

## SHORT-TERM BACKUP WASTE TRANSPORTATION & DISPOSAL SERVICES AGREEMENT

This SHORT-TERM BACKUP WASTE TRANSPORTATION & DISPOSAL SERVICES AGREEMENT (“Agreement”) is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington, (“Customer”) WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON, INC. a Delaware corporation (“WMDS” or the “Company”), for the purposes of providing transportation and disposal services and/or hauling services as backup to an existing agreement between Customer and its primary service provider, if for any reason the Customer decides to utilize backup services.

### TERMS AND CONDITIONS

**1. SERVICES PROVIDED.** Company will provide the following:

1.1. Transportation and Disposal Services to include:

(a) Services consisting of transportation and landfill disposal (“Basic Services”) for Customer's Acceptable Waste comprised of Municipal Solid Waste (defined as putrescible and non-putrescible waste, including but not limited to garbage, rubbish, refuse; plant and grass clippings and leaves; commercial, industrial, demolition, and construction wastes; septage screenings; manure, vegetable or animal solid and semisolid wastes and incidental quantities of dead animals weighing less than one hundred pounds) and/or Special Waste for which specific landfill Special Waste profile approval is obtained (defined as industrial process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, and other materials requiring special handling in accordance with applicable federal, state, provincial or local laws or regulations); and

(b) Equipment consisting of intermodal rail Containers or trailers of a size and in a quantity to be determined by Company in its sole discretion. Company cannot guarantee Containers or trailers necessary to handle Customer's waste volume. Customer shall deliver Acceptable Waste to Company in fully-loaded Containers FOB Argo Yard or such other location designated by Company and shall pick up empty Containers at the Argo Yard or such other location designated by Company. Customer shall ensure that containers or trailers do not contain more than 30 tons of waste. At the time of tender, Customer shall provide to Company accurate and complete documents, shipping papers or manifests as are required for the lawful transfer of the Acceptable Waste under all applicable federal, state or local laws or regulations.

1.2. Company may, at the sole discretion of the County, also supply hauling services which would include transportation of filled Containers from Snohomish County interim solid waste handling facilities to Argo Yard or such other location designated by Company (“Haul Services”).

**2. CHARGES AND PAYMENTS.**

2.1. Customer shall pay the Company monthly for Basic Services provided hereunder at a rate of involving rail transportation and disposal from the Argo Yard at a rate of \$2,155.72 (two thousand one hundred fifty-five dollars and seventy-two cents) per filled Container.

2.2. Customer shall pay the Company monthly for Haul Services involving transportation of filled Containers provided hereunder to the Argo Yard at a rate of \$375/roundtrip (three hundred seventy-five dollars and no cents per trip) for each Container from the Southwest Recycling and Transfer Station and \$412/roundtrip (four hundred twelve dollars and no cents per trip) from the Airport Road Recycling and Transfer Station.

2.3. Customer shall pay the rates in full within 30 days of receipt of each invoice from Company. Customer shall pay a late fee on all past due amounts accruing from the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law.

**3. CUSTOMER WARRANTIES.** Customer hereby represents and warrants that:

3.1. All Acceptable Waste delivered by Customer to Company shall be in accordance with waste descriptions given in this Agreement and shall not be or contain any Unacceptable Waste (e.g., any waste that is or contains any infectious waste, radioactive, volatile, corrosive, flammable, explosive, biomedical, biohazardous material, regulated medical or hazardous waste or toxic substances, as defined pursuant to or listed or regulated under applicable federal, state or local law, or any waste that is prohibited from being received, managed or disposed of at the designated disposal facility by federal, state or local law, regulation, rule, code, ordinance, order, permit or permit condition, including but not limited to road tires, used oil, batteries, appliances and car bodies);

3.2. All Special Waste delivered by Customer to Company shall be in accordance with a Special Waste Profile approved by Company;

3.3. Customer shall not place more than THIRTY (30) tons of waste in the intermodal Containers; and

3.4. Customer will transport Containers in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations. Customer (including its subcontractors) represents and warrants that it will comply with all applicable laws, ordinances, regulations, orders, permits or other legal requirements applicable to the Acceptable Waste.

**4. TERM OF AGREEMENT.** The Initial Term of this Agreement shall be SIX (6) months, commencing on the Effective Date shown below, unless terminated sooner in accordance with the provisions of this Agreement; provided however, that the terms and conditions of this Agreement shall remain in full force and effect, in accordance with its terms, with respect to any uncompleted or unfinished Service provided until such Service is completed.

**5. INSPECTION; REJECTION OF WASTE.** Title to and liability for Unacceptable Waste shall remain with Customer at all times. Company shall have the right to inspect, analyze or test any waste delivered by Customer. If Customer tenders to Company Unacceptable Waste, Company can, at its option, reject Unacceptable Waste and return it to Customer or require Customer to remove and dispose of the Unacceptable Waste at Customer's expense. Customer shall indemnify, hold harmless (in accordance with Section 9 below) and pay or reimburse Company for any and all costs, damages and/or fines incurred as a result of or relating to Customer's tender or delivery of

Unacceptable Waste or other failure to comply or conform to this Agreement, including costs of inspection, testing and analysis.

**6. SPECIAL HANDLING; TITLE.** If Company elects to handle, rather than reject, Unacceptable Waste, Company shall have the right to manage the same in the manner deemed most appropriate by Company given the characteristics of the Unacceptable Waste. Company may assess and Customer shall pay additional fees associated with delivery of Unacceptable Waste, including, but not limited to, special handling or disposal charges, and costs associated with different quantities of waste, different delivery dates, modifications in operations, specialized equipment, and other operational, environmental, health, safety or regulatory requirements. Title to and ownership of Acceptable Waste shall transfer to Company upon its final acceptance of such waste.

**7. COMPANY WARRANTIES.** Company hereby represents and warrants that:

7.1. Company will manage the Acceptable Waste in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations;

7.2. Company will use disposal facilities that have been issued permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the facility to accept, treat and/or dispose of Acceptable Waste; and

7.3. Except as provided herein, Company makes no other warranties and hereby disclaims any other warranty, whether implied or statutory.

**8. LIMITED LICENSE TO ENTER.** When Customer is transporting Acceptable Waste to a Company facility, Customer and its subcontractors shall have a limited license to enter the facility for the sole purpose of off-loading Containers for Acceptable Waste at an area designated, and in the manner directed, by Company. Customer shall, and shall require its subcontractors to, comply with all rules and regulations of the facility, as amended. Company may reject Acceptable Waste, deny Customer or its subcontractors' entry to its facility and/or terminate this Agreement in the event of Customer's or its subcontractors' failure to follow such rules and regulations.

**9. INDEMNIFICATION.**

9.1. Company agrees to indemnify, defend and save Customer harmless from and against any and all liability (including reasonable attorneys' fees) which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by Company's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs as a result of the disposal of Customer's Acceptable Waste at the Columbia Ridge Landfill and Recycling Center or such other landfill owned or operated by a subsidiary of Waste Management, Inc., provided that Company's indemnification obligations will not apply to occurrences involving Unacceptable Waste.

9.2. Customer agrees to indemnify, defend and save Company harmless from and against any and all liability (including reasonable attorneys' fees) which Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or

possession of any equipment furnished by Company. Customer specifically agrees to indemnify, defend and save Company harmless from and against any and all liability (including reasonable attorneys' fees) which Company may incur as a result of any claims against Company by the Customer's primary service provider related to this Agreement or the services hereunder.

9.3. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

## **10. INSURANCE**

10.1. No Limitation. Company's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Company to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

10.2. Minimum Insurance Requirements. Company shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Company, its agents, representatives, or employees as described below:

(a) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. The County shall be named as an additional insured under the Company's Auto Liability insurance policy with respect to the work performed for the County.

(b) Commercial General Liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate covering liability arising from premises, operations, independent contractors and personal injury written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage. The County shall be named as an additional insured under the Company's Commercial General Liability insurance policy with respect to the work performed for the County.

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

10.3. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance: (a) The Company's insurance coverage shall be primary insurance as respect the County. Any insurance, self-insurance, or insurance pool coverage maintained by the County shall be excess of the Company's insurance and shall not contribute with it. (b) The Company's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice (ten (10) days in the case of cancellation due to non-payment of premium) by certified mail, return receipt requested, has been given to the County.

10.4. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.5. Verification of Coverage. Company shall furnish the County with original certificates evidencing the insurance requirements of the Company before commencement of the work.

**11. UNCONTROLLABLE CIRCUMSTANCES.** Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruption, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or significant threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government (“Uncontrollable Circumstances”), and the affected party shall be excused from performance hereunder during the period of such disability. The party claiming Uncontrollable Circumstances shall promptly notify the other party when it learns of the existence of an Uncontrollable Circumstances condition and when the Uncontrollable Circumstances condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term “Uncontrollable Circumstances” does not include and a party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

**12. ASSIGNMENT.** Neither party shall assign this Agreement without the prior written consent of the other party, except that Company assign this Agreement to any subsidiary, parent or affiliated company without the other party’s consent. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**13. PUBLIC RECORDS ACT.** This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the “Act”). To the extent that public records then in the custody of the Company are needed for the County to respond to a request under the Act, as determined by the County, the Company agrees to make them promptly available to the County. If the Company considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Company shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Company and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Company (a) of the request and (b) of the date that such information will be released to the requester unless the Company obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Company fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Company to claim any exemption from disclosure under the Act. The County shall not be liable to the Company for releasing records not clearly identified by the Company as confidential or proprietary. The County shall not be liable to the Company for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

**14. COUNTY NON-DISCRIMINATION.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts. The Company

shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Company of the Company's compliance with the requirements of Chapter 2.460 SCC. If the Company is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Company's obligations under other federal, state, or local laws against discrimination.

**15. FEDERAL NON-DISCRIMINATION.** Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

During the performance of this Agreement, the Company agrees to comply with all of the terms required by Appendices A and E, attached hereto and incorporated by this reference.

**16. ENTIRE AGREEMENT.** This Agreement represents the entire understanding and agreement between the parties relating to the management of waste and supersedes any and all prior agreements, whether written or oral, between the parties regarding the same.

**17. TERMINATION.** Either party may terminate this Agreement by giving the other party at least TEN (10) days written notice of termination. Company may immediately terminate this Agreement in the event of Customer's breach of any term or provision of this Agreement, including failure to pay on a timely basis. Notice of termination shall be in writing and deemed given when delivered in person or by certified mail, postage prepaid, return receipt requested. Notwithstanding the foregoing, this Agreement shall automatically terminate upon execution of a definitive contract between Customer and Company for long-term waste transportation and disposal services. At the termination of this Agreement, Company's equipment shall be returned in the condition in which it was provided, normal wear and tear excepted.

**18. EFFECTIVE DATE.** The "Effective Date" of this Agreement shall be the date of the last party to sign.

**19. MISCELLANEOUS.**

19.1. The prevailing party will be entitled to recover reasonable fees and court costs, including attorneys' fees, in interpreting or enforcing this Agreement. In the event Customer fails to pay Company all amounts due hereunder, Company will be entitled to collect all reasonable collection costs or expenses, including reasonable attorney's fees, court costs or handling fees for returned checks from Customer.

19.2. The validity, interpretation and performance of this Agreement shall be construed in accordance with the laws of the State of Washington.

19.3. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed severable from and shall not affect the remainder of this Agreement, which shall remain in full force and effect.

19.4. Customer's payment obligation for Services and the Warranties and Indemnification made by each party shall survive termination of this Agreement.

**IN WITNESS WHEREOF**, the parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the party on whose behalf it is indicated that the person is signing.

**WASTE MANAGEMENT DISPOSAL  
SERVICES OF OREGON, INC.:**

**SNOHOMISH COUNTY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ George Marsh April 22, 2022  
Deputy Prosecuting Attorney

APPENDIX A

During the performance of this Agreement, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).