

**Intergovernmental Agreement between
Clackamas County and
City of Sandy**

**Opportunity to Recycle, Plastic Pollution and Recycling Modernization
[ORS 459A; OAR 340-090]**

1. Purpose

This Agreement is entered into by and between the City of Sandy (the “City”) and Clackamas County (the “County”) for the cooperation of units of local government under the authority of ORS 190.010. This Agreement provides for the County, on behalf of the City and as a part of the Clackamas County Recycling Partnership, to meet the requirements of the Opportunity to Recycle Act, the Plastic Pollution and Recycling Modernization Act, and OAR chapter 340, division 90, as applicable to the City, in carrying out certain county-wide recycling programs and activities, including but not limited to recycling, waste prevention, and contamination reduction programming.

2. Background

Through the Clackamas County Recycling Partnership, the County provides county-wide recycling and waste reduction programs and activities that meet many of the requirements of Oregon’s “Opportunity to Recycle Act” (ORS chapter 459A) that apply to the metropolitan service district (Metro) for Clackamas, Multnomah, and Washington counties and the cities therein, including the City, to develop integrated solid waste management plans—the Regional Waste Plan (RWP)—and implement associated activities to meet goals established by the Oregon Department of Environmental Quality (DEQ). The County also reports to DEQ via Metro, the watershed representative, on these programs and activities on behalf of cities in the partnership, including the City.

Key components of meeting the goals established in the RWP are directly related to the activities of the solid waste collection franchisee(s). Some of the collection practices considered to be standard components of the RWP include but are not limited to: 1) Weekly collection of the uniform statewide collection list (commingled recycling); 2) Collection of glass separated from other recyclables; and 3) Providing the opportunity for all business and multifamily communities to have recyclables collected. Metro maintains regional service standards (RSS) that detail minimum solid waste and recycling collection service levels to be provided for compliance with Opportunity to Recycle Act requirements.

The Plastic Pollution and Recycling Modernization Act [SB 582 (2021)] created requirements (starting in 2025) for cities to provide for recycling in their communities, including by collecting a uniform statewide list of materials and implementing new contamination reduction programs. Local governments may receive compensation for eligible costs to implement these additional requirements from the statewide Producer Responsibility Organization (PRO), Circular Action Alliance (CAA). Local governments may elect to receive PRO funding directly or may authorize service providers and/or other entities that incur eligible costs to receive compensation directly from the PRO for activities conducted (and reporting) for their community.

The RWP, Metro Code and rules, and state law related to waste reduction and recycling requires implementation throughout the entirety of the Metro watershed. Local governments may receive compensation annually based on the funds Metro has allocated for the Annual Waste Reduction Plan (subset of RWP) in the adopted Metro budget. Local governments may elect to receive Metro funding directly or may authorize the County to receive compensation directly from Metro for the activities conducted (and reporting) for their community.

3. Scope of Work

- A. In keeping with the Clackamas County Recycling Partnership, the County shall carry out the recycling programs and activities—including but not limited to waste reduction and contamination reduction planning, program implementation, and education—that meet the requirements of OAR chapter 340, division 90, on behalf of the City.
- B. The County shall represent the City in the planning effort, in collaboration with regional partners and service providers where appropriate, to develop one or more funding agreements with the producer responsibility organization that designate how funds will be distributed to meet those requirements for the City, pursuant to the planning efforts of the Clackamas County Recycling Partnership. With the City's prior authorization, this may include distribution of funds directly to the City's franchised hauler.
- C. Pursuant to the delegation of authority below, the County shall file such reports as may be necessary with DEQ to acknowledge receipt and to report eligible expenses, and to otherwise act as required or permitted by OAR chapter 340, division 90, on behalf of the City.
- D. The County shall have an opportunity to review any proposed deviation from the standard collection practices of the solid waste collection franchisee(s) presented to the City for the purpose of ensuring continued compliance with the RSS and with RWP and Opportunity to Recycle Act requirements. The County agrees to present the findings of the review to the City.
- E. The County shall provide the City with standardized forms to request annual production and financial data from the City's solid waste collection franchisee for use in the City's annual review and establishment of service rates. The City shall request that their franchisee share the City-specific data with the County for the County's annual review to support standardized data collection and compliance with Opportunity to Recycle Act and Plastic Pollution and Recycling Modernization Act requirements for fees. The County may request other City-specific operational data from the City's franchisee as needed to support compliance with state and local recycling requirements and programming.

4. Delegation of Authority by City to County. The City designates the County as its authorized agent to receive eligible compensation directly from the producer responsibility organization through DEQ's Funding Authorization Process pursuant to OAR 340-090-0810.

5. Term and Termination

- A. This Agreement becomes effective on January 1, 2026, and shall be automatically renewed each calendar year unless otherwise terminated as provided herein.

- B. Either party may terminate this Agreement at the end of the then-current calendar year by providing notice to the other party at least ninety (90) days before the end of that calendar year. Where this Agreement is terminated at the end of a calendar year, the County shall complete all reporting requirements for that calendar year.
- C. Either party may terminate this Agreement in the event of a breach of the Agreement by the other party. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- D. Neither party shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Either party may terminate this Agreement in the event the terminating party fails to receive expenditure authority sufficient to allow that party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the terminating party is prohibited from performing under the Agreement. The terminating party shall give written notice of termination stating the effective date of the termination.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

6. General Provisions.

A. Liability.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify and hold harmless the City, its officers, elected officials, agents, and employees, from and against all third party claims and actions, and all expenses incidental to the investigation and defense thereof, including reasonable attorney fees, arising out of or based upon damage or injuries to persons or property caused by the acts or omissions of the County, its employees or agents, while performing under this Agreement.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify and hold harmless the County, its officers, elected officials, agents, and employees, from and against all third party claims and actions, and all expenses incidental to the investigation and defense thereof, including reasonable attorney fees, arising

out of or based upon damage or injuries to persons or property caused by the acts or omissions of the City, its employees or agents, while performing under this Agreement.

- B. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of the County, without giving effect to the conflict of law provisions thereof. Any claim between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, that, if a claim must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
- C. **Compliance with Applicable Law.** The parties shall comply with all applicable local, state, and federal ordinances, statutes, laws, and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- D. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other party.
- E. **Access to Records.** Each party shall retain, maintain, and keep accessible all records relevant to this Agreement (the "Records") for a minimum of six (6) years following termination of or full performance under this Agreement, or for any longer period as may be required by applicable law, or until the conclusion of an audit, controversy, or litigation arising out of or related to this Agreement, whichever is later. Each party shall maintain all financial Records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, each party shall permit the other party's authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- F. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers, and other materials produced in connection with this Agreement. The County grants to the City a perpetual, non-exclusive, transferable right and license to use such materials for any lawful purpose.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon the appropriation of funds. Any provisions herein that conflict with the above-referenced laws are deemed inoperative to that extent.

- H. Severability. If any provision of this Agreement is found to be unconstitutional, illegal, or unenforceable, this Agreement nevertheless shall remain in full force and effect, and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal, or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.
- I. Integration, Amendment, and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties regarding the subject matter described herein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Without limiting the generality of the foregoing, this Agreement is specifically intended to supersede the 2008 Letter of Understanding between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.
- J. Interpretation. The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. Independent Contractor. Each party shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee, or contractor of one party shall be deemed to be a representative, agent, employee, or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture, or similar relationship, and each party hereby specifically disclaims any such relationship.
- L. No Third-Party Beneficiary. The City and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. Subcontract and Assignment. Neither party shall enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the other party, which shall be granted or denied in the other party's sole discretion. A party's consent to any subcontract shall not relieve the other party of any of its duties or obligations under this Agreement.
- N. Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, and all of which shall constitute the same instrument.
- O. Survival. All provisions in this Section 6 shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.

Signed:

CLACKAMAS COUNTY

By: _____

Title: _____

Date: _____

CITY OF SANDY

By: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney