

CONTRACT FOR SEPTAGE RECEIVING SERVICES

1. INTRODUCTION

This contract is a standardized agreement between The City of Tillamook, hereinafter called the CITY, and private septage haulers who have applied to use the City's septage receiving service, hereinafter called HAULER.

The CITY agrees to accept septic waste from the HAULER at the Wastewater Treatment Plant. This work will begin following the acceptance and signing of this contract. Septage receiving will be ongoing, and is a service provided by the CITY for a fee as outlined herein.

2. PAYMENT OF CONTRACT

a. Contract Amount

The contract will be billed on a per-gallon basis for septic waste received, as indicated on the application form. The HAULER agrees to pay the CITY for services provided under this contract.

b. Invoicing

Invoices will be made on a monthly basis by the 10th of the month for work performed the previous month. Payment in full of an invoice must be received within thirty days of the date of such invoice.

c. Late Payments

Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the then unpaid balance. In the event that collection proceedings are required, the HAULER will also be responsible to pay the costs and attorneys' fees incurred by the CITY, whether or suit is brought, in both trial and appellate courts.

3. MODIFICATION OF CONTRACT

Any alternations, variations, modifications or waivers of provisions of this contract shall be valid only when they have been submitted in writing and if approved by the CITY and the HAULER.

4. RECOVERY OF FUNDS

Expenditures of the CITY may be charged to this contract only if they charge for services performed under this contract.

a. Contract Termination or Suspension

In the event of termination of all or part of this contract, invoice amounts owed to the CITY shall become due and payable within ten (10) days of termination.

5. REPORTING REQUIREMENTS

The CITY shall maintain a record of septage amounts received.

By signature on the contract, the HAULER grants the CITY, except where expressly prohibited by law, the right to reproduce, use, and disclose for CITY purposes, all or part of the reports, data and technical information furnished the CITY under this contract.

6. INDEMNIFICATION, INSURANCE AND BONDING

- a. During the performance of this Contract the HAULER will maintain professional liability insurance with a limit of not less than twenty-thousand dollars (\$20,000.00) on an annual aggregate basis, and commercial general liability and automobile liability insurance each with a limit of not less than twenty-thousand dollars (\$20,000.00) on an annual aggregate basis.
- b. The CITY is protected by Worker's Compensation insurance as required by applicable state laws and will maintain employers' liability coverage.

8. GENERAL PROVISIONS

8.1 Termination. All or part of this contract may be terminated at any time by either party, with or without cause, with notice in writing and delivered by first class mail or delivered to City Hall. Such termination shall be without prejudice to any obligations or liabilities of either party accrued to such termination.

8.2 Integration. This Contract supersedes all prior oral or written contracts between HAULER and CITY regarding this service. It represents the entire Contract between the parties. Time is of the essence in all terms, provisions, covenants, and conditions in this Contract.

8.3 Savings. Should any clause or section of this Contract be declared by a court to be void or voidable, the remainder of this Contract shall remain in full force and effect.

8.4 Waiver; Modification. Failure by CITY to enforce any provision of this Contract does not constitute CITY'S continuing waiver of that provision, any other provision, or of the entire Contract. The rights and duties under this Contract shall not be modified, delegated, transferred or assigned, except upon the written signed consent of both parties.

8.5 Liability; Indemnification. Each party shall indemnify and hold harmless the other party from all claims, costs, damages, or expenses of any kind, including attorneys' fees and other costs and expenses of litigation, for personal or property damage arising out of that party's performance required by this Contract.

8.6 Jurisdiction; Law. This Contract is executed in the State of Oregon, and is subject to City of Tillamook and Oregon law and jurisdiction. Venue shall be in City of Tillamook, Oregon, unless otherwise agreed by the parties.

8.7 Legal Representation. In entering into this Contract, each party has relied solely upon the advice of their own attorney. Each party has had the opportunity to consult with counsel. Each party represents and warrants to the other that they are fully satisfied with the representation received from their respective attorneys.

8.8 Attorneys' Fees. Attorney fees, costs and disbursements necessary to enforce this Contract through mediation, arbitration and/or litigation, including appeals, shall be awarded to the prevailing party, unless otherwise specified herein or agreed.

8.9 Notices. Any notice required or permitted under this Contract shall be in writing and deemed given when:

8.9.1 actually delivered, or

8.9.2 three days after deposit in United States certified mail, postage prepaid, addressed to the other party at their last known address.

8.10 Public contract. This Contract is a public contract and all applicable provisions of ORS chapter 279 (as amended) are incorporated here by reference.

8.11 Language. The headings of the contract paragraphs are intended for information only and shall not be used to interpret paragraph contents. All masculine, feminine and neuter genders are interchangeable. All singular and plural nouns are interchangeable, unless the context requires otherwise.

8.12. Mediation; Arbitration.

8.12.1 Disputes first Mediated, then Arbitrated. All disputes on this contract shall be submitted first to mediation and then, if any dispute remains, to arbitration. Mediation and arbitration shall be in City of Tillamook, Oregon, unless otherwise agreed.

8.12.2 Procedure for Arbitration; Costs. Mediation and arbitration shall proceed according to Oregon laws and any stipulation of the parties. A mediator or arbitrator shall have the respective powers and authority provided by law and this Contract. The arbitration shall be valid, irrevocable and enforceable, except upon such grounds as exist at law or in equity for the revocation of any contract. The costs and expenses of any mediator or arbitrator shall be shared equally by the parties.

8.12.3 Notice of Demand. Notice of demand for mediation or arbitration shall be filed in writing with the other party to this Contract. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation or arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

8.12.4 Joinder. No mediation or arbitration arising out of or relating to this Contract shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Contract except by written consent containing a specific reference to this Contract and signed by the parties to this Contract and any other person joined or to be joined. Any consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not otherwise specifically described with any person. Any arbitration Contract under this Contract shall be specifically enforceable under the prevailing arbitration law.

8.12.5 Arbitration Award. The award rendered by the arbitrators shall be final; and judgment may be entered upon it according to in any court of competent jurisdiction.