

**City of White Salmon Washington  
Ordinance No.2013-11-927**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON, GRANTING AN EXCLUSIVE ORGANICS RECYCLING FRANCHISE TO DIRT HUGGER, LLC, AN OREGON LIMITED LIABILITY COMPANY, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF PROVIDING COMPOST PICKUP AND PROCESSING IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, DIRT HUGGER LLC, an Oregon Limited Liability Company, and authorized to conduct business in the state of Washington, hereinafter referred to as "DIRT HUGGER," is a composting company that, among other things, provides compost pickup and processing to customers, including those in the Columbia Gorge region; and

WHEREAS, the City has authority under RCW 35.21.152 to enter into agreements for solid waste management within the City; and

WHEREAS, DIRT HUGGER's desired route through the City of White Salmon, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way to pick up compost materials from White Salmon residents; and

WHEREAS, the City Council has determined that the use of portions of the City's rights-of-way and the City's solid waste customer base to provide compost pickup from White Salmon residents is appropriate from the standpoint of the benefits to be derived by resident and the region as a result of such services; and

WHEREAS, the City Council also recognizes that the coordination, planning and management of the City's solid waste management services and the City's rights-of-way is necessary to ensure quality and health, and that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate exclusive franchises for solid waste management, and for the use of public streets, right-of-ways and other public property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

**Section 1. Definitions**

"Organics Recycling." Organics recycling refers to activities that collect, process, and use organic waste derived materials for recycling. See Exhibit A for a list of compostable materials. Dirt Hugger may, add or remove items to the acceptable compostable materials list depending on

the ability to process such materials.

## Section 2. Exclusive Franchise Granted.

A. The City hereby grants to DIRT HUGGER, subject to the conditions prescribed in this ordinance ("Franchise Agreement"), the franchise rights and authority to contract with City residents pursuant to the limitations and requirements set forth herein to pick up compost materials according to the route schedule within the City-owned rights-of-way, set forth in Exhibit A, and hereinafter referred to as the "franchise area."

B. Such organics recycling franchise shall be deemed to be exclusive to DIRT HUGGER but shall not prohibit or limit the City from granting other franchises for any other solid waste or recycling services. Further, the City or its solid waste franchisee shall be permitted to collect organics and all other waste from residents and/or businesses who either elect not to receive services from DIRT HUGGER, and choose to treat compostable material as solid waste to be picked up as part of the City's garbage service. This franchise shall in no way interfere with existing garbage or recycling collection or in any way limit, prohibit or prevent the City or its franchisee from using the franchise area or affect the City's jurisdiction over such area in any way.

Section 3. Authority. The Director of Public Works or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise Agreement and may develop such lawful and reasonable rules, policies and procedures, as he or she deems necessary to carry out the provisions contained herein.

Section 4. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of three years from the effective date of this ordinance. This franchise shall not take effect and DIRT HUGGER shall have no rights under this franchise unless a written acceptance with the City is received pursuant to Section 5 of this agreement. If DIRT HUGGER requests a franchise renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this franchise for up to one year beyond the expiration date to allow processing of renewal. If the City elects to extend the term of this franchise, written notice of the extension shall be provided to DIRT HUGGER prior to the franchise expiration date. DIRT HUGGER may terminate this agreement with not fewer than sixty (60) days' prior written notice to the City.

Section 5. Acceptance of Terms and Conditions. The full acceptance of this franchise and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit B. Failure on the part of DIRT HUGGER to file said consent within 30 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise Agreement.

Section 6. Collection Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this Franchise Agreement and may result in some or all of the penalties specified in Section 7.

- A. Regular collection required. DIRT HUGGER agrees to regularly collect compost from residents on the schedule attached as Exhibit "C". Failure to collect compost according to the schedule shall be a default of this agreement. In the event DIRT HUGGER can not collect according the attached schedule, it shall notify the City in writing and further notify its customers of any adjustment or change in the schedule, and resume the schedule unless the City agrees in advance and in writing to a schedule modification. In no event will DIRT HUGGER allow compost material to remain uncollected at curbside in excess of 48 hours beyond the scheduled collection time.
- B. Collection receptacles. All collection receptacles, whether provided by DIRT HUGGER or its customers, must be sealable and resistant to animals, including, without limitation, dogs, rodents, raccoons, skunks, coyotes and bears. The City reserves the right to terminate this franchise before the end of the term in the event repeated incidents of animal intrusion or other conditions create a health hazard or other nuisance.
- C. Customer service standards. DIRT HUGGER will be responsible for all customer complaints or questions relating to DIRT HUGGER charges or service, and shall provide customers with a toll-free or local number to call for assistance. DIRT HUGGER agrees to promptly respond to customer calls. In the event the City receives complaints about DIRT HUGGER's customer service that are not promptly resolved, the City shall be entitled to terminate this agreement prior to the end of its term.
- D. Customer billing practices. City will perform billing and collect \$1 per customer per month in administrative fees. Customers will contact City to sign up for service and City will provide route sheet to DIRT HUGGER one day (24 hours) prior to the collection day.
- E. Rates: DIRT HUGGER will charge customers according to the rate schedule attached as Exhibit D. City will disburse payment to Dirt Hugger for customer fees collected by the City less the City's administrative fee on or before the 15<sup>th</sup> day following the billing due date for the preceding collection month. City is performing a billing service only; City shall bear no responsibility to collect any unpaid charges or turn them over to collection, nor shall City have any authority to waive or reduce charges. All customer questions or concerns shall be referred to DIRT HUGGER who shall process them according to the Customer Service Standards set forth in Section C, above. Said rates may only be modified with the written approval of the City, which approval shall not unreasonably be withheld.

#### Section 7. Franchise Compliance.

A. Franchise Violations. The failure by DIRT HUGGER to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the City that describes the violations of the franchise and requests remedial action within 30 days of receipt of such notice. If DIRT HUGGER has not attained full compliance at the end of the 30-day period following receipt of the violation notification, the City may declare an immediate termination of all franchise rights and privileges, provided that full compliance was reasonably possible within that 30-day period. If compliance is impossible within 30 days, the City may allow a longer period for compliance and terminated this franchise if the condition is not remedied within that stated period.

## B. Emergency Actions.

1. If any of DIRT HUGGER's actions, or any failure by DIRT HUGGER to act to correct a situation caused by DIRT HUGGER, is deemed by the City to create a threat to life or property, financial harm, or cause a delay of the construction, repair or maintenance of the public improvement, the City may order DIRT HUGGER to immediately correct said threat, financial harm, or delay or, at the City's discretion, the City may undertake measures to correct said threat, financial harm or delay itself; provided that, when possible, the City shall notify DIRT HUGGER and give DIRT HUGGER an opportunity to correct within a specified time said threat, financial harm or delay before undertaking such corrective measures. DIRT HUGGER shall be liable for all costs, expenses and damages attributed to the correction of such an emergency situation as undertaken by the City to the extent that such situation was caused by DIRT HUGGER and shall further be liable for all costs, expenses and damages resulting to the City from such situation and any reimbursement of such costs to the City shall be made within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by DIRT HUGGER to take appropriate action to correct a situation caused by DIRT HUGGER and identified by the City as a threat to public or private safety or property, financial harm, or delay of the construction, repair or maintenance of the public improvement shall be considered a violation of franchise terms.

2. If in the course of DIRT HUGGER collection, any damage occurs to public or private property DIRT HUGGER shall immediately call 911 in the event of injury, and then promptly notify the City of the incident.

C. Other Remedies. Nothing contained in this Franchise Agreement shall limit the City's available remedies in the event of DIRT HUGGER's failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the City's right to a lawsuit for specific performance and/ or damages, as well as City's right to attorney fees and costs as set forth in Section 17, below.

D. Removal of Equipment. In the event this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, DIRT HUGGER shall, at its sole expense, promptly remove all equipment and receptacles belonging to DIRT HUGGER.

## Section 8. Insurance

8.1 DIRT HUGGER shall purchase and maintain such insurance as will protect it from all claims, including, without limitation, those set forth below, which may arise out of or result from the DIRT HUGGER's execution of the Work, whether such execution be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

1. Claims under workmen's compensation, disability benefit and other similar employee benefits acts.

2. Claims for damages due to bodily injury, occupational sickness or diseases, or death of his employees.
  3. Claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or by any other person.
  4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- 8.2 Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the Work.
- 8.3 DIRT HUGGER shall procure and maintain at its own expense, during the contract time, liability insurance, general public liability and property damage insurance, including vehicle coverage, issued to DIRT HUGGER and protecting them from all claims for personal injury, including death, and all claims for destruction of or damage to property written on a per-occurrence basis during the full term of this franchise for personal injuries and property damages. The policy shall contain coverage in the amounts of not less than two million dollars (\$2,000,000) per occurrence.
- 8.4 Such insurance shall specifically name as additional insured, the City, its officers and employees; shall apply as primary insurance; shall stipulate that no insurance affected by the City will be called' on to contribute to a loss covered thereunder; and shall further provide that the policy shall not be modified or canceled during the life of the permit or Franchise Agreement without giving 30 days written notice to the City. Notice shall be by certified mail, return receipt requested to the City.
- 8.5 If the City determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be acquired. The City shall provide written notice should the City exercise its right to require additional insurance.

Section 9. Waiver of Immunity. DIRT HUGGER further agrees, and has specifically negotiated, to waive its immunity under the State Industrial Insurance Act (RCW Title 51) to indemnify and hold the City harmless from any claims made against the City by DIRT HUGGER 's employees, agents, contractors, subcontractors or other representatives.

Section 10. Other Permits & Approvals. Nothing in this Agreement shall relieve DIRT HUGGER from any obligation to obtain approvals or necessary permits from applicable federal, state and City authorities for all activities in the franchise area.

#### Section 11. Transfer of Ownership.

A. The rights, privileges, benefits, title or interest provided by this franchise shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, with such consent not being unreasonably withheld or delayed.

B. In any transfer of this franchise which requires the approval of the City, DIRT HUGGER shall show that the recipient of such transfer has the technical ability, financial capability, and any other legal or general qualifications as reasonably determined by the City to be necessary to ensure that the obligations and terms required under this Franchise Agreement can be met to the full satisfaction of the City. The qualifications of any transferee shall be determined by hearing before the City Council and the approval to such transfer shall be granted by resolution of the City Council. Any administrative costs associated with a transfer of this franchise which requires the approval of the City, shall be reimbursed to the City within 30 days of such transfer.

#### Section 12. Administrative Fees.

A. As a initial incentive to begin composting services in the City, DIRT HUGGER shall not be subject to an administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement. Renewal Franchise Agreements may be subject to a cost-recovery administrative fee to be negotiated between the parties. These costs shall include, but not be limited to, wages, benefits, overhead expenses, equipment and supplies associated with such tasks as plan review, site visits, meetings, negotiations and other functions critical to proper management and oversight of this agreement. Payment of the administrative fee is due 30 days after franchise approval.

B. The City shall charge DIRT HUGGER the sum of \$ 1 per customer per month to compensate the City for customer billing services.

Section 13. Notices. Any notice to be served upon the City or DIRT HUGGER shall be delivered to the following addresses respectively:

City of White Salmon  
Office of the City Clerk  
PO Box 2139  
White Salmon WA 98762

DIRT HUGGER LLC  
Wyers Law Pc  
218 E Steuben  
Bingen, WA 98605

#### Section 14. Indemnification.

A. DIRT HUGGER shall use reasonable and appropriate precautions to avoid damage to persons or property while fulfilling any right, privilege, or authority granted by or exercised pursuant to

this franchise. DIRT HUGGER shall indemnify and hold the City harmless from all claims, actions or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any negligent act or omission of DIRT HUGGER, its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to DIRT HUGGER by this franchise. In the event any claim or demand is presented to or filed with the City which gives rise to DIRT HUGGER's obligation pursuant to this section, the City shall within a reasonable time notify DIRT HUGGER thereof and DIRT HUGGER shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the City is named a party, and which suit or action is based on a claim or demand which gives rise to DIRT HUGGER's obligation pursuant to this section, the City shall promptly notify DIRT HUGGER thereof, and DIRT HUGGER shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, DIRT HUGGER may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require DIRT HUGGER to:

1. protect and save the City harmless from any claims, actions or damages;
2. settle or compromise any claim, demand, suit or action;
3. appear in or defend any suit or action; or,
4. pay any judgment or reimburse the City's costs and expenses (including reasonable attorney's fees with counsel reasonably acceptable to City), to the extent such claim arises out of the negligence or intentional acts of the DIRT HUGGER, its employees, agents or independent contractors.

B. To the extent of any concurrent negligence between DIRT HUGGER and the City, DIRT HUGGER's obligations under this paragraph shall only extend to its share of negligence or fault.

Section 15. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, either party may deem the entire ordinance to be affected and thereby nullified. However, in the event that a determination is made that a section, sentence, clause or phrase in this ordinance is invalid or unconstitutional, the parties may agree to treat the portion declared invalid or unconstitutional as severable and maintain in force the remaining provisions of this ordinance; provided that, if the City elects, without agreement by DIRT HUGGER, to enforce the remaining provisions of the ordinance, DIRT HUGGER shall have the option to terminate the Franchise Agreement.

Section 16. Reservation of Rights. The parties agree that this agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders and ordinances. Accordingly, any provision of this agreement or any local ordinance which may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this agreement does not constitute a

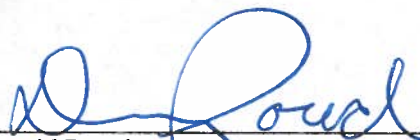
waiver of any rights or obligations by either party under the law.

Section 17. Attorney fees. In the event of a default under this agreement or a dispute concerning the terms and conditions hereof, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs at trial and on appeal.

Section 18. Police Powers. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. DIRT HUGGER shall not by this Franchise Agreement obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Franchise Agreement. This Franchise Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.


Section 19. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

**PASSED** in regular session this 6<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
David Poucher, Mayor

  
\_\_\_\_\_  
Leana Johnson, Clerk/Treasurer

Approved as to form:

  
\_\_\_\_\_  
Kenneth B. Woodrich, City Attorney



## **EXHIBIT A: COMPOSTABLE MATERIALS**

### **Phase I – Pilot period**

#### **“IF IT GROWS, IT GOES.”**

##### **Accepted**

- Yard Debris
- Leaves
- Brush
- Branches up to 3” diameter
- Grass Clippings

#### **“IF IN DOUBT LEAVE IT OUT!”**

##### **Not Accepted**

- Lumber
- Stumps
- Dirt
- Rock
- Cardboard
- Plastic
- Metal
- Glass

## **Phase II – Yard debris and food scraps permitted**

**“IF IT GROWS, IT GOES.”**

### **Accepted**

- Yard Debris
- Leaves
- Brush
- Branches up to 3” diameter
- Grass Clippings
- Food Scraps
  - Coffee
  - Eggs
  - Vegetables
  - Meat
  - Dairy

**“IF IN DOUBT LEAVE IT OUT!”**

### **Not Accepted**

- Lumber
- Stumps
- Dirt
- Rock
- Cardboard
- Plastic
- Metal
- Glass
- “Compostable” Packaging
- “Compostable” Serveware
  - Cups
  - Plates
  - Utensils

EXHIBIT B

FRANCHISE AGREEMENT ACCEPTANCE FORM DIRT HUGGER LLC

City of White Salmon  
City Clerk's Office  
PO Box 2139  
White Salmon WA 98672

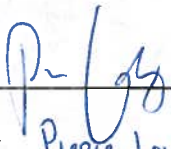
Re: Ordinance No. 2013-11-927      Adopted November 6<sup>th</sup>, 2013

Dear Mayor Poucher,

In accordance with and as required by Section 5 of City of White Salmon Ordinance No. 2013-11-927 (the "Ordinance"), passed by the City Council and approved by the Mayor on November 6<sup>th</sup>, 2013, DIRT HUGGER LLC hereby accepts the terms, conditions and obligations to be complied with or performed by it under the ordinance.

Agreed to this 7<sup>th</sup> day of November, 2013

DIRT HUGGER, LLC, an Oregon Limited Liability Company  
(Washington UBI No 603-255-879)

  
\_\_\_\_\_  
By Pierce Lewis  
Its SWISS ARMY KNIFE

SUMMARY OF Ordinance No. 2013-11-927

City of White Salmon, Washington

On November 6<sup>th</sup>, 2013 the City Council of the City of White Salmon, Washington, adopted Ordinance No. 2013-11-927, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON, GRANTING AN EXCLUSIVE COMPOST COLLECTION FRANCHISE TO DIRT HUGGER, LLC, AN OREGON LIMITED LIABILITY COMPANY, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF PROVIDING COMPOST PICKUP AND PROCESSING IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

Approved by the City Council at a Regular Meeting thereof on November 6<sup>th</sup>, 2013.

Published Enterprise: Nov. 13<sup>th</sup>.

## EXHIBIT C: ROUTE SCHEDULE

**Collection:** Bi-weekly collection will occur on Wednesday of the first and third full week in a month. Sign up for service must occur by Monday at 4pm of the collection week to be included in that week's collection. If the collection day falls on a holiday, collection will occur the following day (i.e. New Year's day is a Wednesday, collection will be on Thursday). Place cans in the front of your house with lid opening towards the street. The cart needs to be curbside on a surface street by 7:00 AM on collection day. There will be no alley pick-ups.

**Cans:** Can will be customer provided and must be no larger than 55 gallons. Can must have a sealable lid to prevent animal intrusion.

**Contamination:** Cans containing contamination (i.e. unacceptable items) will not be picked up on collection day.

**Driving route:** will depend on customers subscribing to the service. With brush only route will be bi-monthly.

**Service Period:** Service will be offered from October through the first week of January and resume in mid-March through July. After the pilot period service may be offered year-round.

**Route to include:** City Limits of White Salmon and the White Salmon Urban Growth Area

**EXHIBIT D: RATE SCHEDULE**

**City of White Salmon**

<b>Class</b>	<b>Description</b>	<b>Charge</b>	<b>Extra Unit</b>
1	1-55 Gallon Can Bi-Monthly	\$15	\$5
2	2-55 Gallon Can Bi-Monthly	\$30	\$10