

GARBAGE AND REFUSE COLLECTION
AND DISPOSAL AGREEMENT

THIS AGREEMENT, is made an entered into in duplicate this _____ day of October, 2016, by and between the CITY OF KALAMA, a Washington municipal corporation, hereinafter referred to as the "CITY" and WASTE CONTROL, INC., a Washington corporation, hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the CONTRACTOR and the CITY are presently parties to an Agreement for solid waste collection and disposal in the City (*first dated February 4th, 1987*) and they desire to renew and extend said Agreement as modified hereunder for a term commencing on the date hereof and ending on December 31, 2021; and

WHEREAS, the CONTRACTOR by its past performance has demonstrated that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. GRANT OF AUTHORITY.

The CONTRACTOR is hereby granted the sole and exclusive franchise, license and privilege within the territorial jurisdiction of the CITY to collect and dispose of garbage, refuse, rubbish and recyclable materials (hereinafter "solid waste") as set forth herein and said CONTRACTOR shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide collection, removal and disposal services as so described and specified and to perform all of the work called for and described in the specified documents. Provided however, recyclable materials generated by commercial and industrial businesses shall not be considered a part of the waste stream subject to CONTRACTOR'S exclusive grant of authority.

2. TERM.

This Agreement shall commence on the day and year first hereinabove written and shall continue in full force and effect, unless sooner terminated according to the provisions herein, for a period of five (5) years plus the remaining portion of 2016, until December 31, 2021. Provided, however, this Agreement may be modified or extended upon the mutual agreement of the parties, provided such modifications or extensions are in writing and such provisions thereof are executed by the parties' duly authorized representatives.

3. OPTION TO EXTEND.

At the sole discretion of the CITY, this Agreement may be extended for a period of five (5) years pursuant to the terms and conditions mutually acceptable to the parties. Provided, however, negotiations for such extension shall commence at least six (6) months prior to the termination date and be fully concluded at least ninety (90) days prior to said termination date.

4. DEFINITIONS.

The following terms when used in this Agreement shall have only the meanings designated below:

A. "Bulky Material." Stoves, refrigerators, water tanks, washing machines, furniture and other waste materials other than Construction Debris, dead animals, Hazardous Waste or Stable Matter with weights or volumes greater than those allowed for Containers.

B. "Construction Debris." Waste building materials resulting from construction, remodeling, repair or demolition operations, except substances considered as hazardous waste.

C. "Compacted Material." Any material which has been compressed by any mechanical device either before or after it is placed in the receptacle/container.

D. "Container." A roll out receptacle with a capacity of 32-90 gallons constructed of plastic, having handles and wheels, and having a tight fitting lid capable of preventing entrance into by vectors. It shall also include stationary receptacles with a capacity of 300-450 gallons, constructed of plastic, and having a tight fitting lid.

E. "Curb-Side." That portion of property immediate of a curblineline or that portion of the right-of-way adjacent to a paved or traveled roadway.

F. "Disposal Site." A Refuse depository including but limited to sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved to receive for processing or final disposal of Garbage/Refuse and dead animals by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.

G. "Drop Box." A receptacle constructed of steel, having a capacity of 20 to 40 cubic yards which is placed on a truck by mechanical means, hauled to a disposal site and returned.

H. "Extra." Occasional extra waste material (Units, Boxes, Cartons, Bags, etc.) which can be readily and easily loaded by hand into the CONTRACTOR'S truck.

I. "Garbage." Every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing,

canning, storage, transportation, decay or decomposition of meats, fish, fowl, fruits, grains, or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of Bulky Materials, Construction Debris, dead animals, Hazardous Waste and Rubbish.

J. "Hazardous Waste." Any chemical, compound, mixture, substance or article which is designated by the United States Environmental Protection Agency or appropriate agency of the State to be "hazardous" as that term is defined by or pursuant to Federal or State law.

K. "Non-Curb." The placement of a container at a point other than the curb-side.

L. "Recycle Material." All solid wastes that are separated for recycling or reuse, such as papers, metals, plastics and glass.

M. "Refuse." All Garbage, Rubbish wastes and Construction Debris generated by a residence and all commercial/industrial places of business.

N. "Rubbish." All waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Materials, Construction Debris, Garbage and Hazardous Waste.

O. "Special Pickup." The picking up or hauling of materials such as Bulky Material, Construction Debris, or other materials that cannot be picked up on a regular collection route.

P. "Stationary Packer." A receptacle of variable capacity constructed of steel and designed to compact refuse and be picked up as by definition "Drop Box."

Q. "Unit." One can made of durable, corrosion resistant, nonabsorbent material, watertight with a close-fitting cover and two handles, and shall not exceed thirty-two gallons or four cubic feet or fifty pounds (including contents). A Unit can also mean a (Box, Carton, Bags, etc.) that are no more than fifty pounds by weight and four cubic feet by dimension.

5. SCOPE OF SERVICES.

The CONTRACTOR shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as CONTRACTOR responsibilities throughout this Agreement and as more particularly detailed in Exhibit "A", Kalama Municipal Code Chapter 7.08 Garbage Collection and Disposal.

6. CONTRACTOR'S OFFICE.

The CONTRACTOR shall maintain an office or such other facility at which he can be contacted. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 7:30 a.m. to 4:00 p.m. on regular collection days of Monday through Friday. There will be no requirement to maintain an office on Saturdays, Sundays or holidays; however, provision must be made by the CONTRACTOR and approved by the CITY to handle any emergency calls after hours and on holidays.

7. CITY TO ACT AS COLLECTOR.

The CITY shall submit statements to and collect from all residential, multiple-family and commercial units for services provided by the CONTRACTOR pursuant to Exhibit "A."

8. COMPENSATION AND METHOD OF PAYMENT.

As compensation for the services rendered by CONTRACTOR pursuant hereto, the CITY shall pay CONTRACTOR a sum equal to eight-five percent (85%) of all monies collected from residential and commercial customers for garbage and refuse and recycling services within the corporate limits. Monies collected shall be in accordance with the schedule of rates and charges *as may be authorized in the Kalama Municipal Code* and as set by council resolution as well as Sections 8 and 9 of this Agreement. Provided however, the State Refuse Tax shall not be considered as part of gross revenues when computing the CONTRACTOR'S share. The CITY shall pay to CONTRACTOR on or before the 10th day of each calendar month through the term of the Agreement its portion of monies collected pursuant to the formula set forth above. Should any person or persons request CONTRACTOR to make garbage and refuse pickups in addition to the *mandatory minimums required by applicable ordinances now in effect or hereinafter amended*, the CONTRACTOR shall notify the CITY in writing of such pickups and the applicable charges therefor. Upon being so notified, the CITY Clerk/Treasurer shall charge such person or persons for such additional services in accordance with the rate schedules described above. The CITY shall use reasonable diligence in collecting all sums due for and on account of garbage and refuse services provided by the CONTRACTOR, but shall not be liable for such deficiencies.

9. SUBSEQUENT ADJUSTMENT.

In the event the Contractor is granted a rate increase by the Washington Utilities and Transportation Commission during the term of this agreement, the Contractor shall immediately notify the City of such increase and the City may approve such increase within thirty (30) days of notification by the Contractor, said increase to become effective thirty (30) days after approval by the City. In the event the increase is not granted by the City then either party to this agreement shall have the right to terminate this agreement as otherwise provided herein.

10. OWNERSHIP.

Title to solid waste shall pass to the CONTRACTOR when placed in CONTRACTOR'S collection vehicle, removed by CONTRACTOR from a receptacle, or removed by CONTRACTOR from the customer's premises, whichever last occurs.

11. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent CONTRACTOR/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the CONTRACTOR. No agent, employee, servant or representative of the CONTRACTOR shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the CONTRACTOR are not entitled to any of the benefits the CITY provides for its employees. The CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the CONTRACTOR is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

12. STAFF LIASON BETWEEN THE PARTIES.

The CONTRACTOR'S contact with CITY staff for matters of an operational nature shall be with the CITY'S Public Works Director. Matters or related to finance, billing and account collection shall be directed to the CITY'S Clerk/Treasurer. The CONTRACTOR shall provide the CITY a current, prioritized list of names of its employees who can be contacted to resolve solid waste issues and complaints.

13. CONDUCT OF CONTRACTOR'S EMPLOYEES AND AGENT

A. The CONTRACTOR'S employees and agents shall conform to minimum acceptable standards of behavior, appropriate work ethic and professional attitude during their operation inside the CITY.

B. Posted speed limits shall be observed by CONTRACTOR's drivers.

C. Drivers shall operate vehicles in designated travel lanes and avoid running trucks onto curbs and sidewalks.

D. CONTRACTOR shall be responsible for the removal and disposal of all refuse once the CONTRACTOR takes possession of the refuse. It shall be the CONTRACTOR's responsibility to recover any and all material spilled/blown from collection trucks. Any refuse spilled/blown from the collection

trucks and not recovered by the CONTRACTOR shall be collected by the CITY Public Works Department at the cost of the CONTRACTOR. The CONTRACTOR shall compensate the CITY for hours expended to collect this spilled/unrecovered refuse at the standard hourly rate set by ordinance each year for Public Works labor. The CITY shall provide CONTRACTOR with 24-hour notice of any spilled/unrecovered refuse and a reasonable opportunity to cure the problem before the CITY expends time and money to collect the same.

14. HOLD HARMLESS INDEMNIFICATION.

The CONTRACTOR will indemnify, save harmless, and exempt the CITY, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incident to any work done in the performance of this Agreement arising out of a willful or negligent act or omission of the CONTRACTOR, its officers, agents, servants, and employees; provided, however, that the CONTRACTOR shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of the CITY, its officers, agents, servants and employees.

15. INSURANCE.

The CONTRACTOR shall at all times during the Agreement maintain in full force and effect employer's liability, workmen's compensation, public liability and property damage insurance, including contractual liability coverage. All insurance shall be by insurers and for policy limits acceptable to the CITY and before commencement of work hereunder the CONTRACTOR agrees to furnish the CITY a certificate of insurance or other evidence satisfactory to the CITY to the effect that such insurance has been procured and is in force. The certificate shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

For the purpose of the Agreement, the CONTRACTOR shall carry the following types of insurance in at least the limits specified below:

<u>Coverage</u>	<u>Limits of Liability</u>
• Workmen's Compensation	Statutory
• Employer's Liability	\$500,000
• Bodily Injury and Property Damage Liability	\$2,000,000 per occurrence combined single limit, \$3,000,000 aggregate (except automobile)
• Automobile Bodily Injury Liability and Property Damage Liability	\$2,000,000 per occurrence combined single limit

With respect to the above policies, the CITY shall be named as additional insured on a primary and non-contributing basis. Any deductibles for self-insured retention levels must be declared to and approved

by the CITY. At the option of the CITY, the insurer shall either reduce or eliminate such deductibles or self-insured retentions as respect the CITY, its officials and its employees; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related expenses.

16. LICENSES AND TAXES.

The CONTRACTOR shall obtain all licenses and permits (other than the license and permit granted by the Agreement) and promptly pay all taxes required by the CITY and the State. It will be the CONTRACTOR'S responsibility to determine the costs for licenses and taxes and include them in his proposal. No increase in rates will be allowed for licenses or taxes that were overlooked by the CONTRACTOR in preparing his proposal or prior to entering into the Agreement.

17. COMPLIANCE WITH LAWS.

The CONTRACTOR, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

18. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the CONTRACTOR will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The CONTRACTOR shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The CONTRACTOR shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. Nondiscrimination in Services. The CONTRACTOR will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The

CONTRACTOR shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

19. TRANSFERABILITY OF AGREEMENT.

No assignment of the Agreement or any right accruing under this Agreement shall be made in whole or in part by the CONTRACTOR without the express written consent of the CITY, which consent shall not be unreasonably withheld; in the event of any assignment, the assignee shall assume the liability of the CONTRACTOR. In the event such an assignment is approved, the CONTRACTOR will be responsible to the CITY for the performance of the assigned Agreement.

20. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

21. TERMINATION.

Termination for Cause. If the CONTRACTOR fails to perform in the manner called for in this Agreement, or if the CONTRACTOR fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within thirty (30) days written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

22. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

23. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

24. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered in the State of Washington and it is agreed by each party hereto that this Agreement shall be

governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Cowlitz County, Washington.

25. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

26. FORCE MAJEURE.

This Agreement is entered into subject to the following conditions:

- a. The CONTRACTOR shall procure and keep in full force and effect throughout the term of this contract, all insurance policies and letter of credit specified in and required by this Agreement.
- b. The CONTRACTOR shall not be liable for the failure to wholly perform his duties if such failure is caused by a catastrophe, riot, war, governmental order or regulations, fire accident, act of God, terrorist attacks, or other similar or different contingency beyond the reasonable control of the CONTRACTOR.

27. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:
City of Kalama
PO Box 1007
Kalama, WA 98625
360-673-4561

CONTRACTOR:
Waste Control Equipment, Inc.
Address: _____

Phone: _____
Tax ID #: _____

Ron "Pete" Poulsen
Mayor

Signature

Printed Name

Title

ATTEST:

Coni McMaster, Clerk/Treasurer

APPROVED AS TO FORM:

Erin Hillier City Attorney