

**AMENDATORY AGREEMENT NO. 2**  
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")

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**RECITALS**

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

(b) The parties previously entered into Amendatory Agreement No. 1 to add provisions for a new compostable materials recycling service in accordance with Ordinance Bill No. 9-2010 which was enacted by the City on April 26, 2010; and

(c) The parties wish to amend the terms of the current Agreement to allow for the temporary suspension of services as a result of a Force Majeure event and to provide for emergency services when necessary.

**AGREEMENT**

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

1. Add a new Section 24 as follows:

**Section 24. Suspension of Service as a Result of Force Majeure.** If a Force Majeure event renders either party unable to perform its responsibilities under this Agreement, the affected party shall provide the other party with written notice of its inability to perform as soon as practicable and shall act with speed and diligence to mitigate any potential disruption to service or damage that may result from the event. The affected party shall resume its responsibilities as required herein as soon as possible after the event. When written notice has been delivered by the affected party to the other party, the obligations of both parties shall be suspended for the period of time that the Force Majeure event prevents the affected party from performing as required under this Agreement.

2. Add a new Section 25 as follows:

## **Section 25. Emergency Services.**

25.1 Within twenty-four (24) hours of the City's notice to Franchisee of a government-declared emergency, Franchisee shall provide, or begin to provide, emergency services as described herein, with the understanding that such services shall be provided on a priority basis as set forth in subsections 25.2 and 25.3 and that such services may go beyond the usual scope of solid waste management services as set forth in this Agreement. The scope of work for emergency services shall include, but not be limited to, providing drop boxes together with the collection and transportation of drop boxes for any unscheduled cleanup of solid waste and other debris caused by the emergency. The solid waste shall be transported to City-designated sites or to any county-approved solid waste facilities within the region. The City shall compensate the Franchisee for performing emergency services in a manner and amount consistent with the City-approved rate schedule in effect at the time of the emergency.

25.2 If a government-declared emergency occurs affecting the City and does not require the establishment of a Multiagency Coordination ("MAC") Group as defined under the National Incident Management System ("NIMS"):

- a. The City shall notify the Franchisee of the emergency and describe the relevant circumstances arising from such emergency, and the City shall request emergency services on a priority basis from the Franchisee.
- b. Upon receiving notice of the emergency from the City, the Franchisee shall consult with City and exercise its best efforts to begin to provide the emergency services within twenty-four (24) hours of the notice.
- c. The Franchisee shall provide emergency services as follows:
  1. The City shall have first priority.
  2. Franchisee's commercial Customers shall have second priority.
  3. Franchisee's residential Customers shall have third priority.
  4. Commercial properties outside of Franchisee's Service Area shall have fourth priority.
  5. Residential properties outside of Franchisee's Service Area shall have fifth priority; provided, however, that nothing in this section shall be construed to require emergency services in the City that would jeopardize Franchisee providing essential services for franchised areas outside of Franchisee's Service Area.
- d. If the Franchisee is unable to provide emergency services in the time requested by the City, the Franchisee shall provide the requested service as soon as practicable. Such emergency services may include offering the City an alternative service, provided that the Franchisee obtains prior written approval from the City for the alternative service.

25.3 If a government-declared emergency occurs that results in the establishment of an MAC Group:

- a. The MAC Group shall notify the Franchisee of the emergency and the relevant circumstances arising from such emergency, and the MAC Group shall request emergency services on a priority basis from the Franchisee.

- b. Upon receiving notice of the emergency, the Franchisee shall consult with the MAC Group responsible for coordinating emergency solid waste management services and shall exercise its best efforts to begin to provide the emergency services within twenty-four (24) hours of the notice.
- c. The Franchisee shall provide emergency services on a priority basis as determined by the MAC Group responsible for coordinating emergency solid waste management services.
- d. If the Franchisee is unable to provide emergency services in the time requested, the Franchisee shall provide the requested service as soon as practicable. Such emergency services may include offering an alternative service after obtaining written approval to provide the alternative service.

Notice under this Section 25 may be given to Franchisee by any means practicable under the circumstances

- 3. This Amendatory Agreement No. 2 shall be effective upon execution by both parties.
- 4. Except as specifically modified by this Amendatory Agreement No. 2, 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. 2 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: 4/13/11

**D&O GARBAGE SERVICE, INC.**

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

Title: Sec/Treas

Date: 4/12/11