



AGENDA COVER MEMO

Memorandum Date: 8/16/24

Order Date: 8/20/24

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Dan Hurley, Public Works Director
Tiffany Johnson, Assistant County Counsel

AGENDA ITEM TITLE: ORDER / In the Matter of Amending Resolution & Order No. 23-12-05-07 Delegating Authority to the County Administrator to Sign Any Necessary Agreements with BHS Projects @ Lane County, LLC Related to Leasing Property for and Operations of the CleanLane Resource Recovery Facility.

I. MOTION

Move to amend [Resolution & Order No. 23-12-05-07](#) Delegating Authority to the County Administrator to Sign Any Necessary Agreements with BHS Projects @ Lane County, LLC Related to Leasing Property for and Operations of the CleanLane Resource Recovery Facility.

II. AGENDA ITEM SUMMARY

In December 2023, the Board of County Commissioners approved Resolution & Order No. 23-12-05-07 to approve 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 will include equipment for mixed waste processing, sorting lines for processing commingled recycling, and an anaerobic digestion facility to produce biogas from diverted organic waste. The Order for consideration would amend the previous Resolution & Order to include delegating of authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility.

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. 20-10-20-08). 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, 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. The proposal from BHS indicated that BHS would set up a project entity specifically for this public-private partnership.

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.

In December 2023, the Board of County Commissioners approved [Resolution & Order No. 23-12-05-07](#) to approve a contract with 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 draft contract listed BHS Projects @ Lane County, LLC as the project entity, but this was inadvertently not reflected in the Resolution & Order. The previous Resolution & Order should be amended to add delegated authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery 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 contract to be executed with BHS, a subsidiary of BHS, will require the County to develop the site and construct a suitable building to house the sorting equipment. BHS will be responsible for constructing a portion of the building that will house the anaerobic digester and other ancillary equipment associated with the production of renewable natural gas (RNG). Lane County's portion of the construction is estimated at \$35 million.

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

The contract will require the County to ensure a minimum of 120,000 tons of waste is delivered to the facility annually or risk financial penalties. County staff have negotiated a scaled processing fee for the waste ranging from \$69 to \$99/ton based on a range of 225,000 to 120,000 tons entering the facility.

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 Waste Management Division has purchased for a 26-acre property in Goshen to site the facility. The sale price was \$1,500,000. An estimated \$1M of additional investment is anticipated to mitigate wetlands to be impacted by the facility.

On December 5, 2023, the Board of Commissioners approved adjustments to fees for solid waste services including an 8% increase for the facility plus a 3% inflationary adjustment in fiscal year 2024-25 and fiscal year 2025-26. Fee increases will likely be needed in the following two fiscal years (currently estimated at 6%), however the County is seeking grant opportunities and funding assistance from the State to reduce fee increases for future years.

E. Health Implications

None identified.

F. Analysis

Analysis presented prior to Board of approval of the facility is contained in the [December 5, 2023 Board Packet](#).

Issue#1: Contract Entity

In 2022, the County issued a Request for Proposals (RFP) for the Conceptual Design and Operational Services for a Materials Recovery Facility. BHS was determined to have submitted the most advantageous proposal in response to the RFP. BHS' proposal indicated that BHS would establish a project entity to

provide the services set forth in its proposal. BHS created a specific project entity named BHS Projects @ Lane County, LLC to provide the services set forth in BHS proposal. Resolution & Order No. 23-12-05-07 named BHS as the contracting entity. The draft contract listed BHS Projects @ Lane County, LLC as the project entity, but this was inadvertently not reflected in the Resolution & Order. The Resolution & Order should be amended to add BHS Projects @ Lane County, LLC as a contracting entity. The proposed Order adds delegated authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility.

BHS Projects @ Lane County, LLC is a wholly owned subsidiary of BHS. BHS Projects @ Lane County, LLC filed its Article of Incorporation with the Oregon Secretary of State in April 2023. Establishing a Limited Liability Company (LLC) specific for a project is common practice for public-private partnerships of this nature to allow levels of protection for the project's financing. It should be noted that this arrangement limits the ability of the County to tap assets of the parent company in the event of company default. However, this arrangement also protects the project by limiting the ability of the parent company from tapping project assets if the parent company is faced with financial liabilities.

Issue#2: Development and Operation vs. Construction, and Lease of Property

Resolution & Order No. 23-12-05-07 approved a contract BHS for the construction and operation of the facility. At the time of the previous approval, the County intended that BHS would construct the facility and that the County would purchase the portion of the constructed building not related to energy production. BHS would retain ownership of the energy production portions of the facility to maximize federal tax incentives available for the project. Since the Board's approval and further evaluation of the project scope, it has been determined that a public improvement procurement should be conducted for the portion of the facility that the County will own. The new proposed arrangement is for the County to complete site preparation and construction of the facility, aside from the portion related to energy production, and to lease a portion of the property to BHS where they will construct the portion of the facility related to energy production. BHS will supply and install the equipment in both parts of the facility for "Development" of the facility. The proposed Order adds delegated authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility.

Alternatives/Options

Option 1:

Approve the proposed Order to include the delegating of authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane

County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility.

Option 2:

Do not approve the proposed Order and provide direction to staff.

IV. RECOMMENDATION

Staff recommends Option 1 to amend the Order to include delegating of authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility.

V. TIMING/IMPLEMENTATION

If approved, staff will:

1. Finalize agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility and deliver to the County Administrator to sign the agreements.

VI. FOLLOW-UP

Staff

VII. ATTACHMENTS

Resolution & Order No. 23-12-05-07

Proposed Order

Draft Operating Agreement

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

RESOLUTION & ORDER NO: 23-12-05-07

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. 20-10-20-08) 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 approved contract.
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 5th day of December, 2023.

Pat Farr, Chair
Lane County Board of Commissioners

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 24-08-20-09

IN THE MATTER OF AMENDING
RESOLUTION & ORDER NO. 23-12-05-07
DELEGATING AUTHORITY TO THE
COUNTY ADMINISTRATOR TO SIGN ANY
NECESSARY AGREEMENTS WITH BHS
PROJECTS @ LANE COUNTY, LLC
RELATED TO LEASING PROPERTY FOR
AND OPERATIONS OF THE CLEANLANE
RESOURCE RECOVERY FACILITY.

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”; and

WHEREAS, in 2022, the County issued a Request for Proposals (RFP) for the Conceptual Design and Operational Services for a Materials Recovery Facility; and

WHEREAS, Bulk Handling Systems was determined to have submitted the most advantageous proposal in response to the RFP; and

WHEREAS, on December 5, 2023, through Resolution & Order No. 23-12-05-07, the Lane County Board of Commissioners approved a contract with Bulk Handling Systems for the construction and operation of an Integrated Materials & Energy Recovery Facility (hereafter referred to as the CleanLane Resource Recovery Facility) to 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 to mitigate the largest source of greenhouse gas emissions from Lane County operations; and

WHEREAS, Bulk Handling Systems’ proposal expressly provided that a special purpose entity would be created to provide the services set forth in its proposal; and

WHEREAS, Bulk Handling Systems created a specific project entity named BHS Projects @ Lane County, LLC to provide the services set forth in its proposal; and

WHEREAS, BHS Projects @ Lane County, LLC is a wholly owned subsidiary of Bulk Handling Systems; and

WHEREAS, the purpose of this order is to amend Resolution & Order No. 23-12-05-07 to provide additional delegated authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to the CleanLane Resource Recovery Facility; and

WHEREAS, BHS Projects @ Lane County, LLC will require a property lease agreement

to construct the portion of the CleanLane Resource Recovery Facility that it will own and to develop and operate the CleanLane Resource Recovery Facility on Lane County's real property; and

WHEREAS, BHS Projects @ Lane County, LLC will supply and install the equipment for the entire facility for development of the facility; and

WHEREAS, Lane County will conduct procurement for a public improvement contract to select a contractor to construct the portion of the CleanLane Resource Recovery Facility that the County will own;

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

1. Resolution & Order No. 23-12-05-07 be amended to include:
 - A. Delegating authority to the County Administrator to sign any necessary agreements with BHS Projects @ Lane County, LLC related to leasing property for and operations of the CleanLane Resource Recovery Facility for a term of twenty-five (25) years with an option to extend the length of the lease agreement and operations contract up to ten (10) years.

ADOPTED this 20th day of August, 2024.

Laurie Trieger, Chair
Lane County Board of Commissioners

DRAFT

PROCESSING AND SERVICES AGREEMENT

BY AND BETWEEN

LANE COUNTY OREGON

and

BHS PROJECTS @ LANE COUNTY LLC

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, a political subdivision of the State of Oregon (“**the County**” or “**County**”), and BHS PROJECTS @ LANE COUNTY, LLC, an Oregon limited liability company (“**the Company**” or “**Company**”). The County and Company are collectively referred to herein as “**the Parties**” or “**Parties**” and each as “**the Party**” or “**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. Bulk Handling Systems (“**BHS**”) registered with the State under Oregon Registration No. 162672-96 was determined to have submitted the most advantageous proposal in response to the RFP;
- C. BHS proposal expressly provided in its proposal that a special purpose entity would be created to carry out the services proposed in its proposal];
- D. The Company is a wholly owned subsidiary of BHS created to provide the services set forth in the BHS proposal;
- E. In furtherance of the County’s desire to exclusively partner with Company for this Project, County has purchased land exclusively for use for the Project (“the Project Site”). County will retain ownership of the Project Site, and will lease, as landlord, the Project Site to Company as tenant;
- F. The County will finance, construct and own the portion of the Facility that the County will own as delineated in **Exhibit 1** (the “**County Owned Assets**”);
- G. The Company will finance and construct the portion of the Facility that Company will own as delineated in **Exhibit 1** (the “**Company Owned Facility Assets**”);
- H. The Company will finance, supply and install all Equipment for the Facilities;
- I. Company will own the following items: digester, equipment, and infrastructure related to natural gas production, distribution, and composting, including the composting building , to ensure eligibility for and optimization of tax credits, and Company Owned Facility Assets.
- J. At the end of Term, the County will have the option to purchase the Company Owned Facility Assets and all Equipment, for one dollar (\$1.00); and
- K. The Company will operate and maintain the Facility in accordance with the terms of 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 delivered from the collection of residential and commercial **Municipal Solid Waste**, which has the meaning set forth in Section 1.51. Acceptable Materials does not include Commingled Recyclable Materials, Source Separated Organics, or waste from public transfer stations without mutual agreement of the Parties. Acceptable Materials includes all MSW from all residential and commercial public and private hauler loads not including transfer trailers unless otherwise agreed upon by the Parties, and any additional MSW delivered, as agreed upon by the Company and County (e.g., select transfer trailer loads).

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 and is processed organic material from the anaerobic digestion facility that has achieved a pathogen reduction as required by EPA 503 and passes the SW-846 Test Method 9095-B: Paint Filter Liquids Test.

1.4 **“Annual Maximum Acceptable Materials”** means, with respect to a Contract Year, the lesser of (i) the actual tons of Acceptable Materials received at the Facility during a Contract Year and (ii) 265,200 tons (5,100 tons/week x 52 weeks).

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, solid waste 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:

- (a) except as provided below with respect to exclusions from the definition of “Change in Law”, any of the following events or conditions occurring after the Effective Date which is demonstrated to have a material adverse effect on the County’s or the Company’s ability to perform in accordance with the terms of this Agreement 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 provided that the contesting in good faith of any such event or condition shall not constitute or be construed as a willful or negligent action or failure to act of such Non-Performing Party:

- (i) the adoption, promulgation, issuance, modification, or official change in interpretation of any Applicable Law;
 - (ii) the order and/or judgment of any federal, state, or local court, administrative agency, or governmental officer or body, negligent action or a lack of reasonable diligence of the Non-Performing Party; or;
 - (iii) 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.
- (b) It is specifically understood, however, that none of the following shall constitute a “Change in Law”:
- (i) non-material acts, events and circumstances with respect to Governmental Approvals to the extent the Company has assumed the permitting risk;
 - (ii) any Change in Law relating to income taxes;
 - (iii) a change in the nature or severity of the actions typically taken by a governmental body to enforce compliance with Applicable Law that was in effect as of the Effective Date;
 - (iv) any increase in any fines or penalties provided for under Applicable Law in effect as of the Effective Date;
 - (v) any Change in Law (including the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Company than are imposed by the terms of this Agreement;
 - (vi) any event that affects generally applicable working conditions or standards that is not specific to the materials recovery industry or the Project; or

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 1.3** hereto.

1.9 ***“Commercial Operations Date”*** means the first date after the Acceptance Tests have been completed and confirmed by the Commissioning Contractor (as defined below) the conditions set forth below are achieved and all other elements necessary for operations to commence are completed and available for use (e.g., permits, roads, and infrastructure):

- (a) Operating Governmental Approvals. All governmental approvals required under Applicable Law which are necessary for the operation of the Project shall have been duly obtained and shall be in full force and effect. Certified copies of all such governmental approvals, to the extent not in the County’s possession, shall have been delivered to the County;
- (b) Required Operation Period Insurance. The Company has obtained and submitted to the County certificates of insurance for all required operation period insurance in accordance with **Schedule 1.6**; and
- (c) No Default. The Company has certified that there is no Event of Default by the Company existing under this Agreement or event which with the giving of notice or the passage of time would constitute an Event of Default by the Company hereunder.

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.

1.11 ***“Commissioning Contractor”*** or ***“CC”*** has the meaning provided to the term ***“CC”*** in **Schedule 1.2**.

1.12 ***“Contingency Plan”*** has the meaning set forth in Section 14.2(a).

1.13 ***“Contract Year”*** has the meaning set forth in Section 2.1.

1.14 ***“County Indemnitees”*** has the meaning set forth in Section 15.1.

1.15 ***“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.

1.16 ***“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 1.11**, the lesser of (i) the actual tons of Acceptable Materials received at the Facility on such day and (ii) 1,100 tons.

1.17 **“Deficiency”** means the Company’s failure to complete scheduled cleaning, preventative maintenance, and/or repair of mechanical systems, MRF and anaerobic digestion buildings and ancillary structures, and/or facility parking lots, roadways, and grounds.

1.18 **“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 MRF Diversion Guarantee, processed and dried digestate from the AD that meets the requirements for ADC shall qualify as successfully marketed/beneficially used and not counted as disposal.

1.19 **“Dry Run System Test”** shall have the meaning provided in **Schedule 1.2**.

1.20 **“DWM”** means the Lane County Division of Waste Management.

1.21 **“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.

1.22 **“Equipment”** means the equipment to be located at the Facility, as substantially described on **Schedule 1.4** hereto which is based on the 30% Design Specification Package, attached as **Exhibit 2** hereto. Equipment includes any changes in equipment selection and sizing due to the continued design process, whether or not listed on **Schedule 1.4**. Equipment further includes additional equipment, upgrades and replacement equipment that become located at the Facility.

1.23 **“Equipment Financing”** has the meaning set forth in Section 4.1(c).

1.24 **“Equipment Lender”** has the meaning set forth in Section 6.1.

1.25 ***“Excluded Material”*** means waste delivered to the Facility that is not Acceptable Material.

1.26 ***“Excess Recyclable Revenues”*** has the meaning set forth in Section 8.4.

1.27 ***“Excess RNG Revenue”*** has the meaning set forth in Section 8.5.

1.28 ***“Extension Period”*** has the meaning set forth in Section 2.2.

1.29 ***“Facility”*** means the material recovery facility (***“MRF”***) and anerobic digester facility (***“AD”***) proposed to be constructed by the Company at the Project Site as described in the **Facility Design Specifications**.

1.30 ***“Facility Design Specifications”*** means the specifications for the construction and design of the Facility as described in **Exhibit 2** hereto.

1.31 ***“Fully Process or Fully Processed”*** means (i) with respect to MSW, such MSW has been processed (including separation and recovery of materials as intended by this Agreement 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 as intended by this Agreement through the digestive process at the Facility.

1.32 ***“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.

1.33 ***“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 1.5** hereto.

1.34 ***“Housekeeping Plan”*** has the meaning set forth in **Schedule 1.3**.

1.35 ***“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 1.7**.

1.36 ***“Initial Term”*** has the meaning set forth in Section 2.1.

1.37 ***“Insurance Schedule”*** means **Schedule 1.6** of this Agreement.

1.38 ***“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.

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

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

1.41 ***“Lease”*** means a commercial lease between the County and the Company with respect to the Project Site.

1.42 ***“Liquidated Damages Schedule”*** means **Schedule 1.7** of this Agreement.

1.43 ***“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 1.8** hereto.

1.44 ***“Material Performance Failure”*** means a failure of the Company to meet one or more of the Minimum Diversion Guarantees and Performance Standards as described in Schedule 1.9 for a consecutive period of 60 days, as measured on an average daily basis over the 60-day period, except as a result of an Uncontrollable Circumstance or as a result of the County not meeting any of its obligations hereunder.

1.45 ***“Minimum AD Facility Gas Production Guarantee”*** has the meaning set forth on **Schedule 1.9**.

1.46 ***“Minimum MRF Diversion Guarantee”*** has the meaning set forth on **Schedule 1.9.**

1.47 ***“Renewable Natural Gas Standards”*** has the meaning set forth on **Schedule 1.14.**

1.48 ***“Minimum Tonnage”*** has the meaning set forth in Section 8.1.

1.49 ***“Missed Adjustment”*** means when contemplating CPI adjustments, should the Parties fail to either confirm or revise the annual rate 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.

1.50 ***“MMBTU”*** means one million British Thermal Units.

1.51 ***“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.

1.52 ***“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 1.10** hereto.

1.53 ***“Occupancy Date”*** means the date the Company is entitled to occupy the Facility pursuant to the Lease.

1.54 ***“Operating Hours”*** means the operating hours the Company shall maintain for the receipt of waste at the Facility as further described on **Schedule 1.11** hereto.

1.55 ***“Operating Cost Component”*** has the meaning sort forth in **Schedule 1.17.**

1.56 ***“Operations Manager”*** has the meaning set forth in **Schedule 1.10.**

1.57 ***“Pass Through Component”*** has the meaning sort forth in **Schedule 1.17.**

1.58 ***“Performance Bond”*** means a performance bond meeting the standards set forth on **Schedule 1.12** hereto.

1.59 ***“Preventative Maintenance Program”*** has the meaning set forth in **Schedule 1.13.**

1.60 ***“Project”*** means the cooperative undertaking set forth in this Agreement for construction of the Facility, installation and commissioning of the Equipment, and carrying out of operations thereat all in accordance with the terms of this Agreement.

1.61 ***“Project Site”*** means the real property described in the Lease.

1.62 ***“Rate Year”*** means the period from July 1st through June 30th of the following year.

1.63 ***“Recyclable Materials”*** means old corrugated containers; mixed paper; clean standard recyclable polymer clean food and beverage containers; empty steel food and beverage cans; empty aluminum beverage cans; and any other materials recovered by the Facility and sold by Company. Contaminated materials are excluded.

1.64 ***“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, that 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.

1.65 ***“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.

1.66 ***“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 and, at a minimum, meets the Renewable Natural Gas Standards.

1.67 ***“Renewable Natural Gas Standards”*** means the standards for Renewable Natural Gas (RNG) produced at the Facility set forth on **Schedule 1.14** hereto.

1.68 ***“Residue”*** means that portion of Acceptable Materials delivered to the Facility that is left over and must be disposed of after processing, including any processed organic material from the anaerobic digestion facility that does not meet the definition of ADC.

1.69 ***“Residue Disposal Rate”*** means the per ton rate, described in Section 8.3 and **Schedule 1.17**, as set and adjusted by the County, for the disposal of Residue.

1.70 ***“Reporting Requirements”*** means the reporting requirements with respect to the Company's operation of the Facility as further described on **Schedule 1.15** hereto.

1.71 ***“Restricted Person”*** means any person who (or any member of a group of persons acting together, any one of which):

- (a) Is debarred, suspended, or otherwise disqualified from federal, State, or County contracting for any services similar in nature to the services to be provided by the Company pursuant to this Agreement;
- (b) Was or is subject to any material claim of the United States, State, or County in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the County's view, in either case, be reasonably likely to materially affect the ability of the Company to perform its obligations under this Agreement;
- (c) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;
- (d) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;
- (e) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or
- (f) Has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent.

1.72 **"Scale"** means the scale to be operated by the County at the Project Site, as further described in Section 3.3(a).

1.73 **"Schedule of Performance"** means the schedule for the completion of the Facility .

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

1.75 **"Service Fees Schedule"** means the schedule for the fees to be paid to Company as provided in **Schedule 1.17** hereto.

1.76 **"Source Separated Organics"** means yard trimmings, vegetative and non-vegetative food scraps, uncontaminated scrap wood, and compostable, non-recyclable paper that has been separated from MSW and other recyclable material prior to arrival at the Facility.

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

1.78 **"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.

1.79 **"Uncontrollable Circumstance"** has the meaning set forth in Section 14.1(a).

1.80 **"Unpermitted Waste"** means Hazardous Substances and any material that the Facility is not allowed to accept under Applicable Laws and MSW that 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.

1.81 **"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 Commercial Operations Date shall be a **"Contract Year."**

2.2 Extension of Term.

- (a) 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"**). For this Agreement to be extended, the Parties must agree in writing to an extension and the County Board of Commissioners must approve the proposed extension.
- (b) 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.
- (c) The Service Fee during any Extension Period shall be negotiated to reflect the fact that (i) the original Equipment Financing will have been paid off by the end of the Initial Term and (ii) any new capital costs that may 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, and the County agrees, the Company shall be entitled to an adjustment of the Service Fees in an amount reasonably necessary, as agreed upon by the Parties, to cover

any additional costs related to installation and operation of any such new or refurbished Equipment.

- (d) The Parties may negotiate in good faith any appropriate changes to the Service Fee and/or contract language as part of consideration of any extension.

2.3 Title to Equipment and Facility following Term. Upon expiration of the Term, at the County's option, the Company shall deliver title to the Equipment and the Company Owned Facility Assets and all other improvements at the Site to the County without encumbrance, for the payment of one dollar (\$1.00). If the County decides not to take title, the Company shall remove the Equipment from the Facility to dispose of as it chooses within 180 days of expiration of the Term, or as agreed upon by the Parties.

3. **County Obligations.**

3.1 Design.

The County shall be responsible for:

- (a) obtaining title to the Project Site and all necessary easements and land use approvals at the Project Site necessary for the construction of the Facility and operation of the Project;
- (b) cooperating with the Company on the design of the Facility, as set forth in Section 4.1(a);
- (c) obtaining, maintaining, renewing and amending, as needed, (i) all required permits and approvals for the commencement of construction at the Project Site other than any air quality, solid waste and construction permits and approvals for the Company Owned Facility Assets which shall be the responsibility of the Company 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 receipt;
- (d) County to pay for and approve the design of the Facility and finance and construct of the County Owned Assets , in reasonable consultation with the Company;
- (e) 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;
- (f) ensuring all required access to the Project Site, including roadway improvements and traffic control;

- (g) engaging as CC a firm with professional experience in the solid waste industry as selected by the provision of **Schedule 1.2**. The cost of the CC will be equally shared between the County and the Company;
- (h) paying the Company at the end of the term one dollar (\$1.00) for the Company Owned Facility Assets and the Equipment; and
- (i) performing all of its obligations under this Section in a diligent and efficient manner to promote progress of the construction of the Facility in a timely manner consistent with the Schedule of Performance.

3.2 Service Fees. Commencing on Commercial Operations Date and with the first date that any Acceptable Materials are delivered to the Facility for processing and thereafter, the County shall pay to the Company the Service Fees in accordance with the Service Fee Schedule.

3.3 Operational Services (County).

During the Term of this Agreement:

a) Scale. The County shall:

- (i) install, operate and maintain, including bi-annual weights and measures testing, a scale and electronic recordation system at the Project Site to weigh and record the tonnage of incoming and outgoing materials, to be installed in a location mutually agreeable to the Parties (the “**Scale**”);
- (ii) provide such information to the Company via an electronic method to be determined by the parties on a daily basis;
- (iii) provide the Company with read-only access to the Scale and reasonable access to audit records related to the Scale; and
- (iv) before the Acceptance Test, provide the Company with its standard methodology for determining tare weights, which shall be subject to approval by the Company.

- (b) Transportation. The County shall transport all Residue and ADC 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) accept assignment of the design contract from BHS;
- (b) finance and construct of the Company Owned Facility Assets, in reasonable consultation with the County. Upon submission of any design of the Facility to the County, such submission will be deemed approved by the County unless the County provides objections or comments within 10 business days of the submission;
- (c) finance the purchase of the Equipment (the “**Equipment Financing**”) in a form and substance acceptable to the Company;
- (d) maintain insurance as required under the Insurance Schedule;
- (e) obtain any air quality, solid waste and construction permits and approvals required for construction of the Company Owned Facility Assets and comply with (i) all required permits and approvals for the construction of the Company Owned Facility Assets and (ii) all required land use approvals to allow the operation of the Facility by the Company as contemplated by this Agreement including performing required monitoring, sampling, and reporting.
- (f) complete the Acceptance Tests with such completion to be confirmed by the CC before the Commercial Operations Date;
- (g) cooperate with the CC as it monitors and supports the Company in completing the Acceptance Tests;
- (h) ensure that the Facility Design Specifications be in conformance with all Applicable Laws and Land Use Regulations; and
- (i) deliver title to the portion of the Facility that transfers the Company Owned Facility Assets and all Equipment it owns to the County , without encumbrance, upon receipt of payment from the County pursuant to Section 2.3.

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. The Company shall provide access to the County to the Facility and Project Site during the installation period for the purposes of reviewing the design, engineering, manufacturing, and installation of the Equipment.

4.3 Operational Services (Company). Beginning on the Commercial Operations Date, the Company shall:

- (a) Fully Process all Acceptable Materials delivered to the Facility up to the Annual Maximum Acceptable Materials, provided that the Company is not required to receive more than the Daily Maximum Acceptable Materials;
- (b) obtain and maintain all required Facility operating and environmental permits, except for the permits that the County is responsible for obtaining and maintaining, and perform necessary monitoring, sampling, reporting, and corrective actions;
- (c) provide the Management and Operational Services, the Cleaning and Housekeeping Services, and the Preventive Maintenance Services;
- (d) meet the Minimum MRF Diversion Guarantee and Minimum AD Facility Gas Production Guarantee;
- (e) maintain operating hours for the Facility as set forth in **Schedule 1.11**, Operating Hours;
- (f) staff the Facility appropriately and train personnel periodically to ensure safe, environmentally sound operations;
- (g) pay for all utilities for operation of the Facility;
- (h) operate the Facility in conformance with all applicable permit conditions relating to Environmental Laws;
- (i) compile and provide to the County the reports set forth in the Reporting Requirements;
- (j) provide the Hazardous Waste Exclusion and Safety Program in accordance with the timelines and standards set forth therein;
- (k) adopt and comply with the Nuisance Control Standards;
- (l) 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;
- (m) permit County employees or agents to monitor Facility operations by the Company and enter the Facility at any time with reasonable notice, provided

that any such monitoring or inspection does not disrupt the operations of the Facility;

- (n) maintain in full force and effect insurance in the amounts and coverages set forth in the Insurance Schedule;
- (o) maintain in full force and effect the Performance Bond; and
- (p) excluding construction defects related to County Owned Assets and subject to the terms of this Agreement, perform all maintenance, repair and replacement of the Equipment, Facility and Project Site except as otherwise set forth in the Lease.

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 from the County the Project Site and the portion of the Facility owned by the County pursuant to the Lease. The County and the Company will each own portions of the Facility as delineated on Exhibit 1.

6. **Lender Rights.** [UNDER REVIEW]

6.1 Collateral Assignment.

6.2 Cure Right.

6.3 Interim Operation of Facility After Default.

6.4 New Agreement.

6.5 Notices.

7. **Billing and Payment.**

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

7.2 **Payment to Company.** The County shall pay invoices due and owing to the Company, or its designee, no later than thirty (30) days after receipt thereof. Any past due invoices will accrue interest at the JP Morgan Chase prime rate as published in the Wall Street Journal on the invoice date.

7.3 **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) issue a credit memo with an amount equal to any amounts incorrectly charged to the County, if any or (ii) reissue the invoice to the County reflecting the amount still owed if the dispute relates to a shortfall in payment by the County.

7.4 Principal and Interest Payments. The County agrees that, on or prior to the 15th day of each month commencing on the month after the Commercial Operations Date, it will pay Company all Service Fees hereunder relating to the Project for deposit and distribution in accordance with the bond and loan documents to be delivered in connection with the financing of the Project. The Company acknowledges that payment to the Equipment Lender is payment to the Company. Amounts remaining in such accounts following the payment of debt service and all other amounts owing to Company and with respect to maintenance and operation of the Project and as otherwise agreed to by the Parties in the bond and loan documents, may be paid, subject to conditions and terms set forth in the bond and loan documents, to the Company.

7.5 Payment to County. The Company shall pay invoices due and owing to the County no later than thirty (30) days after receipt thereof. Any past due invoices will accrue interest at the JP Morgan Chase prime rate as published in the Wall Street Journal on the invoice date.

8. **Waste Volume and Processing.**

8.1 Minimum Tonnage. The County shall deliver or cause to be delivered to the Facility at least 120,000 tons of Acceptable Materials per Contract Year (the “**Minimum Tonnage**”), on a monthly basis as set forth in the Annual Projections. The County will provide Annual Projections to the Company. In the event the County fails to deliver the monthly Minimum Tonnage of 10,000 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. In the event the County makes any such shortfall payments to the Company, the County shall be entitled to payment from the Company up to such amounts at the end of the Contract Year if the annual tonnage shortfall below 120,000 tons is less than the tonnage amount that was the basis of the shortfall payments.

8.2 Annual Tonnage. The County will provide Annual Tonnage to the Company. The Company will invoice the County at the Service Fee corresponding to the Annual Tonnage projected by the County on a monthly basis. In the event that actual tonnage of Acceptable Materials delivered to the Facility is greater than the Annual Projection, the County will be entitled to reimbursement of Service Fees calculated on the basis of the amount identified in **Schedule ____**. In the event that actual tonnage of Acceptable Materials delivered to the Facility is less than the Annual Projection, the Company will be entitled to reimbursement of Service Fees calculated on the basis of the amount identified in **Schedule ____**. The calculation shall occur on a quarterly basis in a calendar year.

8.3 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 it 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.

8.4 Disposal of Post-Processing Residue from Facility.

- (a) *Recyclable Residue.* The Company shall 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 July 1 at the same rate of increase as the CPI) (the "**Residue Disposal Rate**"); *provided, however*, the County shall be responsible for transporting all Residue from the Facility to the Landfill.
- (b) *ADC.* The Company shall provide to the County at no cost all ADC generated from anaerobic digestion at the Facility for use as soil stabilization at the Landfill, with such transportation at the County's sole cost and expense. If the amount of ADC generated exceeds the amount required by the County, the Company shall, if and as directed by the County in writing, 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 ADC to a saleable product, plus a commercially reasonable fee agreed upon by the Parties. If anaerobic digestion material is not ADC then that material shall be treated as Residue and shall not count as diverted material.
- (c) The Company is not obligated to produce any minimum quantities of Residue or ADC.

8.5 Recycling and Diversion. The Company will use reasonable efforts to Divert as many Recyclable Materials as possible from the Acceptable Material. 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 net revenue (after deduction for claims, shipping, etc.) from such sales of Recyclable Materials is greater than \$5,000,000 in any year (such amount to be adjusted each July 1 at the same rate of increase as the CPI) (as adjusted, "**Excess Recyclable Revenues**"), then the Company shall pay to the County 25% of such Excess Recyclable Revenues within ninety (90) days of the end of each of each Contract Year.

8.6 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 related environmental attributes and such revenue will not affect Service Fee owed to the Company under this Agreement. Notwithstanding the foregoing, if the gross revenue (after deduction for claims, charge backs, brokerage fees) from the sales of RNG and related environmental attributes is greater than \$5,000,000 in any year (such amount to be adjusted each year in accordance with the CPI) (as adjusted, the “**Excess RNG Revenue**”), the Company shall pay to the County 25% of the Excess RNG Revenues within ninety (90) days of the end of each Contract Year. The Company shall maintain accurate books and records with respect to the generation of any revenues from the Project and related brokerage fees and shall make such books and records available for audit by the County at 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 has 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 Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, 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.

9.5 Contract Enforceability. The County is subject to suit with respect to its obligations under this Agreement as of the date that this Agreement is executed and delivered by the County. [UNDER REVIEW]

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 is a wholly owned subsidiary of BHS Projects, LLC, which is a wholly owned subsidiary of Emerging Acquisitions, LLC, dba Bulk Handling Systems. 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 CC both the MRF and AD acceptance tests as described in **Schedule 1.2**.
- (b) *Material Performance Failure*. A Material Performance Failure shall have occurred commencing after the Commercial Operations Date. The Company shall not be in default so long as it supplies to the County a plan for cure within thirty (30) days of notice from the County's Public Works Department, which

notice will include an estimated length of time to cure, and takes reasonable steps to cure in accordance with such plan and in any event such default is cured within 120 days, which time will be extended to the extent reasonably necessary to finish the cure provided that the Company shall have commenced the cure as soon as reasonably possible after the Material Performance Failure and continues to diligently pursue the cure until completed. If, after the cure has been implemented the Facility no longer meets the definition of Material Performance Failure for a consecutive period of 60 days (on an average daily basis), then the Company shall not be in default and the County shall notify the Company in writing that it is no longer in default.

- (c) *Failure to Perform Obligations.* The Company fails to perform (other than as specified in clauses (a) and (b) above) any of its obligations under any provision of this Agreement liquidated damages shall apply as provided for in **Schedule 1.7**. The Company shall not be in default so long as it supplies to the County a plan for cure within such thirty (30) day period below and takes reasonable steps to cure in accordance with such plan, and in any event such default is cured within sixty (60) days, which time will be extended to the extent reasonably necessary to finish the cure provided that the Company shall have commenced the cure as soon as reasonably possible after the Material Performance Failure and have diligently pursued to completion.
- (d) The Commercial Operation Date does not occur within [] days after the County has provided all permits and approvals for which it has responsibility to the Company, provided that any delays not caused by the Company, its subcontractors or agents, will extend the number of days on a day-for-day basis.
- (e) *Insolvency or Bankruptcy (Voluntary Petition).* The Company files a voluntary petition for relief under any bankruptcy, insolvency, or similar law.
- (f) *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) *Performance Guarantee Failure*: Remedies for performance guarantee delays and failures are specified in **Schedule 1.2, A.4.3 (Actions in Event of Test Failure) and B.4.3 (Test Failure)**.
- (b) *Failure to Process Materials*. If the Company is in breach of this Agreement as a result of its inability to process the Acceptable Material delivered to the Facility by County, 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 **Schedule 1.7, Liquidated Damages, 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) *Material Performance Failure*. If a Material Performance Failure is not cured as described in subsection 11.1(b) above, then the County may terminate this Agreement in accordance with subsection ____ and Section 6.
- (e) *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 11.1(e) or (f) or if 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 in accordance with Section 6.
- (f) *Other Breaches*. Subject to the requirements of Section 13, 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.

(g) *Limitation on Damages.*

- (i) Neither Party will be liable to the other Party for any indirect, consequential, incidental, special, punitive or other similar damages.
- (ii) If liquidated damages are imposed for any breach other than failure to pass Performance Testing as set out in Schedule 1.2, it is the exclusive remedy except as otherwise set forth in this agreement.

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, County Default.* Upon a termination of this Agreement by the Company due to uncured default by the County as described in subsection 11.2 above, within 90 days of receipt or delivery of the termination notice, the County shall:
 - (i) purchase the Equipment owned by Company by either assuming the Company's obligations to the Equipment Lender, if allowed by such Equipment Lender or paying the Equipment Lender an amount equal to all outstanding indebtedness related to the construction and delivery of the Equipment; and
 - (ii) pay an amount sufficient to compensate the Company for the fair market value of the rights of the Company under the Service Agreement and Lease. Upon payment of the amounts set forth in this subsection 11.4(b), the Company shall deliver title to the Equipment. Until payment of the amounts set forth in this subsection, the Company and the Equipment Lender shall retain the continued right to access the Facility and Project Site to remove any Equipment therefrom.
 - (1) For the purpose of this Section, fair market value of the rights of the Company under the Service Agreement and Lease ("**Fair Market Value**") means ... [UNDER REVIEW]
- (c) *Purchase of Equipment, Company Default.*

- (i) In the event of an uncured default by the Company as described in subsection 11.1 above, within 120 days of receipt or delivery of the termination notice, the County shall have the option, but shall not be required to, purchase the Equipment owned by Company by either assuming the Company's obligations to the Equipment Lender, if allowed by such Equipment Lender, or paying the Equipment Lender an amount equal to all outstanding indebtedness related to the construction and delivery of the Equipment. If the County does not elect to purchase the Equipment, the Equipment shall be removed from the Project Site within 180 days of the termination or pay liquidated damages as set forth in **Schedule 1.7**.
- (ii) The County will have full ownership of the Equipment upon payment to the Equipment Lender.
- (d) *Remedies.* Subject to subsection 11.3(g), Limitation of Damages, either Party may pursue any and all remedies under law in the event of a default by the other Party including recovering monetary damages associated with any termination.
- (e) *Company's Post-Termination/Expiration Obligations.* Upon the termination or expiration of this Agreement, the Company shall comply with the following post-termination obligations:
 - (i) stop the Contract Services on the date and to the extent specified by the County;
 - (ii) promptly deliver to the County all construction record drawings prepared by the Company in carrying out the construction which have not previously been delivered to the County;
 - (iii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
 - (iv) within 180 days remove from the Facility all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
 - (v) leave the Facility in an orderly condition;
 - (vi) promptly deliver to the County the Operation and Maintenance Manual used at the Facility in the performance of the Contract Services, including all revisions and updates thereto;
 - (vii) deliver to the County a copy of all books and records in its possession required to be maintained under this Agreement;

- (viii) provide the County with a list of all computer and other files relevant to the Facility, and access, user names, passwords and security codes;
 - (ix) promptly deliver to the County copies of all Subcontracts;
 - (x) assign to the County any Subcontract that the County elects in writing, at its sole election and without obligation, to have assigned to it. The County shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned;
 - (xi) terminate all Subcontracts not assigned to the County and make no additional agreements with Subcontractors;
 - (xii) promptly transfer to the County all warranties given by any manufacturer or Subcontractor with respect to particular components of the Facility or Equipment;
 - (xiii) take no action which shall increase any amount payable by the County under this Agreement.
- (f) *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 use commercially reasonable efforts to mitigate their damages hereunder.

12. **Bonding.** At the time that Company enters into the Municipal Solid Waste Facility and Anaerobic Digestion Facility Equipment purchasing agreements, the Company will cause its equipment supplier to provide a performance bond in Company's favor for five million dollars (\$5,000,000) to support the acquisition of the Equipment and its performance according to the Performance Guarantees. The Company shall add the County as beneficiary of the performance bond. Company will release such bond upon successful completion of the Performance Tests of both the Municipal Solid Waste Facility and Anaerobic Digestion Facility.

13. **Dispute Resolution.** Except in those cases where this Agreement references the use of an Independent Consultant ("IC") to resolve a dispute between the Parties, in which case any such disputes shall be resolved based on the decision of the 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 the County of any form of defense or immunity, whether governmental immunity or otherwise, from any claim or from the jurisdiction of any court.

14. **Excuses From Performance.**

14.1 Uncontrollable Circumstances.

- (a) *Force Majeure.* Neither Party will be held responsible for delay or default due to force majeure acts, events, or occurrences, unless such delay or default could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that Party. The Parties shall be excused from performing their respective obligations under this Agreement, to the extent performance is prevented by force majeure acts, events, or occurrences, such as by reason of floods, transportation disruptions, significant disruptions to supply chains beyond delays which should have been reasonably anticipated as of the Effective Date, earthquakes, fire, landslide, lightning, earthquake, flood, explosion, other casualty event, acts of "God," war, terrorism, sabotage, civil blockade or insurrection, riots, superseding state or federal governmental regulations or judicial actions making contract unenforceable, actions of domestic governments (except County's obligations shall not be excused as a result of its own actions), not due to the fault of the Party seeking relief due to an Uncontrollable Circumstance, pandemic (with respect to Covid 19, only to the extent the impacts of such pandemic has worsened since the Effective date), epidemic, and any other catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder except as provided below with respect to exclusions from the definition of "Uncontrollable Circumstances" (an "**Uncontrollable Circumstance**").
- (b) It is specifically understood that none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:
 - (i) Any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
 - (ii) Changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, labor availability, currency values, exchange rates or other economic conditions;

- (iii) Changes in the financial condition of the County, the Company or their affiliates or subcontractors affecting the ability to perform their respective obligations;
 - (iv) Union or labor work rules, requirements or demands, strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions affecting construction except for third-party strikes affecting construction activities;
 - (v) Any surface conditions at the Project Site;
 - (vi) Any act, event, circumstance or Change in Law occurring outside of the United States;
 - (vii) Mechanical failure of Equipment;
 - (viii) The failure of the Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the work; or
 - (ix) Changes in waste composition of Acceptable Materials during the Term.
- (c) *Notice.* The Party claiming excuse from performance as a result of Uncontrollable Circumstances shall as soon as possible after such Party has notice of such circumstances, give the other Party notice of the facts constituting such circumstances. As soon as is reasonably practicable thereafter and in no event longer than 14 days, the Party claiming excuse from such event shall provide the other Party an update, the proposed solution, an estimate of the costs and time necessary to resume its obligations, and asserting its claim to excuse under this subsection.
- (d) *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) The Company shall repair or rebuild the portion of the Facility that it constructed if damaged;
 - (ii) The County shall repair or rebuild the portion of the Facility that it constructed if damaged;
- (e) *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.

15. **Indemnification.**

15.1 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 their 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.

15.2 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 defective operations, 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.

16. **Limited Waiver of Governmental Rights.**

16.1 Fees, Taxes, and Assessments. The County shall not, without the prior written consent of the Company, which shall not be unreasonably withheld, 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.

16.2 Moratorium. County agrees, to the extent practicable, to provide reasonable advance notice of any ordinance, resolution, or other Land Use Regulation or limitation which may apply to or govern operation of the Facility.

16.3 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.

17. **Intellectual Property.**

17.1 Company Intellectual Property Warranty. The Company warrants that it is the owner of, or has the necessary rights to, all intellectual property (including but not limited to copyrights, patents, and trade secrets) that it may use in performing and completing its obligations under this Agreement.

17.2 County Intellectual Property Warranty. The County warrants that it is the owner of, or has the necessary rights to, all intellectual property (including but not limited to copyrights, patents, and trade secrets) that it may use in performing and completing its obligations under this Agreement.

17.3 Intellectual Property Ownership.

- (a) Subject to the non-exclusive licenses contained in this agreement, each party retains all copyrights, patent rights, trade secret rights as well as any and all other proprietary rights in or to any documentation, photos, designs, sound or audiovisual recordings, software code, inventions, methods, systems, technologies, and other materials in existence upon execution of this Agreement.
- (b) Subject to the non-exclusive licenses contained in this agreement, each party shall be the sole owner of all copyrights, patent rights, trade secret rights as well as any and all other proprietary rights in or to any documentation, photos, designs, sound or audiovisual recordings, software code, inventions, methods, systems, technologies, and other materials that party creates or causes third parties to create on its behalf, after execution of this Agreement.

17.4 Nonexclusive Intellectual Property License to the County. The Company grants to the County, solely for its use in association with the performance of this Agreement, a perpetual, irrevocable, non-transferable, no-cost, royalty-free nonexclusive license, with the right to grant sublicenses upon prior agreement of the Company (such agreement not to be unreasonably withheld), in the intellectual property (including, but not limited to copyrights, patents, and trade secrets) it owns and is used in association with the performance of this Agreement. Such license shall operate only to the extent it is necessary for the County to perform its obligations under this Agreement and operate the Facility.

17.5 Nonexclusive Intellectual Property License to the Company. The County grants to the Company, solely for its use in association with the performance of this Agreement, a perpetual, irrevocable, non-transferable, no-cost, royalty-free nonexclusive license, with the right to grant sublicenses upon prior agreement of County (such agreement not to be

unreasonably withheld), in the intellectual property (including, but not limited to copyrights, patents, and trade secrets) it owns and is used in association with the performance of this Agreement. Such license shall operate only to the extent it is necessary for the Company to perform its obligations under this Agreement and operate the management Facility.

17.6 Indemnification of County for Infringement Claims. The Company shall indemnify 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 the alleged infringement or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right by reason of the manufacture, sale, marketing, or use of any product, system, method, or any other action undertaken by the Company in performing its obligations under this Agreement.

17.7 Indemnification of Company for Infringement Claims. The County shall indemnify 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 the alleged infringement or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right by reason of the manufacture, sale, marketing, or use of any product, system, method, or any other action undertaken by the County in performing its obligations under this Agreement.

17.8 Use of County Logo. The County hereby grants the Company the non-exclusive right and license to use the Lane County logo in connection with implementing this Agreement and operation of the Facility. Upon termination of this Agreement, the Company agrees to cease all use of the Lane County logo.

18. Use of Company Trademarks. The Company hereby grants the County the non-exclusive right and license to use its trademarks and service marks in connection with implementing this Agreement and operation of the Facility. Upon termination of this Agreement, the County agrees to cease all use of the licensed marks.

19. **Confidential Records.**

19.1 The Parties have the right to identify records and information as confidential to the extent permissible by law and the nature of the records and information warrants confidentiality.

19.2 Trade secrets must be distinctly labeled as such. Company agrees to label any asserted trade secrets and thereafter when requested by the County, provide relevant factual information and justification of the assertion of the trade secret exemption. Failure to initially label records as trade secrets does not prevent the Company for asserting trade secret and

labeling the information as such at a later time. ORS 192.345(2) provides a conditional exempt from disclosure of trade secrets. ORS 192.355(9)(a) provides an unconditional exemption for public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law, which includes trade secret as defined in ORS 646.461.

19.3 The Parties shall not disclose confidential information unless required by law, court or district attorney order.

19.4 Records held by County are generally considered public records and subject to public disclosure unless a statutory exemption applies.

19.5 Pursuant to Oregon public record law (ORS 192.355(4)) confidential records submitted by the Company to the County may be withheld from disclosure if the following criteria is met:

- (a) The informant must have submitted the information on the condition that it would be kept confidential;
- (b) The informant must not have been required by law to provide the information;
- (c) The information itself must be of a nature that reasonably should be kept confidential;
- (d) The County must be able to show that it has obliged itself in good faith not to disclose the information; and
- (e) The public interest would suffer by the disclosure.

19.6 With respect to any Financial Statements or any other non-public information, County agrees that it will hold in confidence all such information and it will restrict the disclosure of all such information within its own organization and to its agents or representatives on a need-to-know basis.

19.7 Within five (5) days of receiving a public records request for information that is labeled confidential or trade secret and prior to releasing such information, the County will inform the Company by written notice (including electronic mail). The Company may seek judicial assistance to prevent the disclosure of the confidential information, in which case, unless required to do so by law, court order, or governmental order, and so long as the judicial assistance is sought within seven (7) days of receiving notice, the County will not release the confidential information except pursuant to a final, non-appealable order or judgment to release the confidential information

19.8 Company agrees that County shall have no liability for the disclosure of any confidential information in response to a public records request where such disclosure is required by law, the court or governmental order, but only if County has provided Company the

prior written notice above and the Company does not seek judicial assistance to prevent disclosure, or if the Company does seek judicial assistance and the confidential information is released pursuant to a final, non-appealable order or judgment.

20. **Miscellaneous**

20.1 Relationship of the Parties.

- (a) 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.
- (b) Except as expressly provided under Sections 3.1 and 4.1, each Party shall have the exclusive control over the construction of the portion of the Facility that it will construct and own and 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.

20.2 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 and the Equipment Lender to another governmental entity provided the successor governmental entity has substantially similar financial and legal 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 and the Equipment Lender 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 and is not a Restricted Person. Consent to an assignment under this subsection shall not be unreasonably withheld by either Party.

20.3 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. Either party may designate a new authorized representative by written notice to the other. Parties agree to provide prompt notice of a new authorized representative when the authorized representative on record has changed.

20.4 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.

20.5 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.

20.6 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. This Agreement shall otherwise be fully enforceable as a valid and binding contract as and to the extent provided by the laws of the State of Oregon.

20.7 Injunctive Relief. To the extent a Party seeks injunctive or other equitable relief pursuant to one or more applicable sections of this Agreement, the dispute resolutions requirements under Section 13 do not apply and the Party shall be entitled to seek all such injunctive or other equitable relief.

20.8 Waiver of County's Right to Exclude. County grants, acknowledges, and confirms that Company and the Equipment Lender and their respective 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.

20.9 Entire Agreement; Ordering. This Agreement, including the Exhibits and Schedules, represents the full and entire Agreement between the Parties with respect to the matters covered herein. In the event of any conflict between the Schedules and the body of this Agreement, the Schedules will control.

20.10 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.

20.11 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.

20.12 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.

20.13 Attorney Fees. If any legal proceeding is commenced to interpret or enforce any provision of this Agreement, including any appeal therefrom, and any proceeding under the U.S. Bankruptcy Code, the prevailing party shall recover its reasonable attorney's fees and reasonable costs and disbursements.

20.14 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.

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: _____

SCHEDULES

Schedule 1.2

Acceptance Tests

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 the Company to test each piece of equipment in the processing lines, using commissioning protocol described below as well as any additional protocols to be developed and agreed upon in writing and signed off between the Parties prior to testing, 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 MSW “Acceptable Materials” line, the Company will work with the County to determine if all MRF testing will be tested separately by line or together. Company will be responsible for providing all necessary SS testing infeed. This phase of the performance test program is referred to as “Component Testing”. In addition to the commissioning protocol, which is performed during, and upon completion of the mechanical and electrical installation of all system components, a separate inspection and component testing process, Phase I, will be directed by Company and monitored, measured, and reported to the County by the CC, which will be selected by the County following the agreed upon protocols. Costs for CC are to be shared evenly between County and Company. The Company’s Phase 1 commissioning process will commence concurrent with the final week of the Company’s installation schedule and be completed within three (3) working days after the Company’s mechanical and electrical installation are completed. The County will work cooperatively with the Company to minimize the impact of the Company’s Phase 1 commissioning process upon the Company’s installation and system start-up process.
2. The Company’s field testing and motor control programming will include Emergency stops / interlocks testing, and be observed by the CC, during this phase of the test program.
3. The CC will monitor the Phase 1 activities to ensure that BHS is proceeding under the commissioning protocols. The CC will also 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 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 the Company 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 testing reports have been submitted to the County and Company, by CC, for all pieces of equipment, the Company 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. No abnormal or unusual staffing, maintenance and/or adjustments will be permitted during the Dry Run System Test, unless authorized by the County.
5. 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.

6. 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.
7. The CC will monitor the Phase 2 activities to ensure that the Company is proceeding under the commissioning protocol. The CC will also 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 and is capable of processing the specified materials at the specified flow rates without overloads, jamming, “tripping”, or other malfunction.
2. The Company 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 the Acceptable Materials required during the MSW Phase 3 Function Test.
4. At a minimum, this phase of testing shall be conducted over two (2) consecutive days, five (5) consecutive hours per day. If the Company requires a longer period of time to make system adjustments, the County will continue to provide the required Acceptable Material up to a maximum of four (4) working days during a 6 (six) day period, Monday

through Saturday. After four (4) working days, adjustments to the calculations and performance times will be made.

5. No abnormal or unusual staffing, maintenance and/or adjustments will be permitted during Phase 3, unless authorized by the County.
6. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.
7. *Requirement for CC.* The CC will monitor the Phase 3 activities to ensure that the Company proceeds under the commissioning protocol. The CC will also 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 Acceptable Materials processed, TPH, number of sorters on the line and their position, estimated quality (visual) of the final commodities.
 - c. Schedule for Phase 3 retesting in the event of failure.

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). The Company shall provide the County with written notification of its desire to start Phase 4 (complete the test program). 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 Acceptable Materials during the scheduled testing period. Before starting test on Phase 4, the County shall assure that sufficient Acceptable Materials are 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).
7. No abnormal or unusual staffing, maintenance and/or adjustments will be permitted during Phase 4, unless authorized by the County.

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) and system uptime
Day Two	Independent testing of the MSW processing system for material recovery rate and system uptime.
Day Three	Independent testing for system uptime.
Day Four	Combined testing of MSW processing system for hourly rate of production, system uptime, and material recovery rate.

A.4.2 Performance Tests

The Phase 4 Performance Test involves the assessment of following three (3) individual tests:

1. System Uptime
2. Hourly Rate of MSW Production
3. MSW Material Recovery Diversion Rate

The contractual requirements for uptime, hourly rate of production, and material recovery diversion rate must be contemporaneously achieved during Phase 4 testing. The failure of any of the three (3) individual tests shall constitute failure of the entire Performance Test.

Requirement for CC. – The CC will monitor the Phase 4 Performance Test to ensure that the Company is proceeding under the commissioning protocol. The CC will also 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 4 report:

- a. Report outlining the Performance 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 4 retesting in the event of failure.

A.4.2.1 System Uptime

System Uptime Guarantee

The mechanical waste processing system shall effectively operate at, or above, the contractually guaranteed average of fifty tons per hour (50 TPH) during ninety percent (90%) of the testing period, at minimum. Non mechanical/electrical downtime events during the testing period shall be subtracted from the total numerical uptime required during the testing period.

Example:

6:00 AM – 2:30 PM	Shift Time	510 minutes
15 min	Break #1	-15 minutes
30 min	Lunch	-30 minutes
15 min	Break #2	-15 minutes
Scheduled Processing Time		450 minutes
Required Processing Time (90%)		405 minutes (6 hours 45 minutes)

Operator caused downtime that reduces the amount of scheduled processing time shall be subtracted from the scheduled processing time and the uptime shall be calculated using the reduced numerator.

Example:

Scheduled Processing Time	450 minutes
Inadvertent E-stops (Operator caused)	16 minutes

Time Available to Mechanical System	434 minutes
Required Processing Time (90%)	389 minutes (6 hours 29 minutes)

System Uptime Calculation

As planned, each shift provides the operator with 7.5 hours (seven and one-half hours) of scheduled processing time. During Phase 4 testing, the entire system must be available for 90% of each scheduled shift processing time. The Phase 4 shift schedule includes one-hour of scheduled downtime, and accommodates one-half hour of unscheduled, downtime. Test failure will be constituted whenever the entire system is not available, on-call, for at least 90% of a scheduled testing period (shift).

Failure to achieve the uptime requirement during the testing period shall constitute failure of the entire Performance Test.

A.4.2.2 Hourly Rate of MSW Production

The MSW mechanical waste processing system will process Acceptable Materials 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 Acceptable Materials processed during the testing period by the total amount of time (hours and minutes) that was required to process the Acceptable Materials during the testing period.

Before commencement of the MSW Production/Throughput test, the operator will thoroughly empty the facility of all Acceptable Materials, Acceptable Materials 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 of Acceptable Materials during the testing period shall be considered the total weight of all MSW material processed during the testing period.

Failure to achieve the hourly rate of production during the testing period shall constitute failure of the entire Performance Test.

A.4.2.3 MSW Material Recovery Rate

The Minimum MRF Diversion Guarantee shall be as specified in Schedule 1.9.

Recovery Rate Calculation

The calculation of the material recovery facility Diversion rate is the MRF Diversion Rate as defined on **Schedule 1.9**.

Testing Protocol

- All Equipment, floors, bunkers, etc. are to be clean and empty at the start of testing.
- All individual loads of Acceptable Material delivered to the MRF shall be tracked and their tonnages recorded;
- The number of staff on the sorting line will be documented;
- The CC shall verify that:
 - All containers for receiving the separated recyclable materials were empty and free of debris prior to sorting;
 - The conveyors, debris boxes, sort-line trash receptacles, liquid storage drums, bins, silos, bunkers and walking floor areas were all clear of materials and free of debris;
 - The tare weight of all bins and containers used for storing recovered materials;
 - The tare weight of all roll offs, and fork lifts and the proper accounting of all material weights accounting for any and all applicable tare weights;
- Verified all recorded weights, including Total Tons Processed, Tons of Diverted Materials Tons of ADC, Tons of Residual. At the end of the sorting process all fines and materials on equipment shall be collected as can be reasonably done and weighed for inclusion in the residual tonnage.
- Residuals from AD processing are to be weighed and reported.

A.4.3 Test Failure

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

- (a) Did the Acceptable Materials processing system meet the hourly throughput requirements (hourly design capacity)?
- (b) Did the system achieve the Minimum MRF Diversion Guarantee specifications of the contract?
- (c) Did the system achieve the contractually guaranteed uptime requirement?

In the event of failure, the Company shall advise the County as to the cause(s) of failure and take corrective measures as required. Once the problems have been corrected, the Company 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 not be permitted until the County is satisfied that the cause(s) for the initial failure have been remedied to its satisfaction with consent to continuation not to be unreasonably withheld.

Failure to achieve the minimum material recovery diversion rate during the testing period shall constitute failure of the entire Performance Test.

Actions in Event of 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. If all four phases of MRF system testing are not successfully completed within the 120 calendar days, Company shall have an additional 100 days to successfully complete all four phases of MRF system testing. The start date for that additional 100-day period is to be set by the County. During that additional 100-day period, Company shall pay the County \$5,000.00 (five thousand dollars) per day to offset the ongoing costs of testing until all testing requirements are successfully completed. Should the Company not successfully complete all four phases of MRF testing within that additional 100-day period, and should the Company and the County fail to reasonably agree upon a remedy within 30 calendar days following the additional 100-day period as provided, at the County's discretion, that shall constitute an Event of Default.

A.5 Miscellaneous:

Process of Selecting CC:

The County will provide the Company with a list of three (3) or more qualified CCs with at least three (3) years of experience in the solid waste industry to conduct monitoring and reporting on the performance tests related to each of the following three (3) systems:

1. Municipal Solid Waste system;
2. AD system; and
3. Single stream system.

The Company shall select one of the CCs on the County list to serve as the CC with respect to determining Substantial Completion of the building and each of the required performance tests. The Company may propose qualified CC's to be included on the County's list but the County is not obligated to include any of the Company's proposed CCs on the County's list.

Commissioning Phase Planning:

Each phase shall be timely planned by the Company and approved in writing by the County.

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 train employees regarding the equipment and system operation prior to scheduling Phase 4 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 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 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 Operations Manual.

- (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 manual.
- (c) Sorter production by sorting station will be included in this manual.
- (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. The Company will test each piece of equipment in the processing lines, using the commissioning protocol described below, as well as any additional protocols to be developed and agreed between the Parties prior to testing, 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 by the Company and monitored, measured, and reported to the County by CC. The County

- will work cooperatively with the Company to minimize the impact of the Phase 5 commissioning process upon the Company's installation and system start-up process.
2. The Company's field testing and motor control programming will include Emergency stops / interlocks testing, with results reported to the County .
 3. Documentation of events and results, by CC, 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 the Company 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 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. CC 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. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.

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 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.
3. 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.
4. 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.
5. CC 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. Date and times of each day of processing, approximate organics processed, TPH, number of support personnel on the line and their positions.
 - d. Description of any failure causing the test to be suspended, canceled, or otherwise not completed in full.
 - e. Repairs required to correct the failure.
 - f. Schedule for Phase 7 retesting in the event of failure.
6. The purpose of this Phase 7 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.
7. The Company 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.
8. At a minimum, this phase of testing shall be conducted over two (2) consecutive days, five (5) consecutive hours per day. If the Company 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.

9. All plant operating costs, including sorters, equipment operators, supervisors, supplies, and utilities shall be borne by the Company.
10. The County shall provide sufficient Acceptable Materials to the MSW system. The Company shall be responsible for creating the AD feedstock required during the Phase 7 Function Test. Before starting testing on Phase 7, the Company shall ensure that sufficient appropriate testing material is available for each day's testing. If the Company requires a longer period of time to make system adjustments, the County will endeavor to continue to provide the required Acceptable Material.

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 AD 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 Acceptable Material. The Company shall be responsible for providing adequate anaerobic digestion testing materials during the scheduled testing period. Before starting test on Phase 8, the Company shall ensure that sufficient testing material is available for each day's testing.
5. The performance requirements for each of the four (4) phases of testing must be chronologically and independently achieved.

B.4.1 Performance Test Schedule

The Performance Test shall be conducted over a total of 30 days. During Phase 8, the system will run 24/7 shift schedule. To comply with this schedule the MRF shall also run on a full time schedule and shall be responsible for recovering and providing all required AD testing materials during the scheduled testing period.

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. The Company 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 the Company. 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 Organic system testing shall be successfully completed within 180 calendar days following the scheduled commencement of Phase 5 testing. If all four phases of Organic system testing are not successfully completed within the 180 calendar days, the Company shall have an additional 100 days to successfully complete all four phases of AD system testing. The start date for that additional 100-day period is to be set by the County. During that additional 100-day period, Company shall pay the County \$5,000.00 (five thousand dollars) per day to offset the ongoing costs of testing until all testing requirements are successfully completed. Should Company not successfully complete all four phases of Organic testing within that additional 100-day period, and should the Company and the County fail to reasonably agree upon a remedy within 30 calendar days following the additional 100 day period, at the County's discretion, that shall constitute an Event of Default. County agrees that the liquidated damages is the exclusive remedy for Company's inability to pass the Performance Tests.

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SCHEDULE 1.3

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 pursuant to Schedule 1.7.

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 1.4

Equipment

Insert PDF

SCHEDULE 1.5

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 the Equipment supplier(s) be removed, be allowed or permitted to be removed, or made inoperable, without prior written consent of such supplier(s). The Parties agree to abide by all applicable health and safety governmental rules, regulations, and laws ("Health and Safety Requirements"). Each Party agrees to indemnify and hold harmless the other for any claim arising from breach of the provisions of this **Schedule 1.5**.

Parties 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.

Company will be responsible for the development of specific practices and protocols that make up the Safety Program to be delivered to the County for review and comment [___] days before the Commercial Operations Date and will be followed by all parties on the project site.

SCHEDULE 1.6

Insurance

- A. **Company's Required Insurance.** Company must provide and maintain all types and amounts of insurance required under this schedule and must notify Lane County Risk Management of any material reduction or exhaustion of aggregate limits. Company may not commence any work under this Agreement until Company furnishes evidence of all required insurance specified by the County. Commercial General Liability and Auto Liability coverage must include an Additional Insured Endorsement naming Lane County and its officers, agents, employees and volunteers that includes completed operations, and which is primary and non-contributory with any other insurance and self-insurance.
- B. **Company to Maintain Insurance.** Company may not cancel, materially change, or not renew insurance coverages. If any policy is canceled before final payment by County to Company, Company must immediately procure other insurance meeting the requirements. If Company fails to maintain any required insurance, County reserves the right to procure such insurance and to charge the cost to Company.
- C. **Workers' Compensation.** Company, its subcontractors, and all employers working under this Agreement are subject employers under Oregon Workers' Compensation Law, and must comply with ORS 656.017 and provide Workers' Compensation coverage for all their subject workers unless exempt under ORS 656.126. Company shall maintain Worker's compensation and employer's liability insurance as statutorily required for persons performing work under this contract. Statutory amount is currently \$500,000 in Oregon. Any subcontractor hired by Company shall also carry Workers' Compensation and Employers' Liability coverage. Sole proprietors not subject to Workers' Compensation coverage must complete, execute, and submit the Workers' Compensation Coverage Exemption Statement.
- D. **Commercial General Liability with Additional Insured Status shall include:**
- (a) Policy must include:
 - i. Commercial General Liability
 - ii. Property Damage
 - iii. Medical Expenses
 - iv. Personal and Advertising
 - v. Products/Completed Operations
 - (b) Minimum Policy Limits:
 - i. \$2 million per occurrence
 - ii. \$6 million aggregate
 - (c) All policies must be of the occurrence form with combined single limit for bodily injury and property damage. Any deviation from this must be approved by Lane County Risk Management. All claims-made forms must be approved by Lane County

Risk Management in advance and provide tail/continuous coverage for 24 months from the end of the project.

- E. **Additional Insured Status:** For general liability insurance coverage is required for performance of this Agreement. Unless otherwise specified below, blanket additional insured is acceptable and is considered a written contract requirement on any insurance policies required herein with respect to Company's activities being performed under the Contract, excluding Professional Liability coverage.
- F. **Automobile Liability with Additional Insured:** Automobile insurance minimum policy limit of \$2 million combined single limit per accident for bodily injury and property damage. The coverage shall include owned, hired, and non-owned automobiles and include Lane County and its divisions, its commissioners, officers, agent, and employees as additional designated insureds (CA 20 48 02 99 or equivalent).
- G. **Pollution Liability:** Minimum coverage limit of not less than \$[] million per occurrence. All non-occurrence coverages must provide tail/continuous coverage for 24 months from the end of the project and shall include completed operations where applicable.
- H. **Builders' Risk.** Prior to the Occupancy Date, the Company shall maintain, or cause its 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 and the Company Owned Facility Assets to be constructed. Both the County 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.
- I. **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.

- J. **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 this **Schedule 1.6**, in an amount sufficient to pay operating expenses for a period of at least twelve (12) months, but in no case less than ten million dollars (\$10,000,000).¹
- K. **Umbrella or Excess Coverage:** Umbrella or excess coverage to meet the policy limits to the required amount is acceptable.
- L. **Guarantee of Maximum Coverage.** Lane County requires the coverage types and amounts shown above or policy limits, whichever is greater. The policy limits specified above are minimum requirements; Lane County reserves the right to claim up to the policy limits. All coverages are primary and non-contributory with any other insurance and self-insurance. Acceptance of a certificate of insurance providing less than required coverages does not relieve Company of the insurance requirements set out above or in this Agreement. Company must notify the County if non-County claims have infringed or impacted the policy. Company is required to notify Lane County of any changes to or cancellation of coverage(s) within 24 hours. Company is required to provide a copy of the policy to Lane County upon demand.
- M. **No Limitation.** Nothing contained in these insurance requirements limits the extent of Company's responsibility under this Agreement for payment of damages resulting from Company's operation under this Agreement.
- N. **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 1.6**, the Company shall increase such coverage. All policies maintained (or caused to be maintained) by the Company pursuant to this **Schedule 1.6** 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.
- O. **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 this **Schedule 1.6** states are customarily maintained by waste processors similar to the Company in the ordinary course of their business.
- P. **Certificates.** The certificate holder shall Lane County, its officers, agents, employees and volunteers. The Company shall deliver to the County (i) the certificate(s) of insurance

¹ 160,000 tons x \$65/ton = \$10.4 million = Minimum annual value of Agreement.

which the Company is then required to maintain pursuant to this **Schedule 1.6**, 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 1.6**, 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 1.6** and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of this **Schedule 1.6** and that all premiums then due thereon have been paid.

- Q. **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 1.6** is impossible, the Company may substitute the insurance required by this **Schedule 1.6** with reasonably available insurance policies constituting best practices for similarly situated entities.
- R. **Company Acknowledgement of County Self-Insured Status.** Company acknowledges that County is self-insured for tort liability, property damage, and automobile liability pursuant to ORS 30.260 through 30.300, and specifically ORS 30.282, and has qualified under ORS 806.130 of the Oregon Vehicle Code.

SCHEDULE 1.7

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.3. Failure to Process Acceptable Materials

For each ton of Acceptable Materials delivered by the County in accordance with this Agreement, the Company fails to Fully Process in a Contract Year, the Company shall pay to the County the full amount of the most recently approved per ton Service Fee.

A.4. Failure to Meet the Minimum MRF Diversion Guarantee

Should the Company fail to achieve the Minimum MRF Diversion Guarantee in any given Contract 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.5. Failure to Meet the Minimum Gas Production Guarantee

Should the Company fail to achieve the Minimum Gas Production Guarantee in any given Contract 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.6. 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 ADC be of a quality that does not otherwise meet regulatory requirements, any such materials shall be transported by the County with Company paying the disposal fee at the then current disposal cost. Any such material shall constitute Residue and shall not be counted as Diverted for purposes of calculating the Company's Minimum MRF Diversion Guarantee.

A.8 Odor Violations

Should there be more than three (3) verified odor violations in a Contract Year, Company shall pay County one thousand dollars (\$1,000) day each time a subsequent odor violation occurs in that Contract Year. Should there be more than ten (10) verified odor violations in a Contract Year, Company shall pay County five thousand dollars (\$5,000) per day each time a subsequent odor violation occurs, and Company will prepare an odor mitigation plan through a third-party expert to present to County and will commence implementation and diligently pursue to correction.

A.9 Equipment Removal Following Expiration of the Term

If the County decides not to take title of the Equipment and the Company does not remove the Equipment from the Facility within 180 day period following expiration of the Term or as otherwise agreed upon by the Parties, the Company shall pay the County \$1,000 per day until all Equipment is removed from the Facility.

A. 10 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.10.1 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 (electronic mail is acceptable) for a meeting with the Public Works Director or his/her designee to present evidence that the assessment is not correct.

A.10.2 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.10.3 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 subsection A.10.4 below.

A.10.4 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 its written findings to both the County and the Company. Either party may appeal the County's decision or the Independent Consultant's determination through the dispute resolution process.

A.11 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 and payable monthly until cured.

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 subsection A.10.3 above, unless the Company takes exception to the County's decision as provided for in subsection A.10.4 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. Should either party begin the dispute resolution process, Liquidated Damages, if any, shall be paid within ten (10) calendar days of a final, non-appealable order being entered.

If Liquidated Damages are not paid within the specified period above, the County may offset 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 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 Liquidated Damages are not paid within the ten (10) business day period, and Company has not taken exception and engaged an IC, the County may offset against the Company's Service Fees 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 its written findings to both the County and the Company. Should the exception be submitted to an Independent Consultant, absent appeal through the dispute resolution procedure, the Independent Consultant's decision shall be final and binding on the County and the Company. Either party may appeal the County's decision or the Independent Consultant's determination through the dispute resolution process.

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 Liquidated 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.

SCHEDULE 1.8

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.
- Provide processing capacity for up to the *Annual Maximum Acceptable Materials*.
- 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 1.9

Minimum Diversion Guarantees and Performance Standards

A) MINIMUM MATERIAL RECOVERY FACILITY (MRF) DIVERSION GUARANTEE

The Company shall Divert a minimum of 35.55% of Acceptable Materials in each Contract Year (the “**Minimum MRF Diversion Guarantee**”).

The calculation of the material recovery facility Diversion rate (the “**MRF Diversion Rate**”) shall be as follows:

One minus ([Tons of Residue] / [Tons of Acceptable Material delivered]).

Example Calculation:

If 400 tons of Acceptable Materials are delivered to the Facility, and 250 tons of Residue is produced, then

In that case, the MRF Diversion Rate calculation shall be as follows:

1 minus ([250 tons of Residue] / [400 tons of Acceptable Materials delivered]) =

1-(250/400) = 37.5% = MRF Diversion Rate.

Note: Commingled Recyclable Materials or Source Separated Organics shall not count towards the MRF Diversion Rate.

B) MINIMUM ANAEROBIC DIGESTION (AD) FACILITY GUARANTEE

The Company shall ensure the production of no less than (the “**Minimum AD Facility Gas Production Guarantee**”). The Minimum AD Facility Gas Production Guarantee shall be a Renewable Natural Gas (RNG) quantity of 63,750 MMBTU/year based on the Minimum Tonnage of 120,000 tons per year of Acceptable Materials. 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 Contract Year the Minimum Gas Production Guarantee for that Contract Year shall be 92,968 MMBTU (63,750 MMBTU x (175,000/120,000)).

SCHEDULE 1.10

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.

Company shall submit an odor control plan to County prior to commencement of operations.

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.
- 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. If odor issue is found to not be resolved, liquidated damages will be incurred.
- If there are three or more verified odor violations within a Contract Year, Company shall be subject to liquidated damages as described in Schedule 1.7.

(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 1.11

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 1.12

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 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, the Company 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 the Company's faithful performance of the Agreement.

Alternative Security

The County may, in its sole discretion, allow the Company to provide security in the amount of \$5,000,000 (Five million dollars) 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 1.13

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 1.3** 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
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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	Jewel	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
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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 1.14

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 1.15

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);
2. The amount of Recyclable Material recovered from processing at the Facility and revenues generated from sale;
3. The amount of RNG and attributes produced at the Facility and revenues generated from sale;
4. The Company's status on meeting each guarantee;
5. Accidents at the Facility;
6. Communications with regulatory entities;
7. Planned or performed Equipment replacement and upgrades to the Facility; and
8. Any other information sufficient to allow the County's compliance with any state or other requirements therefor and any other reports or information 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 Contract Year.

SCHEDULE 1.16

Schedule of Performance

To be developed.

SCHEDULE 1.17
Service 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 complete 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***" is based on the volume of the annual tonnage and, for example, shall equal **\$48.69** at 225,000 tons per year in a Rate Year. The Operating Cost Component shall be adjusted annually as provided for in subsection 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 subsection B.2 of this Schedule.

The Operating Cost Component will decrease proportionally with the increase in quantity of additional Acceptable Material Tons delivered by the County, as outlined below:

Operating Cost Component Reduction				
Acceptable Material Tons	Up to 120,000	120,000 - 130,000	130,001 - 140,000	140,001 - 150,000
Operating Cost Component	\$78.69	\$74.69	\$70.69	\$66.69
Acceptable Material Tons	150,001 - 160,000	160,001 - 170,000	170,001 - 180,000	180,001 - 190,000
Operating Cost Component	\$62.69	\$60.69	\$58.69	\$56.69
Acceptable Material Tons	190,001 - 200,000	200,001 - 210,000	210,001 - 220,000	220,001 - 225,000
Operating Cost Component	\$54.69	\$52.69	\$50.69	\$48.69

B ANNUAL ADJUSTMENTS TO COMPANY'S COMPENSATION

B.1 Operating Cost Component Adjustment. 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 Contract 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 up to the 5.0% maximum adjustment. Under no circumstances shall the annual adjustment to the Operating Cost Component exceed 5.0% in any given year.

B.2 Pass-Through Cost Component Adjustment. 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 Residue Disposal Rate under subsection 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 or guarantees. The obligation of the parties in such event is to negotiate in good faith in arriving at an appropriate adjustment in rates or guarantees. 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 or gross revenues 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, and net income from sales of RNG, and 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 rate increase. 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 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. County may consider increases or decreases in Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

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 reasonable judgment, make the final determination as to whether an

adjustment to the Service Fees will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. Approval of the County 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.

C.1.4 Extraordinary Events. Extraordinary events may include, without limitation: (a) force majeure acts, events, or occurrences, pursuant to subsection 14.1 of the Agreement, (b) provision of emergency services; (c) new or expanded programs or services required by the County or other governmental agency and not otherwise provided by Company under this Agreement; (d) a Change in Law; (e) changes in regulatory, governmental, or other surcharge fees after execution hereof; or (f) Uncontrollable Circumstance, as defined in subsection 14.1 of the Agreement.

D. OTHER PRICING

D.1 Residue. The Company shall pay the County for disposal of Residue at a cost of \$31.51/ton adjusted each year at the same rate of increase as the CPI.

D.2 ADC. The Company shall provide ADC generated from anaerobic digestion at the Facility to the County at no cost.

EXHIBIT 1

Owned Facilities

County and Company will own the following items and improvements as identified on the 30% Schematic Design package dated 9.26.2023.

OWNED BY LANE COUNTY

Load Out Building
MRF (Tipping & Processing) Building
MRF Interior Building Improvements
Office
Site Improvements
Onsite Septic
Storm Water Collection and Treatment
Site Earthwork and Paving

OWNED BY BHS PROJECTS @ LANE COUNTY

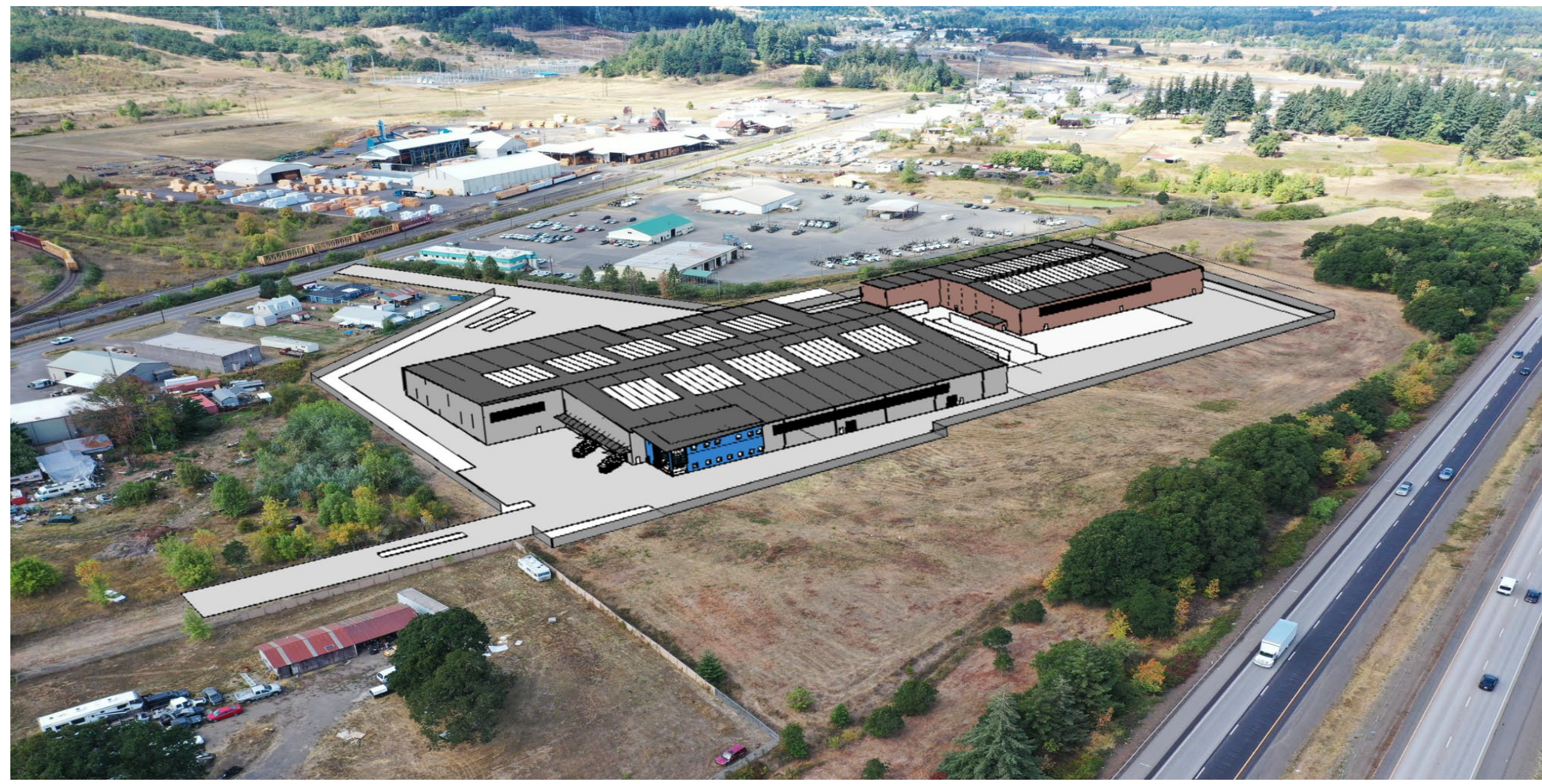
Composting Shell
Composting Shell Interior Improvements
Anaerobic Digesters
Exhaust Air Treatment System and Biofilter
AD Feedstock Bunkers
Biogas Bladder
Concrete Slabs, Walls, and Equipment Foundations

EXHIBIT 2

Facility Design Specifications

Add 30 % Design Specification Package

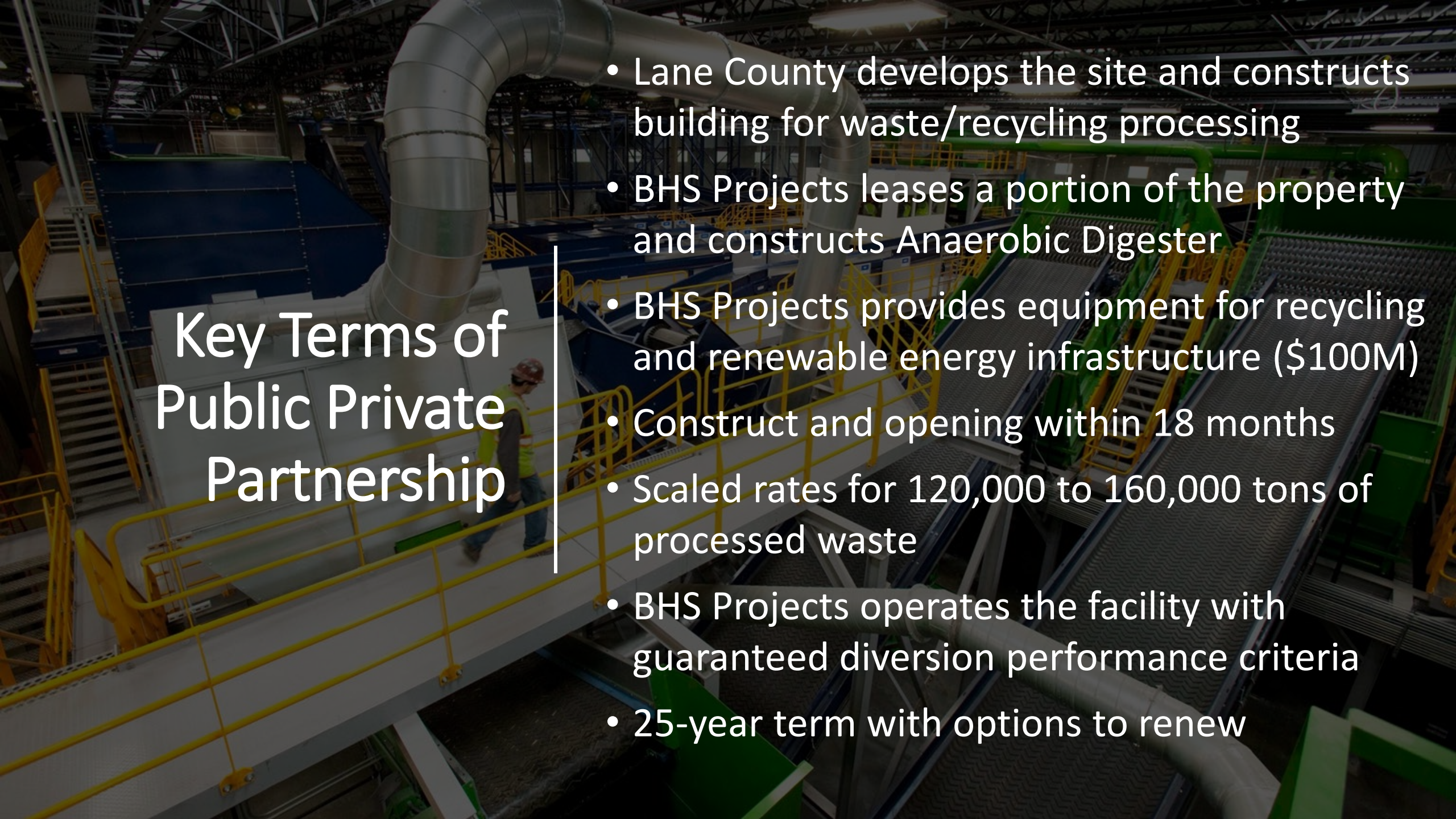
CleanLane Resource Recovery Facility





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

The background image shows a complex industrial facility, likely a waste processing plant. It features large, curved metal pipes, yellow safety railings on walkways, and various structural elements. A worker in a hard hat and safety vest is visible on one of the walkways. The overall scene is industrial and technical.

Key Terms of Public Private Partnership

- Lane County develops the site and constructs building for waste/recycling processing
- BHS Projects leases a portion of the property and constructs Anaerobic Digester
- BHS Projects provides equipment for recycling and renewable energy infrastructure (\$100M)
- Construct and opening within 18 months
- Scaled rates for 120,000 to 160,000 tons of processed waste
- BHS Projects operates the facility with guaranteed diversion performance criteria
- 25-year term with options to renew

An aerial photograph of a large landfill site, showing various waste management areas and infrastructure. In the background, there are rolling hills and mountains under a clear sky. The image is used as a background for a presentation slide.

Key Benefits

- 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

An aerial photograph of a large landfill site. The foreground shows various sections of the landfill, including some covered areas and open spaces. In the background, there are rolling hills and mountains under a clear sky. The overall tone is somewhat muted, with a dark overlay.

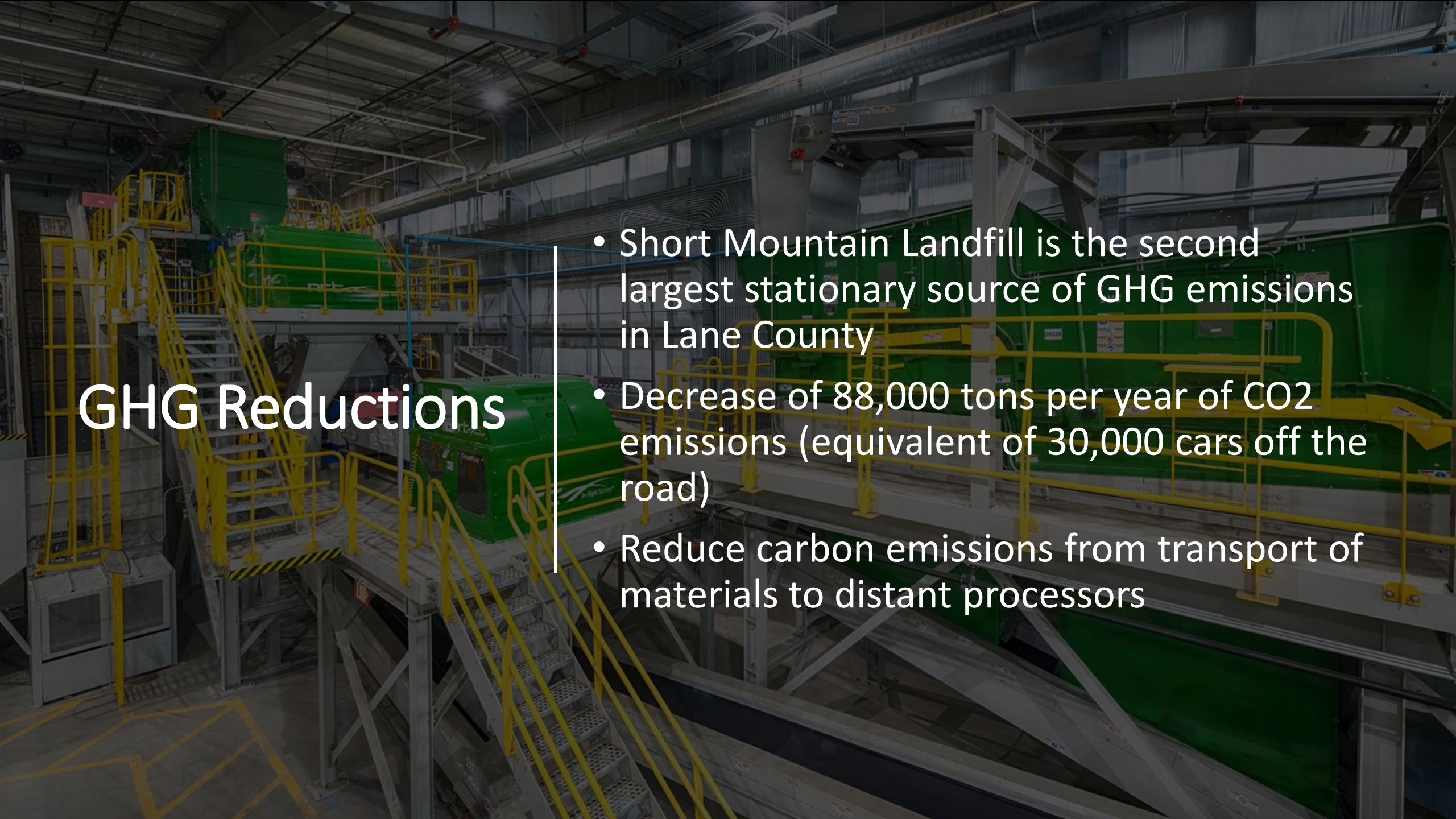
Landfill Life

- 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
- Will recover recyclable materials from garbage bins
- Baled commodities will be sold locally and abroad

The background image shows a large industrial facility, likely a waste-to-energy plant. It features multiple levels with green machinery, yellow safety railings, and concrete walkways. The scene is dimly lit, with some overhead lights visible. The text is overlaid on the right side of the image.

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

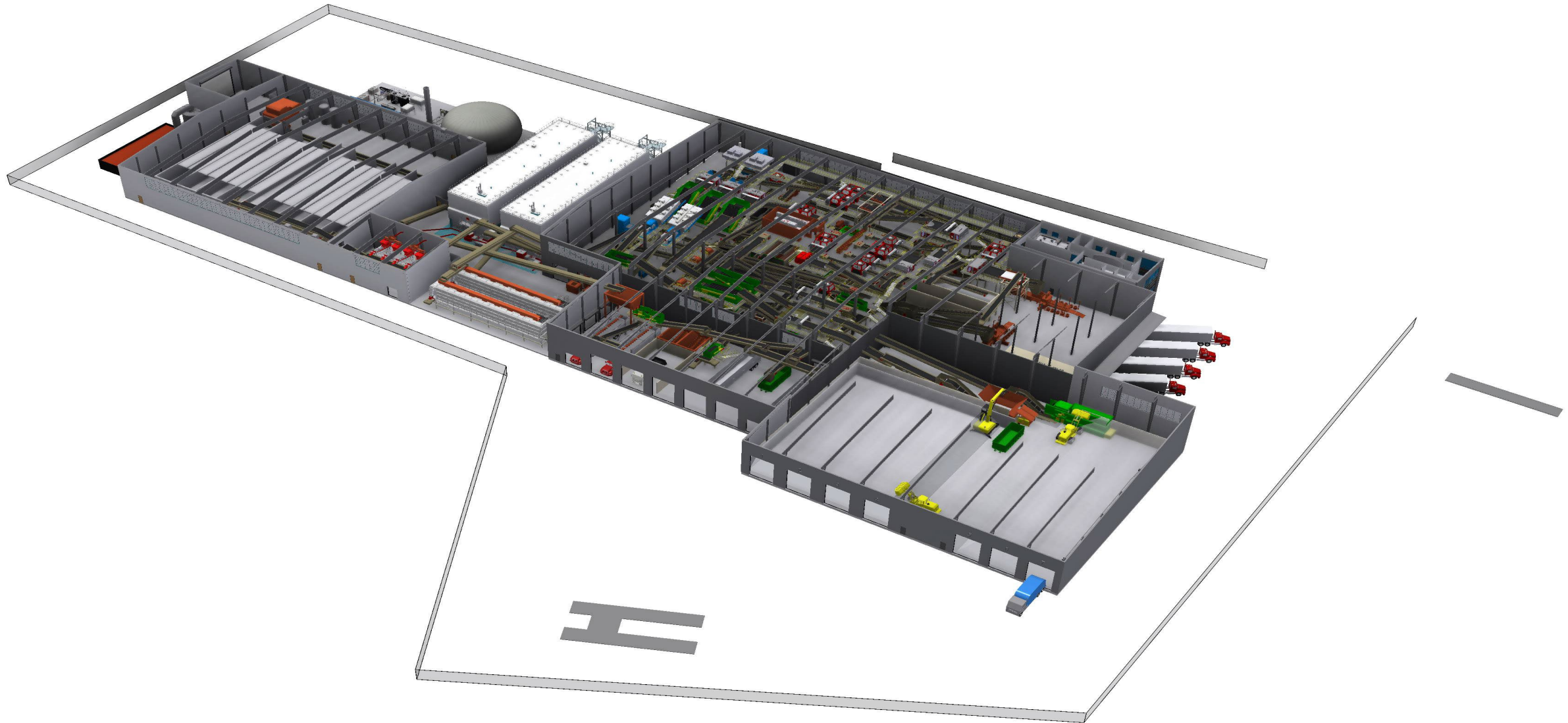
- The facility will produce 1M diesel gallon equivalent (DGE) per year of biogas upgraded to pipeline quality Renewable Natural Gas (RNG)
- Produces Negative Carbon Intensity RNG fuel under Oregon's Clean Fuels Program



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

Process Equipment



Rate Impacts & Options

- System impacts
 - Haulers
 - MRFs
 - EPUD
- 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

Figure 2. LFG Recovery Projection: Short Mountain Landfill – MRF Diversion Scenario

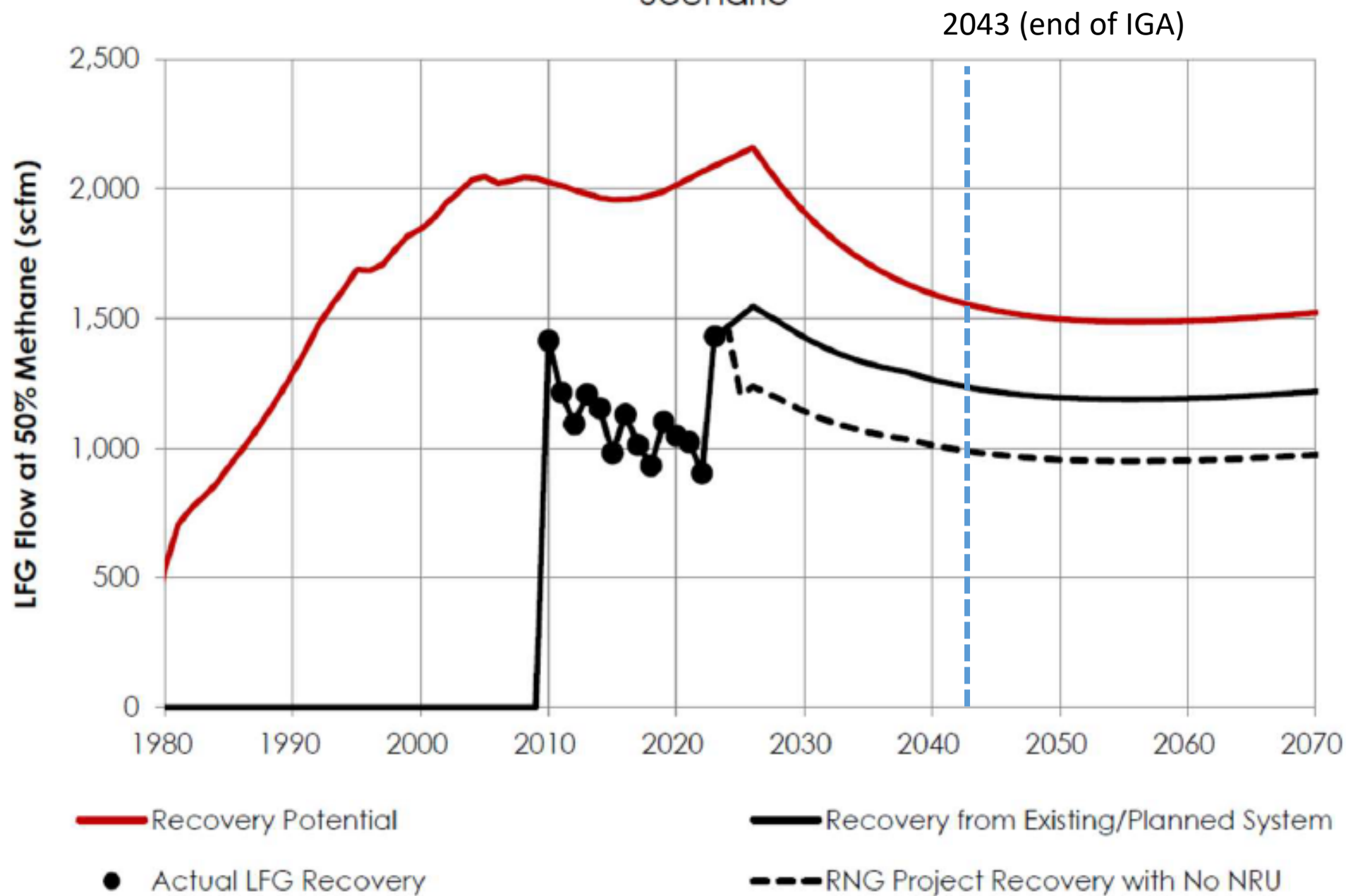
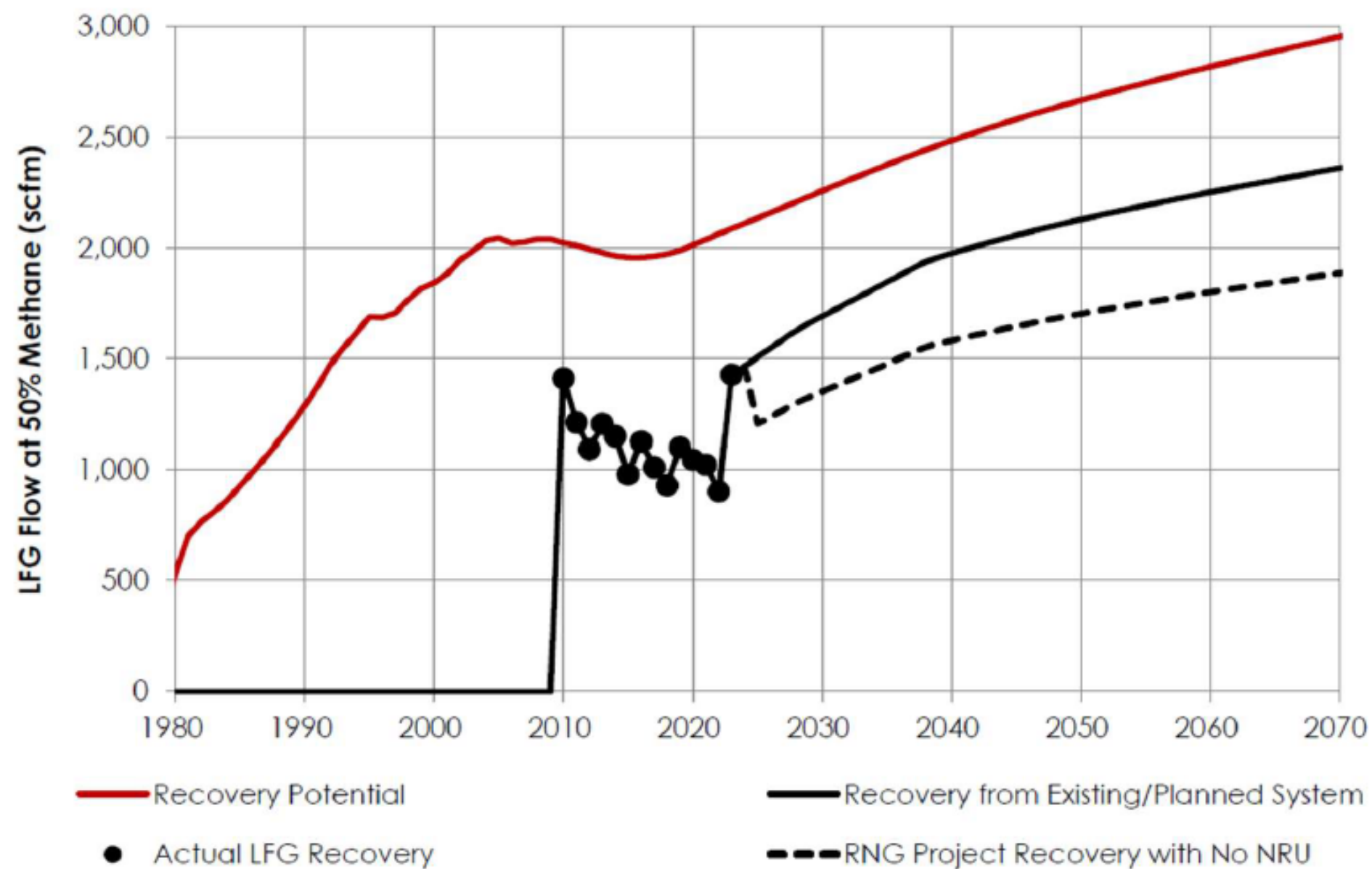


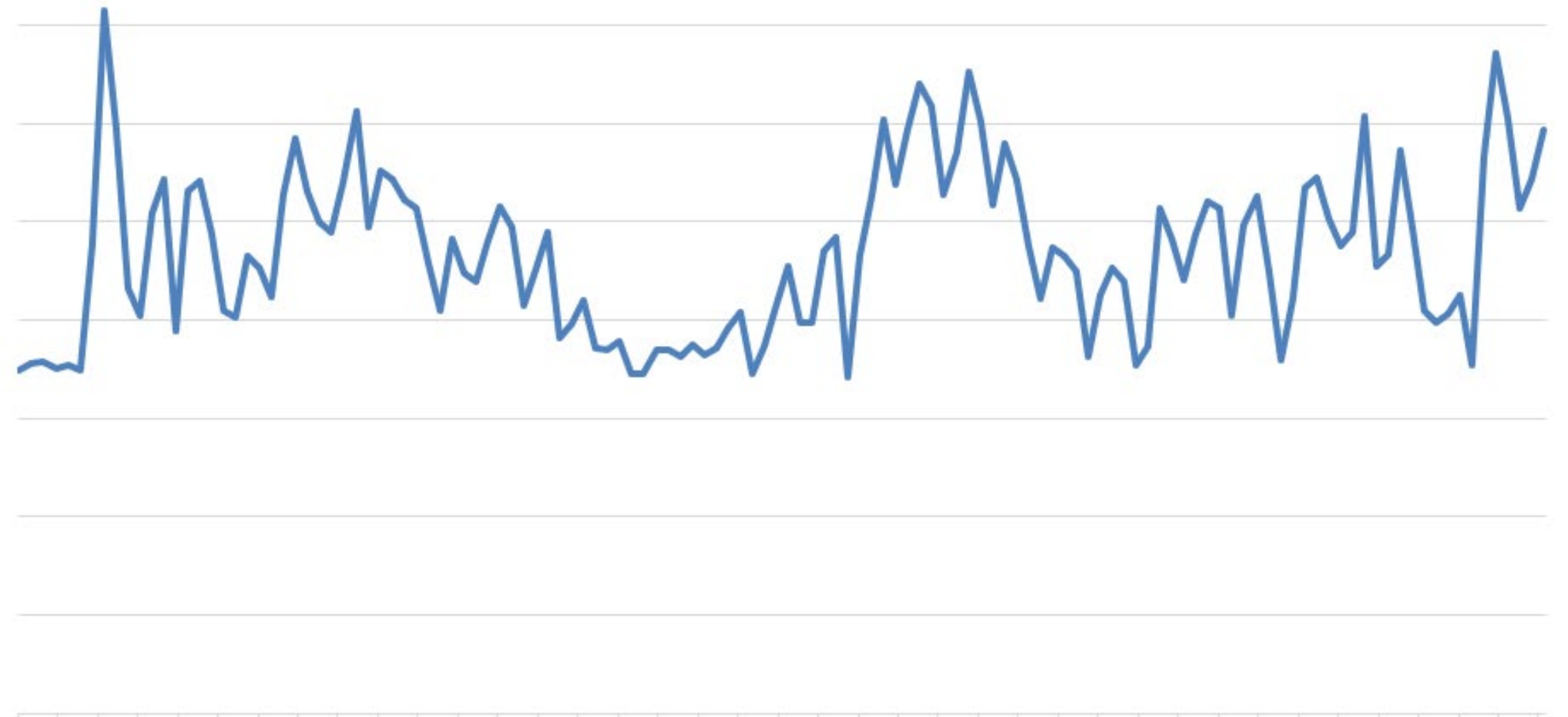
Figure 1. LFG Recovery Projection: Short Mountain Landfill – Baseline Disposal Scenario



Total kWh

8,000,000
7,000,000
6,000,000
5,000,000
4,000,000
3,000,000
2,000,000
1,000,000
0

Jun-92 Apr-93 Feb-94 Dec-94 Oct-95 Aug-96 Jun-97 Apr-98 Feb-99 Dec-99 Oct-00 Aug-01 Jun-02 Apr-03 Feb-04 Dec-04 Oct-05 Aug-06 Jun-07 Apr-08 Feb-09 Dec-09 Oct-10 Aug-11 Jun-12 Apr-13 Feb-14 Dec-14 Oct-15 Aug-16 Jun-17 Apr-18 Feb-19 Dec-19 Oct-20 Aug-21 Jun-22 Apr-23 Feb-24



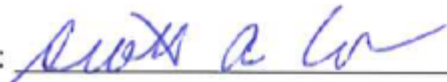
LANDFILL GAS USE AGREEMENT

This Agreement is entered into by and between Lane County, a political subdivision of the State of Oregon ("County"), and the Emerald People's Utility District, a people's utility district organized pursuant to Chapter 261 of the Oregon Revised Statutes ("Emerald"). Either County or Emerald may be referred to individually as a "Party" in this Agreement, or collectively as the "Parties".

- d. County shall notify Emerald at least one year prior to implementing any waste diversion programs expected to reduce methane-producing solid wastes deposited into the Landfill by more than 10 percent compared to the current year solid waste disposal practices.

AGENCY:

EMERALD PEOPLE'S UTILITY DISTRICT

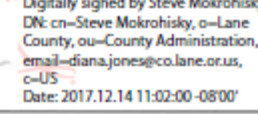
By: 

Title: General Manager

Date: 10/11/2017

COUNTY:

LANE COUNTY, OREGON

By:  
Digitally signed by Steve Mokrohisky
DN: cn=Steve Mokrohisky, o=Lane
County, ou=County Administration,
email=diana.jones@co.lane.or.us,
c=US
Date: 2017.12.14 11:02:00 -08'00'

Title: County Administrator

Date: 12/14/2017

Why Now?

- This will be much more expensive in the future
 - \$32M in tax-exempt bonds (RECEIVED)
 - 40% tax credit on energy facilities
 - Several federal grant programs
- The sooner we start, the more we can save
 - Each year of landfill space = \$16M
- Urgent climate action is needed now

An aerial photograph of a landscape featuring a winding road, fields, and distant hills. The image is darkened to serve as a background for the text.

Previous Board Approval

- 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

Requested Approvals

- Delegating Authority to the County Administrator to Sign Any Necessary Agreements with *BHS Projects @ Lane County, LLC* Related to Leasing Property for and Operations of the CleanLane Resource Recovery Facility
- Authorizing \$35M in debt financing
- Authorizing a Construction Manager / General Contractor (CM/GC) approach for construction of the County-owned portion of the facility

Bulk Handling Systems RFP Response, dated May 26, 2022:

“Emerging Acquisitions, LLC, dba Bulk Handling Systems (BHS) intends to finance the Lane County project by using a Project Finance approach under an agreement with Lane County in the format of a Public Private Partnership. As typically done in this format, **the agreements are structured with a project entity formed for the project**. The entity will be initially funded through the development and contract negotiations process by BHS. BHS will also work in collaboration with a financial partner/infrastructure investor to fully fund the PPP. This will occur concurrently with the final approval of all agreements. The project entity is fully funded and owned by the project entity. BHS will be an owner, supply all equipment, and operate the facility. This is a very traditional approach to private infrastructure financing.”

PROCESSING AND SERVICES AGREEMENT (DRAFT), presented to the Board on 12-5-23:

“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**.”

2024: Max-AI Total Visual Identification System (VIS) sorting technology
finalist for the 2024 Plastics Recycling Awards Europe

2017: GreenWaste Recovery - Single Stream MRF, located in San Jose, California
SWANA Gold Excellence Award

2017: Emerald Coast Utilities Authority - Single Stream MRF, located in Pensacola, Florida
SWANA Silver Excellence Award

2016: Zanker Recycling – Demolition Recycling Operation, located in San Jose, California
SWANA Gold Excellence Award

2016: Athens Services – Mixed Materials MRF, located in Sun Valley, California
SWANA Silver Excellence Award

2012: City of Eugene – **Business of the Year Award**

2010: Tri-County Single Stream Recycling Facility, located in Appleton, Wisconsin
SWANA Gold Excellence Award

2009: GreenWaste Recovery - Mixed Waste MRF, located in San Jose, California
SWANA Gold Excellence Award



Founded: 1976





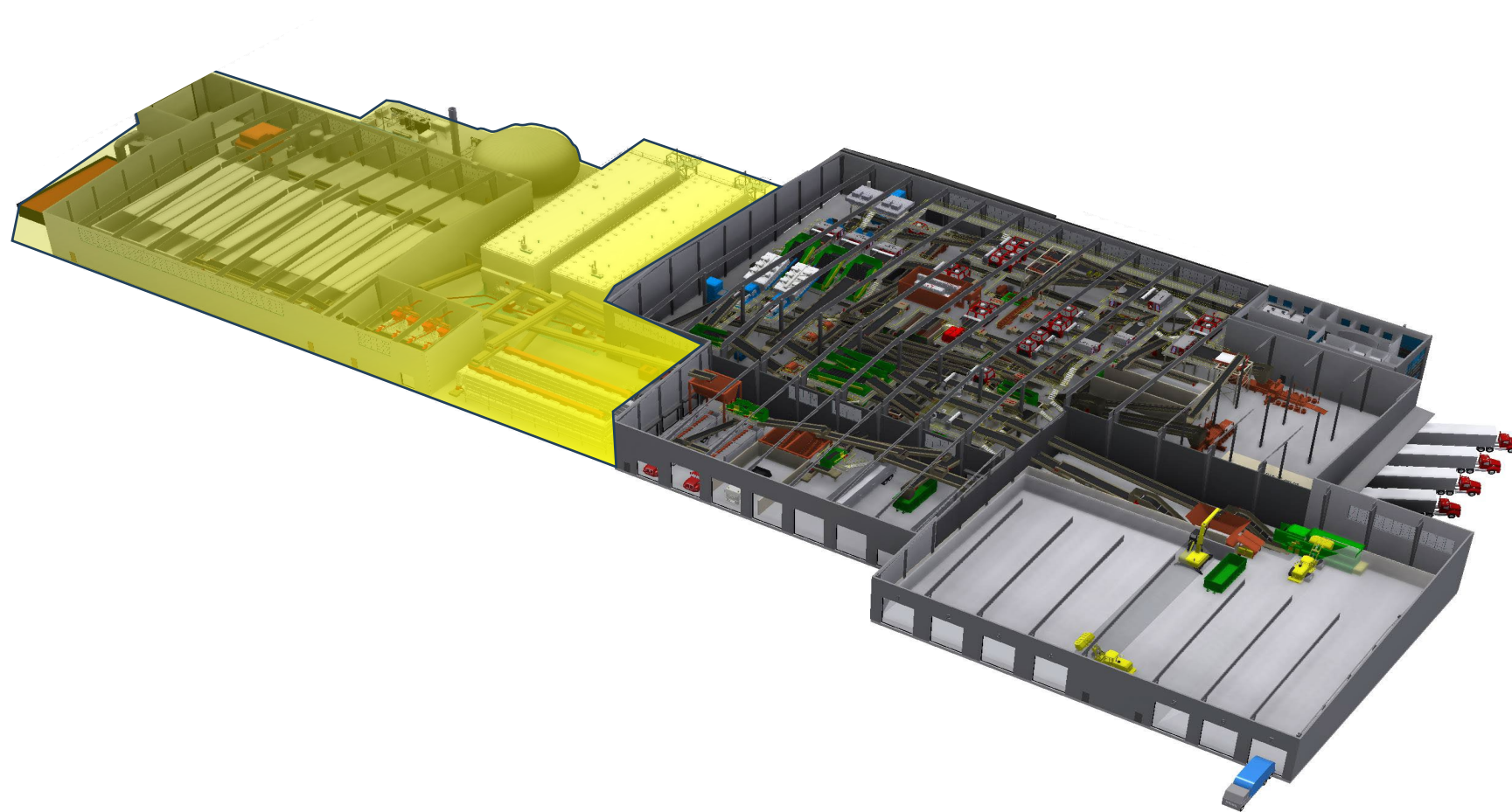
CleanLane Resource Recovery Facility



What's next.

A Public Private Partnership

Lease Area



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, a political subdivision of the State of Oregon ("**the County**" or "**County**"), and BHS PROJECTS @ LANE COUNTY, LLC, an Oregon limited liability company ("**the Company**" or "**Company**"). The County and Company are collectively referred to herein as "**the Parties**" or "**Parties**" and each as "**the Party**" or "**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. Bulk Handling Systems ("**BHS**") registered with the State under Oregon Registration No. 162672-96 was determined to have submitted the most advantageous proposal in response to the RFP;
- C. BHS proposal expressly provided in its proposal that a special purpose entity would be created to carry out the services proposed in its proposal];
- D. The Company is a wholly owned subsidiary of BHS created to provide the services set forth in the BHS proposal;
- E. In furtherance of the County's desire to exclusively partner with Company for this Project, County has purchased land exclusively for use for the Project ("the Project Site"). County will retain ownership of the Project Site, and will lease, as landlord, the Project Site to Company as tenant;
- F. The County will finance, construct and own the portion of the Facility that the County will own as delineated in **Exhibit 1** (the "**County Owned Assets**");
- G. The Company will finance and construct the portion of the Facility that Company will own as delineated in **Exhibit 1** (the "**Company Owned Facility Assets**");
- H. The Company will finance, supply and install all Equipment for the Facilities;
- I. Company will own the following items: digester, equipment, and infrastructure related to natural gas production, distribution, and composting, including the composting building , to ensure eligibility for and optimization of tax credits, and Company Owned Facility Assets.
- J. At the end of Term, the County will have the option to purchase the Company Owned Facility Assets and all Equipment, for one dollar (\$1.00); and
- K. The Company will operate and maintain the Facility in accordance with the terms of this Agreement;

Due Diligence

- Review by County Counsel
- Review by R3 Consultant
- Review by Outside Counsel
- Lender Review

Key Terms

- 25-year Term, 2 optional 5-year renewals
- All assets owned by County at end of term
- Company to furnish all equipment
- Company will operate and maintain the facility
- Performance Guarantees (35.55% diversion)
- Minimum tonnage: 120,000 tons/yr
- Option to purchase equipment in Company Default

Ongoing Negotiations

- Lender Rights
- Fair Market Value of Contract in County Default



CleanLane Resource Recovery Facility



What's next.

A Public Private Partnership

An aerial photograph of a landscape featuring a winding road, fields, and some industrial or construction areas. The image is darkened to serve as a background for the text.

Requested Approvals

- Delegating Authority to the County Administrator to Sign Any Necessary Agreements with *BHS Projects @ Lane County, LLC* Related to Leasing Property for and Operations of the CleanLane Resource Recovery Facility
- Authorizing \$35M in debt financing
- Authorizing a Construction Manager / General Contractor (CM/GC) approach for construction of the County-owned portion of the facility

AUTHORITY:

ORS Section 271.390: Authorizes Lane County to enter into financing agreements to finance or refinance real or personal property

ORS 287A.105: Authorizes Lane County to incur bonded indebtedness in an amount not to exceed 1% of the real market value of the taxable property in the County

Lane Manual 4.030: States that long-term debt obligations shall be issued only upon authorization of the Board of County Commissioners.

BOND SUMMARY:

\$35 Million in Taxable Bonds (Serial Bonds, 20-year Term Bonds)

Estimated Average Interest Rate: 5.49%

Estimated Annual Payment: \$2.9M

REPAYMENT REVENUES:

Approved Fee Adjustments: On December 5, 2023, the Board of Commissioners approved adjustments to fees for solid waste services including an 8% increase for construction and future operation of the facility plus a 3% inflationary adjustment in fiscal year 2024-25 and fiscal year 2025-26.

Other Future Revenues: \$1M Host Fee, Recycling/Biogas Revenue Sharing, Year 3 & 4 solid waste fee adjustments



CleanLane Resource Recovery Facility



What's next.

A Public Private Partnership

An aerial photograph of a landscape, likely a rural or undeveloped area, showing a road, fields, and some distant structures. The image is dark and serves as a background for the text.

Requested Approvals

- Delegating Authority to the County Administrator to Sign Any Necessary Agreements with *BHS Projects @ Lane County, LLC* Related to Leasing Property for and Operations of the CleanLane Resource Recovery Facility
- Authorizing \$35M in debt financing
- Authorizing a Construction Manager / General Contractor (CM/GC) approach for construction of the County-owned portion of the facility

POLICY:

ORS 279C.335 (1) requires, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, awarded to the lowest responsible bidder.

Lane Manual 20.200.130(B) permits the use of alternative contracting methods, which allows the County to consider cost in addition to qualitative factors, when such a method will likely result in substantial cost savings to the County or the public and is unlikely to encourage favoritism or substantially diminish competition.

County Rule requires that the Local Contract Review Board (Board of Commissioners) approve findings that support exempting a contract from competitive bidding requirements. Prior to such approval a public hearing must be held with at least 14 days public notice to allow any interested party to appear and comment.

Findings:

Project Requirements: Collaboration with the County and the design team (Bulk Handling Systems) will be crucial to ensure the project team maximizes cost.

The CM/GC Approach: Construction Manager / General Contractor timing, Guaranteed Maximum Price, Subcontractor Bids

Timing is of the essence: Delays in design and construction would result in significant increases to the total cost of building the facility and potentially make the project unfeasible.

Value Engineering: Value engineering is a means to determine the best project design that meets the needs and priorities of the owner within the established budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and contractors such as exists with the CM/GC approach.

Minimizing Change Orders: Having the CM/GC involved during the design process leads to a better understanding by the contractor of the owner's needs and the architect's design intent.

Encouraging Competition: The CM/GC will be selected using objective criteria under a competitive process. RFP solicitation package will include project goals and objectives, a detailed project description, contract terms and conditions, selection process, evaluation criteria, role of evaluation committee, provisions for comments, and protest process and remedies available.

Clear requirements for soliciting, receiving, and awarding sub-contracts: Adherence to prevailing wage rates, standard conditions of Oregon public works contracts, Lane County Community Benefits Bidding

Compliance with ORS Competitive Bidding: The process used will not involve favoritism nor diminish competition. The selection process for the CM/GC will be done on a competitive, qualifications-based manner.

Savings to the County: The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency

PUBLIC HEARING

UPDATED RECOMMENDATION

Due to Advertising Error (Daily Journal of Commerce) **Keep the Record Open
and Continue the Public Hearing to TIME CERTAIN: September 17, 2024, 1:00 pm**