

AGREEMENT FOR COLLECTION AND DISPOSAL OF SOLID WASTE

THIS AGREEMENT, made and entered into this 1st day of May, 2003, by and between the **CITY OF CHEHALIS, WASHINGTON**, a municipal corporation, herein called "City", and **WASTE CONNECTIONS OF WASHINGTON, INC.**, a Washington corporation, herein called "Contractor",

WITNESSETH:

For and in consideration of the mutual covenants and promises herein contained, and other valuable consideration, the parties hereto agree as follows:

1. The term of this Agreement shall begin upon approval by the Chehalis City Council and terminate on the 30th day of April, 2008.

2. The Contractor does hereby agree to collect all solid waste within the corporate limits of the City of Chehalis, Washington, and to remove the same to an approved solid waste disposal site acceptable to City.

The Contractor does hereby agree to collect all solid waste within those areas annexed to the City of Chehalis, Washington, within the preceding eight (8) years at such time as these annexed areas become eligible for solid waste collection by Contractor.

3. The Contractor agrees to furnish all labor, equipment, tools, and services required and necessary for the collection and disposal of said solid waste within the corporate limits of the City of Chehalis and provide qualified supervisory personnel to direct the activities of Contractor under this Agreement and to have sufficient standby trucks and equipment and personnel to guarantee collection of said solid waste.

4. All trucks for the collection of solid waste used and operated by Contractor shall be packer-type enclosed trucks, and shall be designed to be watertight and drip-proof, so that no garbage or waste water may at any time spill or drip upon the streets of the City. All equipment used by the Contractor shall be kept and maintained in a clean and inoffensive manner and shall be thoroughly washed, at least once a week or as often as directed by City personnel.

The Contractor further agrees to comply with all of the terms and conditions expressed in Ordinance No. 511-B of the City of Chehalis, Washington, codified in the Chehalis Municipal Code as Chapter 8.04, as now in force or as hereafter amended.

5. Contractor agrees to remove and dispose of all solid waste from all existing City buildings, facilities, and sites, at no cost to City. Contractor shall provide solid waste and disposal service for apartments and businesses at a level requested by the apartment or business customer.

6. Contractor shall have residential account billing for disposal service provided by City.

For that service the City will retain twelve percent (12%) of all collected revenues less state excise taxes. Disbursement to the Contractor of fee collection shall be made on or before the tenth (10th) day of each month next succeeding said fee collections during the term of this Agreement. Contractor shall authorize the City access to Contractor's business records at any reasonable time to insure compliance with this Agreement.

7. Contractor shall pay to City a contract fee of five percent (5%) of gross receipts on all accounts within the City including both commercial and residential accounts. Payments shall be made to the City not less than thirty (30) days following the close of each calendar quarter.

8. The rate the Contractor shall charge for solid waste collection service shall be as set forth in Attachment "A", attached hereto, and incorporated herein by this reference.

Contractor further agrees that said rates shall not be increased for the term of this Agreement or extensions hereof, excepting, however, for increases due to increased tipping fees charged by Lewis County, Washington, or any other entity, for solid waste disposal at the solid waste disposal site in Centralia, Washington, or such other site used by Contractor during the term of this Agreement.

Contractor will be responsible for the first four percent (4%) of any increases in tipping fees charged for solid waste disposal at any solid waste disposal site.

9. Contractor agrees that should any person deem the additional charge for collection of excess solid waste on collection day to be unreasonable, such person shall have the right to appeal to the City Manager of the City of Chehalis within thirty (30) days of the date of the mailing of the notice of said charge, and the City Manager, after hearing, shall have the exclusive right to determine whether or not the charge is reasonable.

10. Contractor shall furnish a bond in the sum of Thirty Thousand and no/100 Dollars (\$30,000.00) for the faithful performance of this Agreement, which bond shall be furnished contemporaneously with the execution of this Agreement.

11. Contractor agrees, during the term of this Agreement, to keep in force, with an insurance company acceptable to City and with a Best Rating of no less than A:VII, an "occurrence basis" insurance policy or policies indemnifying and saving harmless City from all damages which may be occasioned to any person, firm, or corporation, whether damages are by reason of any willful or negligent act or acts on part of Contractor, its agents or employees, with limits no less than:

a. General Liability: Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage.

b. Automobile Liability: Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage.

c. Worker's Compensation/Industrial Insurance: Limits as required by the State of

Washington.

The general liability provisions in automobile liability policies are to contain, or be endorsed to contain, the following provisions:

i. The City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied, or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers.

ii. The Contractor's insurance coverage shall be primary insurance as the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

iv. The Contractor's insurance shall apply separate to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, nor reduced in coverage or in limits except after forty-five (45) days' prior written notice by certified mail, return receipt requested, has been given to the City.

12. Contractor shall save, keep, and hold harmless the City, its officers, agents, employees, and volunteers from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of the Contractor, any of the Contractor's employees, or any subcontractor.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the city, its members, officers, employees, and agents, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

13. Contractor agrees to comply with all ordinances, laws, rules, and regulations, together with amendments thereto, of the State of Washington, the United States of America, or any political subdivision pertaining to the services to be performed hereunder.

14. Contractor agrees to save City harmless from any and all taxes or assessments of any kind or nature levied by any political subdivision upon Contractor by reason of services rendered for solid waste and disposal for City.

15. Contractor shall keep all employees covered by Industrial Insurance as provided by the laws of the State of Washington and the regulations of the Washington State Department of Labor and Industries and make all payments required therefor when the same shall become due.

16. Contractor agrees to provide service to school, business, and shopping mall sites during times of low traffic congestion.

17. This Agreement, or any interest herein, shall not be transferred, sold, nor assigned by Contractor to any person, firm, or corporation, without the prior written consent of City being first had and obtained.

18. In the event of a default by either party hereunder, the non-defaulting party may elect to terminate this Agreement upon providing the defaulting party with a written notice of such default, and allowing the defaulting party a period of thirty (30) days from and after the date of such notice to cure the default complained of. In the event said default is not cured within said thirty (30) day period, this Agreement shall be terminated as of the last day of said period. In the event the City is the non-defaulting party, Contractor agrees to furnish services under this Agreement until such time as another solid waste collection and disposal contractor can be selected by City.

Notwithstanding the above Agreement, Contractor agrees that whenever the City determines that the failure of service or threatened failure of service would result in the creation of an immediate and serious health hazard, the City may, after a minimum of twenty-four (24) hours written notice to Contractor, in a public hearing if requested by Contractor, authorize City personnel or other persons to temporarily provide the service or to use and operate the land facilities and/or equipment of Contractor. The City may authorize expenses which are necessary to provide the service which Contractor is required to provide under this Agreement. The City shall return any seized property and the business of Contractor upon abatement of the actual or threatened interruption of service.

If the City is required to perform the services pursuant to this paragraph, City may bill Contractor for the costs of providing the same and Contractor shall reimburse the City for the actual cost of providing the services within ten (10) days after receipt of the City's bill. In the event Contractor fails to reimburse the City within ten (10) days after receipt of the City's cost

bill, City may employ all rights and remedies to which it may be entitled under law to secure payment of the cost bill.

Contractor shall be entitled to all customer account income arising from the provision of the service by the City or other persons pursuant to this section, except as otherwise allocated herein.

19. Recyclables Collection Service.

a. Collection Frequency. Contractor shall provide collection of recyclables two times per month, on the same day as regular refuse collection, to all eligible households. Eligible households include all single-family through four-unit dwellings. Establishment of refuse collection days shall be given priority; therefore, recyclable collection days must correspond with established refuse collection days.

b. Recycling Bins. Contractor shall provide all recycling bins. The bins shall be approved by City, and shall be manufactured of durable material, preferably of recycled plastic if possible. Bins shall be imprinted with a promotional logo as determined by City.

c. Bin Ownership, Distribution, and Replacement. Contractor shall provide procurement and distribution services for all recycling bins to all households in the service area. The bins shall be initially provided to all households, and throughout the terms of the contract to all new eligible households, and on a Replacement basis, within seven days to existing households.

Bins must be initially distributed Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and delivered to the households' front doors or as nearby as reasonable.

As part of the Contractor's distribution services, Contractor shall use all reasonable efforts to minimize bin loss. Contractor shall own the bins. Strict inventory control shall be implemented by Contractor. At the end of the contract terms all bins, both distributed and undistributed, shall remain the property of Contractor.

City reserves the right to purchase the recycling bins from Contractor at any time, at a price representing the initial purchase price, less depreciation. No contractor markup on bin costs shall be allowed.

Should City require additional bins beyond the number stated above, City agrees to purchase these additional bins at Contractor's purchase price without markup.

Replacement of bins shall be made on the following basis:

- Replacement necessitated by bin damage due to Contractor negligence

shall be at Contractor's expense. Such replacement shall be noted and included in Contractor's reports to City.

- Replacement necessitated by bin damage due to customer negligence shall be at the customer's expense.

- Replacement necessitated by bin loss or theft shall be at Contractor's or customer's expense, depending on the circumstances. Any disputes arising over replacement charges may be appealed to the City Manager or his or her representative.

City may make exceptions to these conditions and approve any replacements to be at City's expense.

d. Materials. Contractor shall initially provide the collection of the following household separated materials: newspapers; cardboard and paperboard; magazines; glass, aluminum, and other metal food and beverage containers; narrow-neck HPDE and PET hard plastics; and mixed waste paper. Contractor shall also collect other materials that City and Contractor determine to be recyclable based upon a negotiated price between City and Contractor to provide the additional service.

e. Marketing. Contractor shall be responsible for the marketing and sale of recyclable materials collected from residential households and shall receive proceeds or expenses therefrom, subject to all profits being donated to the Chehalis Foundation.

f. Materials Transport. Contractor shall transport all collected recyclable materials to market. Contractor shall not, under any circumstances, be allowed to dispose of uncontaminated collected recyclable materials by land filling. If City determines that Contractor has land filled uncontaminated recyclable materials collected through this program, a penalty fee will be assessed at the rate of \$100.00 per ton with no maximum, with a minimum of \$100.00 per incident.

g. Public Awareness and Education. Contractor shall provide formal public awareness and education services by assisting and fully cooperating with City's efforts on an as-requested basis which are expected to include: a) a requirement that all personnel in potential contact with customers be knowledgeable about the program and able to answer questions from the general public; b) the distribution of brochures by Contractor concurrent with the distribution of containers; and c) promotional meetings.

h. Reporting Requirements. Contractor agrees and covenants to keep at all times accurate and complete records and accounts in writing, including route books indicating collections from residential customers as well as those commercial and industrial customers who request service, and to allow City, or its duly authorized representative or agent, reasonable and adequate access to any and all of said records, data, and/or

accounts. Contractor will furnish unto City, upon its request, accurate copies or duplicates thereof, without charge.

Contractor will be required to keep records and submit reports to City as specified below. Contractor will also be required to provide weight receipts for all materials collected and brokered by Contractor. The minimum reporting requirements, which are subject to modification, are described below:

1. Quarterly Program Reports: Contractor shall submit quarterly program reports, in a format acceptable to City, for the length of the contract period commencing upon the initial day of the contract. These reports shall be due within twenty (20) business days from the end of the period being reported. At a minimum, the reports shall include:

- Tonnages of all recyclable materials collected pursuant to this contract, by individual material type (e.g., green glass, brown glass, clear glass, newspaper, etc.).
- Summaries of gross revenues from the sale of materials and net revenues following processing and transporting of materials.
- Listing of the date, name, address, and nature of all customer complaints, accompanied by the date action taken, the resolution, and/or any unusual problems related to each complaint.
- Material market prices, by material.
- Number of collection containers replaced and why; addresses where containers reported lost.
- Number of households setting out recyclables at least once in the reporting period.
- Description of any problems encountered and how they were resolved.

2. Annual Reports: Contractor shall also provide year-end annual reports for each year the program is in operation. These reports will be due within thirty (30) days of the end of the reporting year. At a minimum, the report shall include:

- Yearly totals and a summary of the quarterly reports.
- A discussion of highlights, problems, and measures taken to resolve problems and increase efficiency and household participation. Contractor's recommendations for program improvements should also be included.

i. Additional Provisions. Contractor agrees and covenants to abide by the following additional conditions for provision of recycling services:

- Contractor shall comply with minimum state standards on recycling as now in existence or hereafter amended during the term of this Agreement, or extensions hereof.
- All revenues less reasonable transportation costs from the sale of recyclable material shall go to the Chehalis Foundation.

20. Yard Waste Disposal Program.

a. Contractor shall provide all the necessary manpower, equipment, and materials necessary to provide containers at the Stan Hedwall Park location to be determined by City for the setup of a municipal yard waste disposal site. City shall develop the site and Contractor shall provide the containers necessary to collect the yard waste from citizen participants.

b. Contractor shall be responsible for the hauling of all yard waste on an as-needed basis from the collection site at Stan Hedwall Park to the nearest available yard waste disposal site either in Lewis or Thurston County.

c. Contractor shall haul all yard waste at Contractor's sole expense. City shall be responsible for payment of tipping fees incurred at the designated disposal site in accordance with the terms of this agreement. Billing by Contractor to City for tipping fees under this portion of the Contract shall be in accordance with the current billing practices between Contractor and City.

21. Contractor agrees to comply with and support all recycling requirements of the Solid Waste Management Plan for Lewis County, Washington, at such time as it is enacted.

22. Contractor will assist at no expense to City in the collection of solid waste materials including recyclable materials, during the annual "Spring Rally" community clean-up project, provided, however, that the City agrees to continue to be responsible for landfill tipping fees for all additional solid wastes collected as a result of the "Spring Rally."

23. Contractor shall submit not later than January 31 of the following year during the term of this Agreement to the City an annual report regarding Contractor's operation which shall include the following:

- a. Activities in compliance and furtherance of the opportunity to recycle;
- b. Number of customers and changes in number of customers from previous report;
- c. Number of delinquent accounts and methods for collection;
- d. Number of complaints received regarding service and the resolution of those complaints;
- e. Any changes in equipment or disposal and dumping facility or sites;
- f. Summary of assistance to community clean-up efforts;
- g. Accidents or problems encountered in providing the service; and
- h. Tonnages of materials collected and disposed of at all sites.

24. In the event it is necessary for either party hereto to employ the services of an attorney to enforce the terms and provisions of this Agreement, the prevailing party in any dispute shall be entitled to reasonable attorney's fees, together with any costs and disbursements incurred by reason of litigation.

EXECUTED IN DUPLICATE on the date and year first above written.

**CITY OF CHEHALIS, WASHINGTON,
a municipal corporation**

By _____
Its City Manager

Attest _____
Its City Clerk

Approved as to form and content:

City Attorney

CITY

**WASTE CONNECTIONS OF WASHINGTON, INC.
a Washington corporation**

By _____
Its General Manager

CONTRACTOR