



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: April 21, 2021

Department: Public Works Agenda Planning Date: 4/15/21 Time required: 3 mins

Audio/Visual aids

Contact: James Wharton-Hess Phone: (503) 566-4139

Department Head Signature: Brian Hill

TITLE Consider Approval of Contract #PW-4039-21 with United Disposal Services dba. Republic Services, Inc.

Issue, Description & Background On October 12, 2016 the Marion County Board of Commissioners approved a contract with Republic Services, Inc. for the hauling of used tires from the Salem Keizer and North Marion Recycling and Transfer Stations which expires on September 30, 2021. Contract #PW-4039-21 will replace the existing agreement for tire recycling at the North Marion Recycling and Transfer Station. United Disposal Services dba. Republic Services, Inc. is the franchise hauler for the area.

Financial Impacts: The total five-year contract cost is expected to be \$150,000 or about \$30,000 annually.

Impacts to Department & External Agencies: There will be no impact to other departments or entities.

Options for Consideration: 1) Approve Contract #PW-4039-21 with United Disposal Services dba. Republic Services, Inc. 2) Withold approval of Contract #PW-4039-21 with United Disposal Services dba. Republic Services, Inc.

Recommendation: Public Works staff recommends approval of Contract #PW-4039-21 with United Disposal Services dba. Republic Services, Inc.

List of attachments: Contract #PW-4039-21

Presenter: Brian May, Environmental Services Division Manager

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:



# Contract Review Sheet

Contract #: PW-4039-21

Person Sending: James Wharton-Hess Department: Public Works

Contact Phone #: (503) 566-4139 Date Sent: Tuesday, April 6, 2021

Contract  Amendment#       Lease  IGA  MOU  Grant (attach approved grant award transmittal form)

Title: Recycling of Used Tires Collected at North Marion

Contractor's Name: United Disposal Services dba. Republic Services, Inc.

Term - Date From: Oct 1, 2021 Expires: June 30, 2026

Contract Total: \$150,000.00 Amendment Amount: \$0.00 New Contract Total: \$0.00

Source Selection Method: Special Procurement (attach approval) # Franchise

### Additional Considerations (check all that apply)

- Board Order# \_\_\_\_\_
- Incoming Funds
- Independent Contractor (LECS) approval date: \_\_\_\_\_
- Insurance Waiver (attach)
- CIP# \_\_\_\_\_ (required for all goods /software greater than \$5,000)
- Feasibility Determination (attach approved form)
- Federal Funds (attach sub-recipient / contractor analysis)
- Reinstatement (attach written justification)
- Retroactive (attach written justification)

### Description of Services or Grant Award:

Contract with franchise hauler for the recycling of tires collected at the North Marion Recycling and Transfer Station.

**FOR FINANCE USE**

Date Finance Received: \_\_\_\_\_ BOC Planning Date: \_\_\_\_\_ Date Legal Received: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### REQUIRED APPROVALS:

Finance - Contracts \_\_\_\_\_ Date \_\_\_\_\_ Risk Manager \_\_\_\_\_ Date \_\_\_\_\_

Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_ Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Date \_\_\_\_\_  To be filed  Added to Finance Table

Date \_\_\_\_\_ Returned to department for signature

**MARION COUNTY  
CONTRACT FOR SERVICES  
PW-4039-21**

This contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and United Disposal Services dba. Republic Services, Inc., a Corporation hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the “Work”).

**1. TERM.** This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on September 30, 2026. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond September 30, 2031.

**2. CONSIDERATION.**

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$150,000. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.

**3. COMPLIANCE WITH STATUTES AND RULES.**

A. County and the Contractor agree to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this contract as specified in sections concerning recovery of funds and termination.

County’s performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein.

B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, “tax laws” includes all the provisions described in subsection 27. C. (i) through (iv) of this Contract.

i. Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty, in subsection 27.3 of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.

C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**4. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT.** Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

**5. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance of this Contract.

**6. FORCE MAJEURE.** Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

**7. FUNDING MODIFICATION.**

A. County may reduce or terminate this contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.

B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service.

**8. RECOVERY OF FUNDS.**

Expenditures of the Contractor may be charged to this contract only if they (1) are in payment of services performed under this contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the contract period.

Any County funds spent for purposes not authorized by this contract and payments by the County in excess of authorized expenditures shall be deducted from future payments or refunded to the County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

**9. ACCESS TO RECORDS.**

A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

**10. REPORTING REQUIREMENTS.** Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such reports provided by the Contractor shall be supported by documentation in Contractor's possession from third parties to the extent as applicable.

**11. CONFIDENTIALITY OF RECORDS.**

A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.

B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidential provision.

C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.

D. Client records shall be kept confidential in accordance with ORS 179.505, 45 CFR 205.50 and 42 CFR Part 2 as applicable.

**12. INDEMNIFICATION AND INSURANCE.**

A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

B. Contractor shall obtain the insurance required under section 23 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

**13. EARLY TERMINATION.** This Contract may be terminated as follows:

A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.

B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.

C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

D. Notwithstanding section 13C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

**14. PAYMENT ON EARLY TERMINATION.** Upon termination pursuant to section 13, payment shall be made as follows:

A. If terminated under 13A or 13B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.

B. If terminated under 13C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

C. If terminated under 13C or 13D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

**15. INDEPENDENT CONTRACTOR.**

A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.

B. **SUBCONTRACTING/NONASSIGNMENT.** No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

**16. GOVERNING LAW AND VENUE.** This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

**17. OWNERSHIP AND USE OF DOCUMENTS.** All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon's Public Records Laws.

**18. NO THIRD PARTY BENEFICIARIES.**

A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.

B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

**19. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

**20. MERGER CLAUSE.** This Contract and the attached exhibits constitute the entire agreement between the parties.

A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.

B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.

C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

**21. WAIVER.** The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

**22. REMEDIES.** In the event of breach of this Contract, the Parties shall have the following remedies:

A. If terminated under 13C by County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.

B. In addition to the remedies in sections 13 and 14 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.

C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

**23. INSURANCE.**

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County  Not required by County.

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

iii. CYBER LIABILITY. Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

Required by County  Not required by County.

- \$2,000,000 Per occurrence limit for any single claimant; and
- \$5,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

iv. COMMERCIAL GENERAL LIABILITY. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County  Not required by County.

**Bodily Injury/Death:**

- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

v. Automobile Liability Insurance. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

Required by County  Not required by County.

**Bodily Injury/Death:**

- Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager



B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**24. NOTICE.** Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

United Disposal Services  
dba. Republic Services, Inc.  
2215 N. Front Street  
Woodburn, OR 97071

To County:

Procurement & Contracts Manager  
555 Court Street NE, Suite 5232  
P.O. Box 14500  
Salem, Oregon 97309  
Fax No. 503-588-5237

**25. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26.

**26. SEVERABILITY.** If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**27. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to the County that:

A. Contractor has the power and authority to enter into and perform this Contract.

B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.

C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any goods or equipment delivered to the County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to the County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

**28. CERTIFICATIONS AND SIGNATURE.** THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

**MARION COUNTY SIGNATURE  
BOARD OF COMMISSIONERS:**

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Commissioner Date

\_\_\_\_\_  
Commissioner Date

Authorized Signature: Brian Nichl 4/7/2021  
Department Director or designee Date

Authorized Signature: \_\_\_\_\_  
Chief Administrative Officer Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Legal Counsel Date

Reviewed by Signature: \_\_\_\_\_  
Marion County Contracts & Procurement Date

**UNITED DISPOSAL SERVICES  
DBA REPUBLIC SERVICES, INC.**

**SIGNATURE**

Authorized Signature: \_\_\_\_\_ Date

Title: \_\_\_\_\_

**EXHIBIT A  
STATEMENT OF WORK**

**1. STATEMENT OF SERVICES.** Contractor shall perform Services as described below.

A. GENERAL INFORMATION. As part of the required solid waste and recyclable good collection services that Marion County offers to its citizens, tires are accepted for recycling at the North Marion County Transfer Station (NMCTS). Those tires collected then need to be transported to the marketplace for recycling.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE. Contractor shall, at a minimum, provide one empty 30-cubic yard drop box (Box) at the NMCTS. Contractor shall, when Boxes are full, do not contain adequate space for anticipated daily influx, and/or while Boxes are being transported, provide the same number of empty Boxes to replace those Boxes. Should County request Boxes in excess of the minimum number listed, County agrees to pay a flat rate of \$60 per Box per month for the additional Boxes.

Contractor shall deliver the collected tires to the tire recycling facility that has been approved as of the time of transport (Primary Facility). Should Contractor wish to deliver the tires to another DEQ-approved tire recycling facility, Company shall receive approval by County prior to hauling to the alternate facility. If the haul distance to the alternate tire recycling facility is less than 20 miles different each direction than the haul to the Primary Facility, then the price for the tire haul shall remain the same. If the difference is greater than 20 miles each direction, County and Company shall renegotiate the price for said hauling prior to commencement of hauling.

Contractor shall supply and/or haul tire boxes within two (2) working days after notification from County, Monday through Saturday between the hours of 8:00 a.m. and 5:00 p.m.

C. SPECIAL REQUIREMENTS. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

**2. COMPENSATION.** The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$150,000.

**METHOD OF PAYMENT FOR SERVICES.** County shall pay Contractor \$288.32 , the Current Per-Box Hauling Fee (CHF), per Box of tires hauled from NMCTS under this Contract.

The CHF will be used from July 1 through June 30 of each contract year. The County will calculate the Adjusted Per-Box Hauling Fee (AHF) by May 31 using the month of December of the prior year from the CPI-U as set forth below. This AHF and corresponding payment amounts will become effective on July 1. The first adjustment to the CHF will be calculated in May 2022 and each contract year thereafter.

The adjustment shall be calculated according to the United States Department of Labor, Bureau of Labor Statistics, Western Information Office, Consumer Price Indexes Pacific Cities and U.S. City Average, December (yyyy) & 2nd Half (yyyy), All Items Indexes, All Urban Consumers (CPI-U), West Size Class B/C. <https://www.bls.gov/regions/west/factsheet/consumer-price-index-data-tables.htm>

The calculation shall be as follows:

$$\text{AHF} = (\text{CHF} \times \text{YPC}) + \text{CHF}$$

Where:

AHF = Adjusted Per-Box Hauling Fee

CHF = Current Per-Box Hauling Fee

YPC = Yearly Percent Change Ending in December

The fuel fee is calculated on a base diesel price of \$1.25 per gallon. For each round trip haul from the NMCTS, for every \$0.01 per gallon increase or decrease in diesel fuel cost, the round trip transportation cost per load will be adjusted by \$0.15 per trip.

The Contractor and County agree to use the U.S. Department of Energy (DOE) West Coast average price for a gallon of diesel fuel as the base for calculating fuel surcharges during this project. The U.S. DOE West Coast diesel fuel price is issued each Monday. The fuel surcharge will be calculated monthly with the final Monday price for the month being used for calculation of the fuel surcharge for that month. The DOE West Coast fuel price may be obtained by calling DOE's Energy Information Administration, National Energy Information Center at 202-586-6966 or internet site at: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>.

County agrees to pay Company a flat rate of \$60.00 per drop box per month for box rental for extra boxes requested by County which are above and beyond the one (1) box provided at NMCTS. This shall be the average of the number of extra boxes actually used at the site over the month.

A. BASIS OF PAYMENT FOR SERVICES. Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods

B. EXPENSE REIMBURSEMENT. County will not reimburse Contractor for any expenses under this Contract.

C. GENERAL PAYMENT PROVISIONS. Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.

D. INVOICES. Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

**Marion County**  
**Attn: ES Division Manager**  
**5155 Silverton Road NE**  
**Salem, OR 97305**