of each calendar year.

**SCHEDULE 1.80**

**Schedule of Performance**

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# SCHEDULE 1.82

## Services Fee Schedule

## A COMPANY'S COMPENSATION

In exchange for the Management and Operational Services and any and all of its obligations under this Agreement, the County shall pay to the Company on a monthly basis, as invoiced by the Company, an amount equal to:

- The total tons of all Acceptable Materials Fully Processed at the Facility by the Company **multiplied by**
- The sum of (i) the Operating Cost Component, **plus** (ii) the Pass-Through Component.

The Company shall only invoice, and receive payment for, **Acceptable Materials** that have been Fully Processed. No compensation shall be due to the Company for any Acceptable Materials that are not **Fully Processed**.

The Company's compensation provided for in this Schedule shall be the full, entire, and compete compensation due to the Company from the County for any and all costs and obligations necessary to perform the services required by this Agreement.

**A.1 Service Fees**. Service Fees payable to the Company consist of the Operating Cost Component and the Pass-Through Component.

- The "***Operating Cost Component***" shall equal in the first Rate Year **$62.69**, and shall be adjusted annually as provided for in Section B.1 of this Schedule.
- The "***Pass-Through Cost Component***" shall equal in the first Rate Year **$20.31**, and shall be adjusted annually as provided for in Section B.2 of this Schedule.

## B ANNUAL ADJUSTMENTS TO COMPANY'S COMPENSATION

**B.1 Operating Cost Component Adjustmen**t. Beginning on July 1, 2025, and each July 1 thereafter, the Operating Cost Component shall be increased each year by a percentage equal to the twelve-month percentage change in the Consumer Price Index for Urban Consumers published by the United States Bureau of Labor Statistics (***"BOLS"***) for the San Francisco Area, or the nearest comparable BOLS data on changes in the cost of living, if such index is no longer published. The annual adjustment shall be based on the percentage change in the 12 month average of the CPI between the prior preceding calendar year ending December 31st and the preceding calendar year ending December 31st. Therefore, the first rate adjustment effective July 1, 2025 will be based on the percentage change between the annual average of the CPI for the year ended December 31, 2023 and the annual average of the CPI for the calendar year ended December 31, 2024. The period from July 1st through June 30th of the following year shall be the "***Rate Year***".

The Company shall submit supporting documentation to justify the CPI adjustment by April 1, 2025, and annually on April 1 thereafter. Late submittals may result in a delay in the effective date of the adjusted rates beyond July 1st. In any such event, the Company shall not be entitled for any lost revenue due to any delay in the effective date of the adjusted rates. The County shall evaluate the documentation submitted by the Company and provide a written response within 30 calendar days by either confirming or revising the annual rate adjustment, if and as appropriate. If at any time during the Term the parties fail to make a CPI adjustment in accordance with this Section (***"Missed Adjustment"***), such failure will constitute a waiver of a Party's right to adjustment for that year. However, that Party will be entitled to an adjustment in the next year to the amount that the Party would have received had there not been a Missed Adjustment.

**B.1.1 Annual Rate Cap on Operating Cost Component**. In any year that the calculation of the CPI exceeds five percent (5.0%), the total adjustment for that year will equal five percent (5.0%) and the rollover amount will be added to the rate adjustment percentage in the following year, or any subsequent year.

**B.2 Pass-Through Cost Component Adjustmen**t. Beginning on July 1, 2025, and each July 1 thereafter, the Pass-Through Cost Component shall be adjusted. The Pass-Through Component shall be set equal to (A) the dollar amount payable per ton for disposal of residue in effect for such Rate Year (the "***Residue Disposal Rate***") under Section 8.3(a) of the Agreement **multiplied by** (B) a 64.45%. (e.g., $31.51 x .6445 = $20.31)

**C. EXTRAORDINARY CIRCUMSTANCES ADJUSTMENT**

**C.1 Extraordinary Adjustments**. Company and County acknowledge that there may be infrequent extraordinary events, including Change of Law, that may impact Company's costs. The obligation of the parties in such event is to negotiate in good faith in arriving at an appropriate adjustment in rates. Accordingly, at its option, Company may apply to the County not more frequently than once every Rate Year, for an extraordinary adjustment of Service Fees should an event or circumstance arise which negatively impacts the economic operation of Company and which is in excess of the adjustments to the Company's rates. An extraordinary adjustment will be deemed justified if it is necessary for the Company to make a substantial change in its operations, or substantial capital expenditure or investment to perform its obligations under this Agreement due to the occurrence of an event or circumstance which is beyond the reasonable control of Company. Extraordinary adjustments shall only be effective after approval by the County Board of Commissioners. For the purposes of this Section, fluctuations in Net Income from Sales of Recyclable Materials, Net Income from Sales of RNG, but not including any changes in the cost of the Equipment Financing, including any change in interest rates or refinancing of the Equipment Financing, shall not be considered as a basis for an Extraordinary Adjustment.

**C.1.1 Company's Burden**. In the event of such an application for an extraordinary rate increase, it is understood that the Company shall have the burden of demonstrating to the reasonable satisfaction of the County the basis for the extraordinary

increase cost. Company shall bear the burden of justifying its request and shall be solely responsible for the cost of preparing and submitting sufficient documentation in support of its request. County in its sole reasonable discretion may request Company to provide any additional information it deems necessary to fully evaluate the request, and Company shall be solely responsible for the cost of providing such additional information. Company shall allow County to review a report of its annual revenues and expenses for the services provided in the County prepared by a Certified Public Accountant or a licensed public accountant, which shall have been prepared in generally accepted accounting principles (***"GAAP"***). Such Certified Public Accountant or licensed public accountant shall be entirely independent of the Company and shall have no financial interest whatsoever in the business of the Company. County shall have the right to review this information in connection with the County's review of Company's extraordinary rate adjustment request. With respect to any Financial Statements or any other non-public information (***"Confidential Information"***), County agrees that: (a) it will hold in confidence all Confidential Information; (b) it will restrict the disclosure of Confidential Information within its own organization and to its agents or representatives who need to know the Confidential Information for the purposes of the request; (c) it will not disclose Confidential Information to any third party, excepting those subject to subsection (b), without the prior written consent of the Disclosing Parties; (d) it will not copy and/or reproduce any Confidential Information without the prior written approval of the Company; and (e) it will not use Confidential Information except as required for consideration of the request. County may consider increases or decreases in Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Prior to releasing any Confidential Information in response to a public records request or subpoena, County will inform the Company by written notice delivered to the Company (***"Notice"***). The Company will have five (5) calendar days from the date of the Notice to inform the County in writing of its intent to assert its confidentiality rights under this Agreement. The Company will have fifteen (15) calendar days from the date of the Notice to seek judicial assistance to prevent the disclosure of the Confidential Information. If the Company fails to act within the five (5) or fifteen (15) calendar day windows described above, the County may disclose the requested Confidential Information to the requestor or subpoenaing party. In the event Company seeks a court order to stay or enjoining the disclosure of the Records, Company agrees to indemnify and hold harmless the County, its Counsel, elected and appointed board or commission members, officers, employees, volunteers and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description, whether judicial, quasi-judicial or administrative in nature. This Indemnity shall survive the expiration or termination of this Agreement.

**C.1.2 Review Costs**. At the time of its request, Company shall also submit a payment to the County of Twenty-Five Thousand Dollars ($25,000) to defray the County's costs to review the request. In the event the County's reasonable costs exceed that amount, Company shall reimburse the County for any documented amount in excess.

**C.1.2 Meet and Confer**. The County and Company agree to meet and confer regarding the request and to negotiate in good faith regarding the appropriateness of the requested adjustment.

**C.1.3 County Review; Approval**. County shall review the Company's request and, in the County's sole and reasonable judgment, make the final determination as to whether an adjustment to the Maximum Service Rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. Approval of the County Counsel shall be required for any Extraordinary Adjustments. The County shall notify Company of its decision within ninety (90) calendar days regarding whether it accepts Company's request. Except as provided herein, any such change approved by the County shall not be implemented until January 1 of the next Rate Year unless a different time frame is approved by the County Counsel.

# EXHIBIT 1

## Facility Design Specifications

**EXHIBIT 2**

**CC Contract**

# EXHIBIT 3

## Lease

4883-6282-8363.19

ADDENDUM 3

TO THE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

PARTIES: Cecil D. Saxon Revocable Trust ("Seller")

AND: Lane County and/or its Assignee ("Buyer")

RECITALS

A. Pursuant to that certain Purchase and Sale Agreement and Receipt for Earnest Money (PSA) dated July 7, 2023 (the "offer"), Buyer offered to purchase from Seller certain real property commonly known as Map and Tax Lot 18-03-23-40 Lots 101,2401,2500, & 1400 AND Map and Tax Lot 18-03-24-00 Lot 6100, comprising approximately 26.01 acres in Goshen Oregon, (the "Property").

B. Per the subject PSA, the timeline for the inspection period would end on October 4, 2023. HOWEVER, Per Paragraph 3.5.4 of the subject PSA, the buyer has the option to extend the Inspection Period three (3) times in thirty (30) day increments.

C. Addendum 1 and 2, having extended the Inspection period from 9/27/2023 until 11/3/2023 and then a second time to 12/03/2023, Buyer will now use the option to extend the inspection period a third and final time through January 2, 2024.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the Buyer will deposit $10,000 into escrow per the subject PSA and extend the inspection period to thirty (30) days. This will extend the Inspection Period until January 2, 2024.

**Acknowledged:**

BUYERS:
Lane County and/or its Assignee: _____ Date: _____

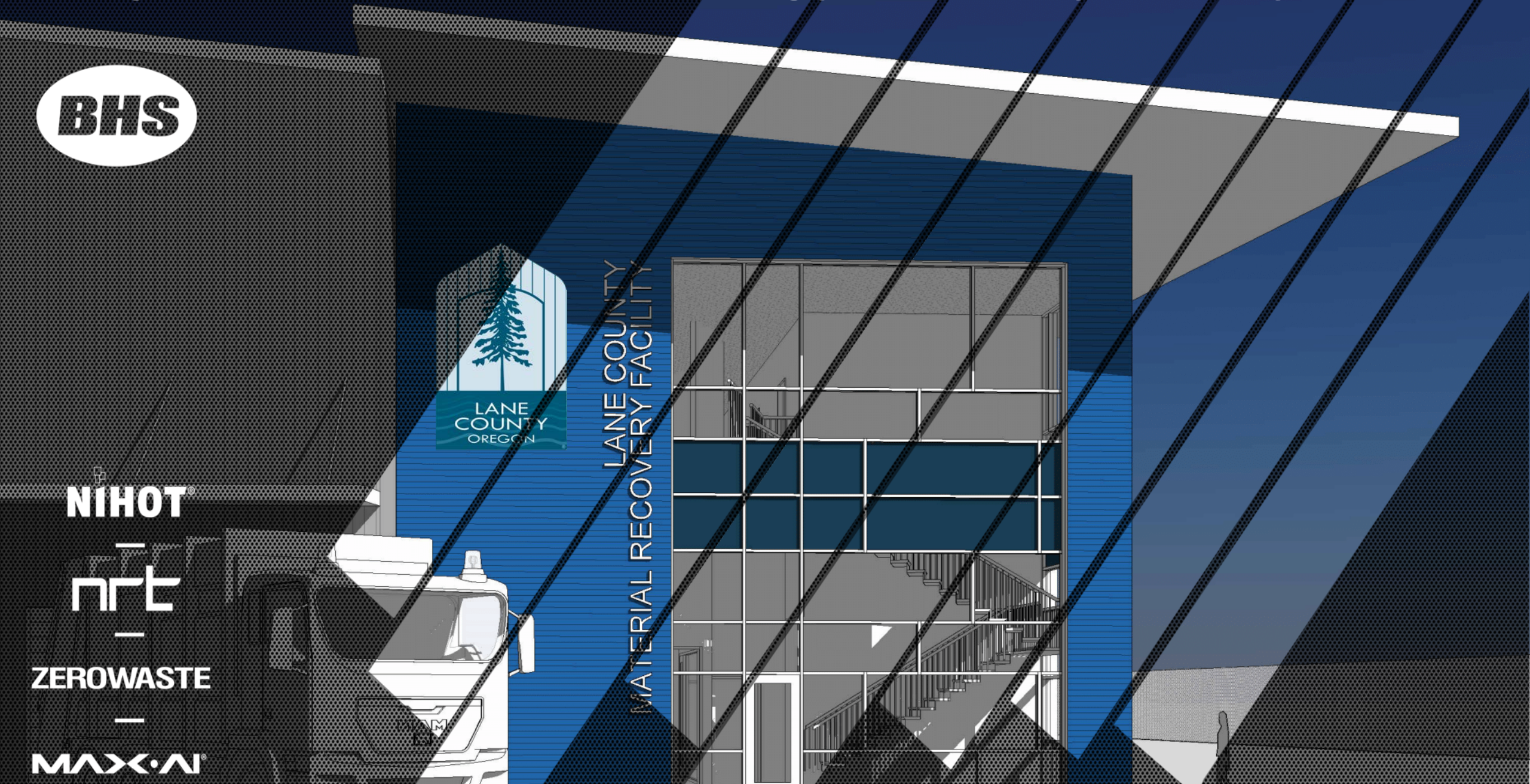
SELLER:

Cecil D. Saxon Revocable Trust: _____ Date: _____

# Table of Proposed Adjustments to Solid Waste Fees

| Fee Type | Unit | Current FY 23/24 | 3 % CPI | 8% IMERF | FY 24/25 11% cumulative increase from 23/24 Fees | 3 % CPI | 8% IMERF | FY 25/26 11% increase from 24/25 Fees |
|---|---|---|---|---|---|---|---|---|
| Loose TN | TN | **$95.16** | **$98.01** | **$102.77** | **$105.62** | **$100.95** | **$110.99** | **$117.24** |
| Loose TN (SML) 4.04% discount | TN | **$91.31** | **$94.05** | **$98.62** | **$101.36** | **$96.87** | **$106.51** | **$112.51** |
| Compacted TN | TN | **$95.16** | **$98.01** | **$102.77** | **$105.62** | **$100.95** | **$110.99** | **$117.24** |
| Compacted TN (SML) 4.04% discount | TN | **$91.31** | **$94.05** | **$98.62** | **$101.36** | **$96.87** | **$106.51** | **$112.51** |
| Demolition TN | TN | **$95.16** | **$98.01** | **$102.77** | **$105.62** | **$100.95** | **$110.99** | **$117.24** |
| Demolition TN (SML) 4.04% discount | TN | **$91.31** | **$94.05** | **$98.62** | **$101.36** | **$96.87** | **$106.51** | **$112.51** |
| MattBxsp TN | TN | **$236.33** | **$243.42** | **$255.24** | **$262.33** | **$250.72** | **$275.66** | **$291.18** |
| MattBxsp EA | EA | **$14.00** | **$14.42** | **$15.12** | **$15.54** | **$14.85** | **$16.33** | **$17.25** |
| HHW Discards | TN | **$95.16** | **$98.01** | **$102.77** | **$105.62** | **$100.95** | **$110.99** | **$117.24** |
| Loose CY | CY | **$11.70** | **$12.05** | **$12.63** | **$12.98** | **$12.41** | **$13.64** | **$14.41** |
| Compacted CY | CY | **$26.70** | **$27.50** | **$28.83** | **$29.63** | **$28.32** | **$31.14** | **$32.89** |
| Demolition CY | CY | **$17.12** | **$17.63** | **$18.49** | **$19.00** | **$18.16** | **$19.97** | **$21.09** |
| Rubble/roof/rock/dirt | CY | **$44.94** | **$46.29** | **$48.54** | **$49.88** | **$47.68** | **$52.42** | **$55.37** |
| Up to 1 CY | EA | **$13.70** | **$14.11** | **$14.79** | **$15.20** | **$14.53** | **$15.98** | **$16.87** |
| Loose to 3 CY | EA | **$23.01** | **$23.70** | **$24.85** | **$25.54** | **$24.41** | **$26.83** | **$28.34** |
| Special Waste Ton | TN | **$95.16** | **$98.01** | **$102.77** | **$105.62** | **$100.95** | **$110.99** | **$117.24** |
| Asbestos TN | TN | **$132.58** | **$136.56** | **$143.19** | **$147.17** | **$140.66** | **$154.65** | **$163.36** |
| MedicSharps TN | TN | **$132.58** | **$136.56** | **$143.19** | **$147.17** | **$140.66** | **$154.65** | **$163.36** |
| Creosote/Penta | TN | **$91.35** | **$94.09** | **$98.65** | **$101.39** | **$96.91** | **$106.55** | **$112.55** |
| VactorCRS-Pvt | TN | **$85.36** | **$87.93** | **$92.19** | **$94.75** | **$90.56** | **$99.57** | **$105.18** |
| DEQXmpt TN | TN | **$91.35** | **$94.09** | **$98.65** | **$101.39** | **$96.91** | **$106.55** | **$112.55** |
| Dirt/Rock TN | TN | **$91.35** | **$94.09** | **$98.65** | **$101.39** | **$96.91** | **$106.55** | **$112.55** |
| Non-Reg Cover | TN | **$23.52** | **$24.22** | **$25.40** | **$26.11** | **$24.95** | **$27.43** | **$28.98** |
| Sp DEXQ Sludg | TN | **$91.35** | **$94.09** | **$98.65** | **$101.39** | **$96.91** | **$106.55** | **$112.55** |
| VatorCRS-Pub | TN | **$78.23** | **$80.57** | **$84.49** | **$86.83** | **$82.99** | **$91.24** | **$96.38** |
| PCSoil TN | TN | **$95.16** | **$98.02** | **$102.77** | **$105.63** | **$100.96** | **$111.00** | **$117.25** |
| PC Soil Beneficial | TN | **$51.38** | **$52.92** | **$55.49** | **$57.03** | **$54.51** | **$59.93** | **$63.31** |
| DEQXVacDecant | TN | **$8.23** | **$8.48** | **$8.89** | **$9.13** | **$8.73** | **$9.60** | **$10.14** |
| MatBxspTN Recy | TN | **$236.33** | **$243.42** | **$255.24** | **$262.33** | **$250.72** | **$275.66** | **$291.18** |
| Yard Debris TN | TN | **$84.70** | **$87.24** | **$91.48** | **$94.02** | **$89.86** | **$98.80** | **$104.36** |
| Wood Waste TN | TN | **$84.70** | **$87.24** | **$91.48** | **$94.02** | **$89.86** | **$98.80** | **$104.36** |
| Yard Debris CY | CY | **$8.96** | **$9.22** | **$9.67** | **$9.94** | **$9.50** | **$10.45** | **$11.03** |
| Wood Waste CY | CY | **$8.96** | **$9.22** | **$9.67** | **$9.94** | **$9.50** | **$10.45** | **$11.03** |
| Ptank to 5g | EA | **$4.92** | **$5.07** | **$5.32** | **$5.46** | **$5.22** | **$5.74** | **$6.06** |
| AsbestBagSale | EA | **$3.28** | **$3.38** | **$3.55** | **$3.65** | **$3.48** | **$3.83** | **$4.05** |
| Tire <20 with rim | EA | **$4.39** | **$4.52** | **$4.74** | **$4.87** | **$4.65** | **$5.12** | **$5.41** |
| ~~Tire17-24 W/Wh~~ | EA | **$22.18** | **$22.85** | **$23.96** | **$24.62** | **$23.53** | **$25.87** | **$27.33** |
| Tire <17 | EA | **$3.28** | **$3.38** | **$3.55** | **$3.65** | **$3.48** | **$3.83** | **$4.05** |
| ~~Tire 17-24~~ | EA | **$10.96** | **$11.29** | **$11.83** | **$12.16** | **$11.62** | **$12.78** | **$13.50** |
| Tire 24.1-30 (used for?) | EA | **$21.91** | **$22.57** | **$23.67** | **$24.32** | **$23.25** | **$25.56** | **$27.00** |
| Yard Debris PU (up to 3 cy) | EA | **$17.72** | **$18.25** | **$19.14** | **$19.67** | **$18.80** | **$20.67** | **$21.83** |
| Wood Waste PU (up to 3 cy) | EA | **$17.72** | **$18.25** | **$19.14** | **$19.67** | **$18.80** | **$20.67** | **$21.83** |
| Rej Applian EA | EA | **$24.11** | **$24.83** | **$26.04** | **$26.76** | **$25.58** | **$28.12** | **$29.70** |
| Tire 17w/wh retrieved | EA | **$8.77** | **$9.04** | **$9.48** | **$9.74** | **$9.31** | **$10.23** | **$10.81** |
| Tire 17-24w/wh retrieved | EA | **$44.37** | **$45.70** | **$47.92** | **$49.25** | **$47.08** | **$51.76** | **$54.67** |
| Tire <17 G | EA | **$6.58** | **$6.78** | **$7.11** | **$7.30** | **$6.98** | **$7.68** | **$8.11** |
| Tire 17-24 G | EA | **$21.91** | **$22.57** | **$23.67** | **$24.32** | **$23.25** | **$25.56** | **$27.00** |
| MRF > 20 % Recovery | TN | **$70.10** | **$72.20** | **$75.70** | **$77.81** | **$74.36** | **$81.76** | **$86.36** |
| MRF > 25 % Recovery | TN | **$56.26** | **$57.95** | **$60.76** | **$62.45** | **$59.69** | **$65.62** | **$69.32** |
| MRF > 30 % Recovery | TN | **$53.50** | **$55.11** | **$57.78** | **$59.39** | **$56.76** | **$62.40** | **$65.92** |
| MRF > 35 % Recovery | TN | **$50.86** | **$52.38** | **$54.93** | **$56.45** | **$53.95** | **$59.32** | **$62.66** |
| MRF > 40 % Recovery | TN | **$48.36** | **$49.81** | **$52.23** | **$53.68** | **$51.31** | **$56.41** | **$59.59** |
| MRF > 45 % Recovery | TN | **$45.99** | **$47.37** | **$49.67** | **$51.05** | **$48.79** | **$53.64** | **$56.66** |
| MRF > 50 % Recovery | TN | **$43.73** | **$45.04** | **$47.23** | **$48.54** | **$46.39** | **$51.01** | **$53.88** |
| Assist/Handling | EA | **$0.00** | **$0.00** | **$0.00** | | **$0.00** | **$0.00** | |
| Assist/H Equip | EA | **$0.00** | **$0.00** | **$0.00** | | **$0.00** | **$0.00** | |

# Integrated Material and Energy Recovery Facility (IMERF)



BHS Video Link

https://youtu.be/dXdBvXCAoDA?si=RXt2j0lntJRdbYV6

# Key Features Overview

- State-of-the-art waste processing facility to recover commodities from garbage headed to the landfill
- Processing of commingled recyclables to provide local materials and reduce long haul shipments
- Anaerobic Digestion of organic waste to produce Renewable Natural Gas (RNG) and reduce landfill emissions
- Visitor and Educational Center to showcase the facility and advance environmental education

# Key Terms of Public Private Partnership

- Lane County develops and owns the site and buildings
- BHS to fund entire buildout of recycling and renewable energy infrastructure
- Construct and opening within 24 months
- Lane County guarantees 160,000 tons of waste to be processed
- BHS operates the facility with guaranteed diversion performance criteria
- 25-year term with options to renew

# Why Now?

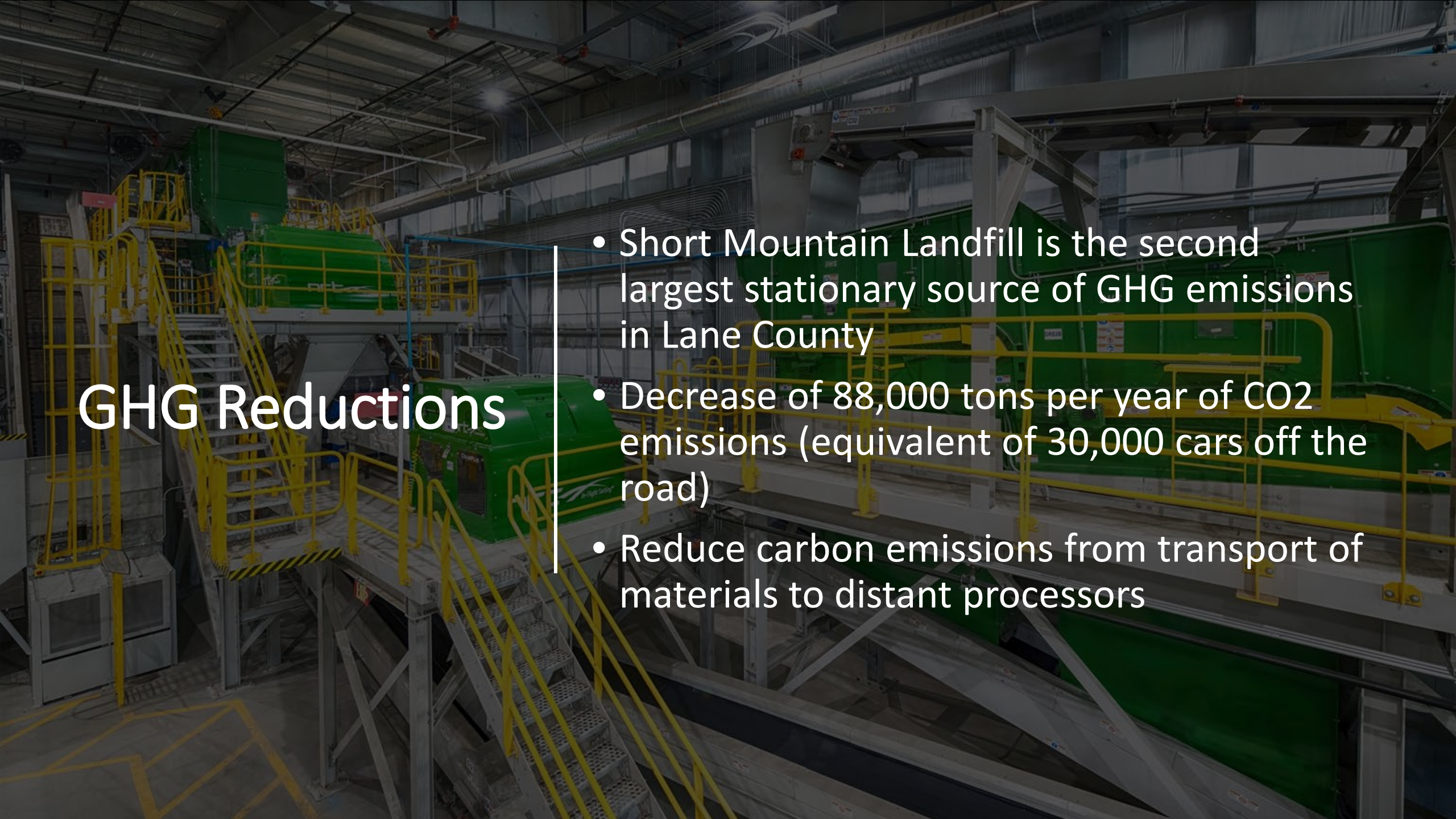
- Extend the life of the landfill
- Improve recycling systems to recover more materials
- Significantly reduce emissions from Short Mountain
- Create sustainable RNG fuel
- Create local, sustainable economic development and jobs

# Landfill Life

- 70 years of landfill space remain
- Project would add 20+ years
- **20 years of landfill space is worth over $330M**
- Nearest landfills will close in 15 years
- Delay future costs of landfill development and eventual closure

# Recyclables

- Expanded list of acceptable materials to include wider range of plastics
- Eliminates bin confusion for users
- Recyclables recovered from the system will be sold locally and abroad



# GHG Reductions

- Short Mountain Landfill is the second largest stationary source of GHG emissions in Lane County
- Decrease of 88,000 tons per year of CO2 emissions (equivalent of 30,000 cars off the road)
- Reduce carbon emissions from transport of materials to distant processors

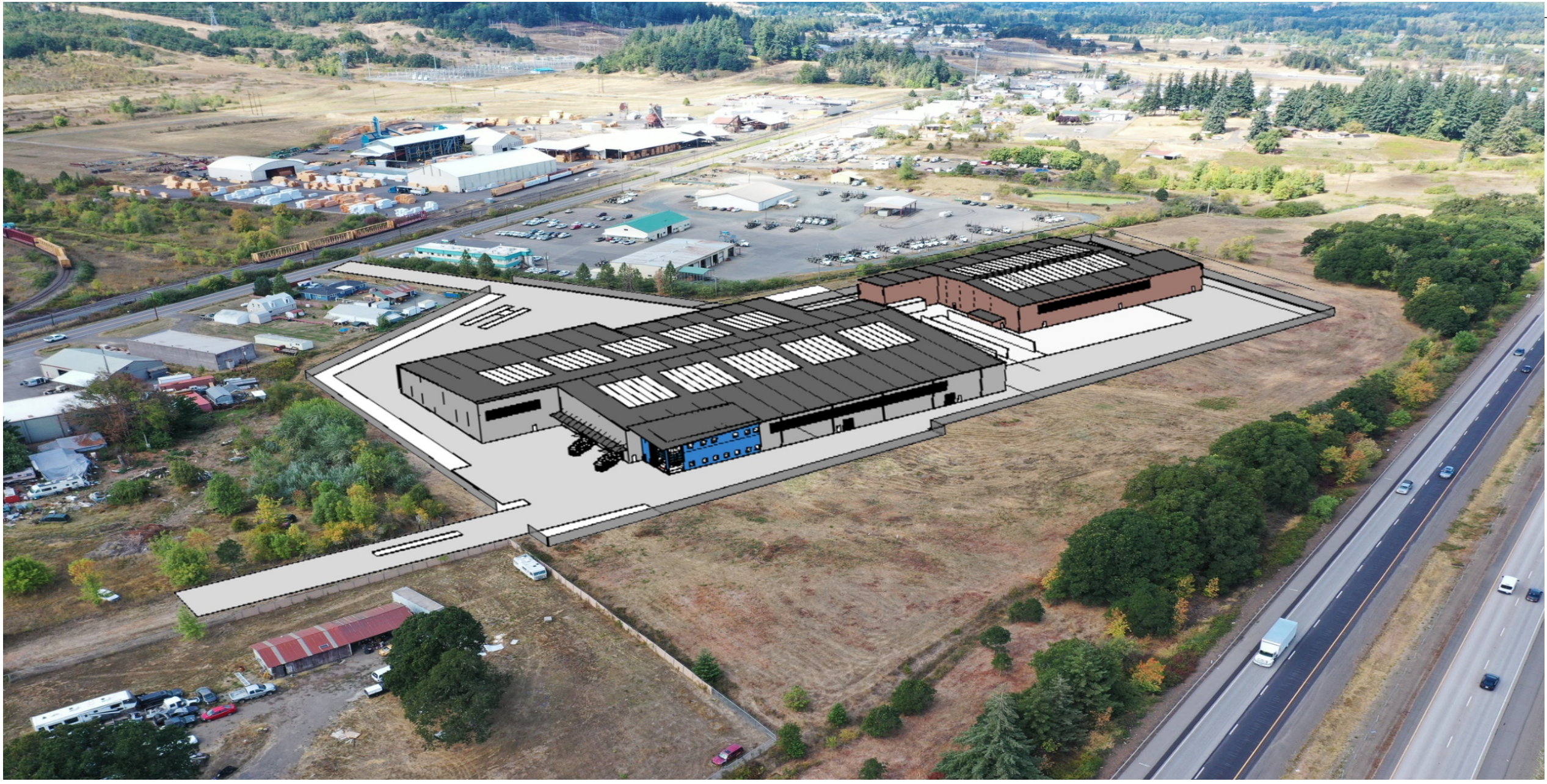
# RNG Production

- The facility will produce 1M diesel gallon equivalent (DGE) per year of biogas upgraded to pipeline quality Renewable Natural Gas (RNG)
- Produces Negative Carbon Intensity RNG fuel under Oregon’s Clean Fuels Program

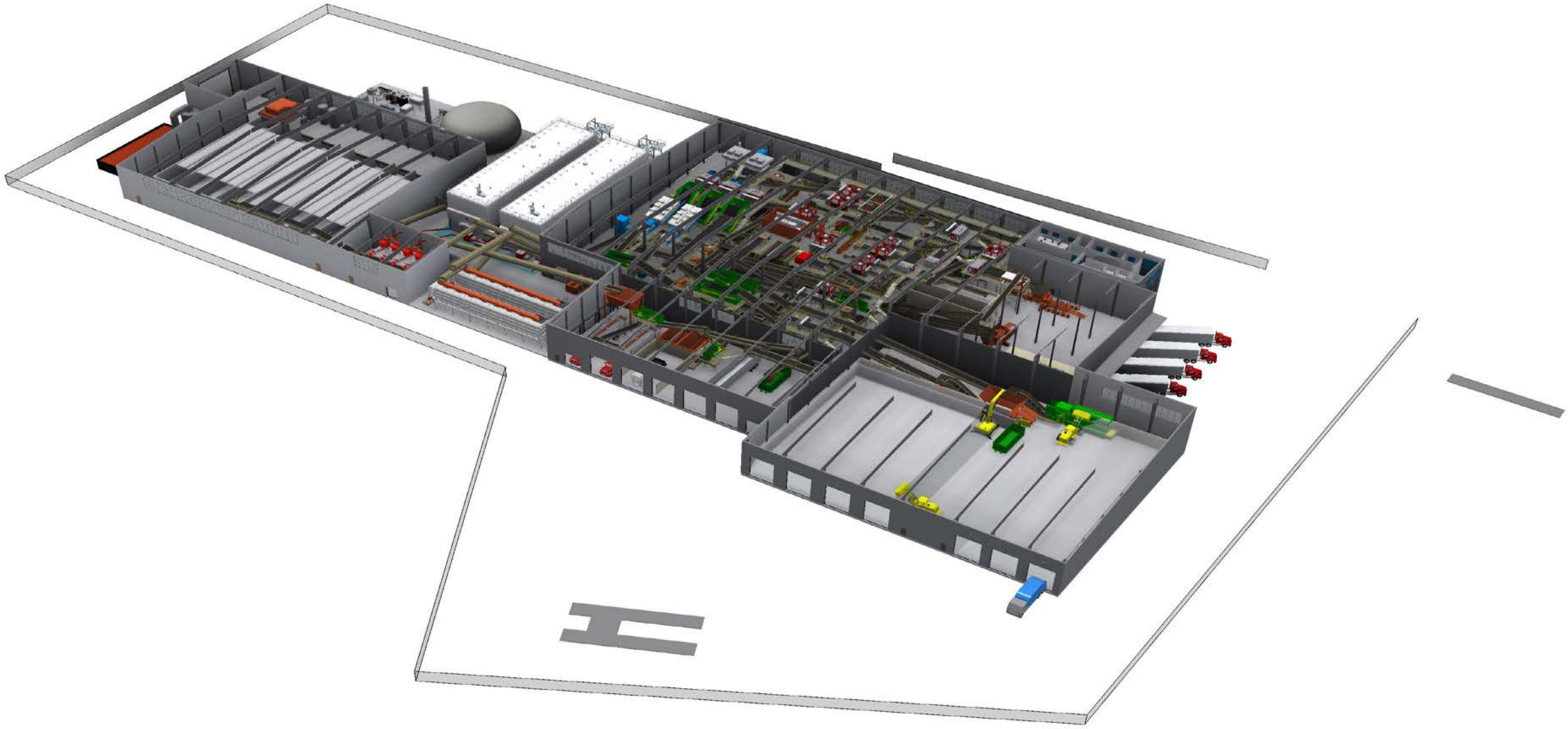
# Local Jobs & Economic Impact

- $135+ million construction value with $35 million of site development and building work
- Generates over $272m in Lane County regional economic activity
- Total direct jobs estimated during design, fabrication, and construction of the IMERF is more than 190 high-paying manufacturing and construction jobs
- Facility employment for the next 25 years estimated at more than 65 at the facility; paying prevailing wages and benefits
- Catalyst for further development in Goshen

# Lane County IMERF



# Process Equipment



# Rate Impacts & Options

- 4-years of rate increases
  - Residential: 50-60 cents each year
  - Commercial: approximately 3% each year
- Discounts
  - Future work session:
    Schools, non-profits, ReThink, C&D, SNAP
- System impacts
  - Haulers
  - MRFs

# What if we wait?

- This will be much more expensive in the future
  - $34M in tax-exempt bonds
  - 40% tax credit on energy facilities
  - Several federal grant programs (IRA)
- The sooner we start, the more we can save
  - Each year of landfill space = $16M
- Climate action in needed now
  - *"The extent to which current and future generations will experience a hotter and different world depends on choices now and in the near term"* (IPCC 2023)

# Recommendation

- Approval of a contract with Bulk Handling Systems for construction and operation of an Integrated Materials & Energy Recovery Facility (IMERF)
- Approval to purchase a 26-acre property in Goshen for siting the IMERF
- Approval of adjustments to fees for solid waste services for the next two fiscal years
  - 8% increase for the IMERF
  - 3% CPI adjustment

# Lane County Integrated Material and Energy Recovery Facility

LANE COUNTY OREGON

BHS What's next.

A Public Private Partnership