

AMENDATORY AGREEMENT NO. 1
to the
SOLID WASTE MANAGEMENT SERVICES
FRANCHISE AGREEMENT
between
THE CITY OF SALEM,
an Oregon municipal corporation,
("City")
D&O GARBAGE SERVICE, INC.,
a private corporation,
("Franchisee")

RECITALS

(a) The City and Franchisee previously entered into a Solid Waste Management Services Franchise Agreement effective February 23, 2009 (the "Franchise Agreement") for the provision of solid waste management services in the City; and

(b) The City enacted Ordinance Bill No. 9-2010 on April 26, 2010, establishing a new compostable materials recycling service; and

(c) The Parties wish to amend the terms of the current Franchise Agreement to allow for the provision of the new compostable materials recycling service.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits and obligations set forth herein, the parties hereby agree to amend the Franchise Agreement as follows:

1. Amend Section 1 as follows, with strikeout wording deleted and underscored wording added:

Section 1. Definitions. For the purposes of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below, unless the context specifically indicates otherwise.

1.1 **Business Day** means each Monday through Friday of every week in a calendar year, but excludes July 4, Thanksgiving Day, Christmas Day, and New Year's Day if such days fall on Monday through Friday.

1.2 **City** means the City of Salem.

1.3 **City Council** means the Council of the City of Salem, Oregon.

1.4 **City Manager** means the City Manager for the City of Salem, or the City Manager's designee.

1.5 Compost or composting means the controlled biological decomposition of organic compostable material or the product resulting from such process.

1.6 Compostable Material has the meaning given that term in SRC 47.020(e).

1.57 Customer means any person who receives Solid Waste Management Services at a residence or business located within the City of Salem.

1.68 Customer Arbitration Form ~~is~~ means the form provided by the Solid Waste Franchise Administrator to Customers to begin the formal arbitration process between a Customer and a Franchisee.

1.79 Dispose or disposal means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.

1.810 Drop Box means a single container designed for the storage and collection of large volumes of Solid Waste, Compostable Material or Recyclable Material, ~~or Yard Debris~~ that is usually ten (10) cubic yards or larger in size.

1.11 Food Soiled Paper has the meaning given that term in SRC 47.020(h).

1.12 Food Waste has the meaning given that term in SRC 47.020(i).

1.913 Force Majeure means acts of God, landslides, lightning, fires, storms, floods, freezing, volcanic eruptions, earthquakes, civil disturbances, acts of terrorism or of the public enemy, wars, blockades, public riots, explosions, and other events which are not reasonably within the control of Franchisee or the City.

1.1014 Franchise means this Agreement between the City and the Franchisee for the provision of Solid Waste Management Services, as authorized by SRC Chapter 47.

1.1115 Franchisee means the Person, business, or entity holding and subject to this Agreement.

1.1216 Generator means a person who produces Solid Waste, Compostable Material or Recyclable Material to be placed, or that is placed, out for disposal. "Generator" does not include a person who manages an intermediate function that alters or compacts the Solid Waste, Compostable Material or Recyclable Material after the Generator has placed the Solid Waste, Compostable Material or Recyclable Material out for disposal.

1.1317 Hazardous Waste has the meaning given that term in Oregon Revised Statutes (ORS) 466.005.

1.1418 Homeowner means a person owning and occupying residential real property or a person renting, leasing or otherwise occupying residential real property.

1.4519 In-Home Waste Recovery means the clean-up, removal and disposal of solid waste and/or recyclable material from a customer's home or business.

1.4620 Infectious Waste means biological waste, cultures and stocks, pathological wastes, and sharps as defined in ORS 459.386.

1.21 Mixed Compostables means the process where two or more types of Compostable Material are collected together (i.e., not separated) in a combination allowed by the City Manager.

1.4722 Mixed Recycling means the process where two or more types of recyclable materials are collected together (i.e., not separated), in a combination allowed by the City Manager.

1.4823 Operating Statement means an annual income statement of the Franchisee's gross revenues earned, and operating expenses incurred, within the Franchisee's Service Area.

1.4924 Person means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.

1.2025 Receptacle has the meaning given that term in SRC 47.020(u) means a trash can, cart, bin, container, Drop Box or other vessel used for the disposal of Solid Waste that has been approved by the City Manager and into which Solid Waste, Recyclable Material or Yard Debris may be placed for collection.

1.2126 Recyclable Material means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

1.2227 Recycling means any process by which Solid Waste is transformed into new or different products in such a manner that the original products may lose their original identity. ~~As used in this Agreement, recycling includes the collection, transportation and storage of Solid Waste done in order to place the Solid Waste in the stream of commerce for recycling or for resource recovery.~~

1.2328 Reuse means the return of waste into the economic stream, to the same or to a similar use or application, without change in the waste's identity.

1.2429 Service means the collection, storage, transportation, transfer or disposal of solid waste by the Franchisee, including such activities that result in recycling or resource recovery.

1.2530 Service Area means the geographic area in which solid waste management services are provided by the Franchisee, as more particularly shown on Exhibit "A,"

which is attached hereto and incorporated herein by this reference. As used in this Agreement, "Service Area" does not include a disposal site.

1.2631 Solid Waste has the meaning given that term in SRC 47.020(bb)~~means solid waste as defined by SRC 47.020(aa), and includes Recyclable Material and Yard Debris.~~

1.2732 Solid Waste Franchise Administrator means the individual designated by the City Manager to oversee solid waste administration for the City of Salem.

1.2833 Solid Waste Management Services means the collection, transportation, storage, and disposal of Solid Waste from Customers; and In-Home Waste Recovery.

1.2934 Source Separation means the separation or setting aside of waste by the Generator of the waste for composting, recycling or reuse.

1.3035 Yard Debris means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to grass, clippings, leaves, hedge trimmings, and small branches, but excluding tree stumps and other similar bulky woody materials.

2. Amend Subsection 3.8 as follows, with strikeout wording deleted and underscored wording added:

3.8 Nothing in this Agreement shall be construed to prevent the City from conducting clean-up campaigns for the collection of Solid Waste, Compostable Material, and Recyclable Materials~~and Yard Debris~~ from residences in the City, or from in any other way providing for the beautification of the City and the safety and convenience of its citizens in any other way.

3. Add a Subsection 6.4 as follows:

6.4 On-route collection of source separated Compostable Material from Customers provided at least once per week on the same day that other Solid Waste is collected from the Customer.

4. Amend Subsection 10.7 as follows, with strikeout wording deleted and underscored wording added:

10.7 Franchisee shall make a reasonable effort to pick up all material (Solid Waste, Compostable Material and Recyclable Material and Yard Debris) blown or littered from a Franchisee-issued Receptacle during the course of collection, that has accrued subsequent to being set out by the Customer and prior to pickup, unless the problem is due to a wind storm with wind gusts in excess of 25 (twenty-five) miles per hour or the problem is a recurring one. If blown or littered material is a recurring problem, Franchisee may leave the material at the Customer's physical address along with a written notice describing the recurring problem.

5. This Amendatory Agreement No. 1 is effective July 1, 2010.

6. Except as specifically modified by this Amendatory Agreement No. 1, the terms and conditions of the Franchise Agreement remain in full force and effect.

IN WITNESS WHEREOF the parties have caused this Amendatory Agreement No. 1 to be signed in their respective names by their duly authorized representatives as of the dates set forth below:

CITY OF SALEM, OREGON

By: Linda Norris
Linda Norris

Title: City Manager

Date: 5/25/2010

D&O GARBAGE SERVICE, INC.

By: Jeanette L. Nelton
Printed Name: Jeanette L. Nelton

Title: Sec / Treas.

Date: 5/19/10