

RESOLUTION NO. 2018-G

A RESOLUTION OF THE EATONVILLE TOWN COUNCIL APPROVING AN EXCLUSIVE FRANCHISE AGREEMENT WITH PIERCE COUNTY REFUSE FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, AND CONSTRUCTION AND DEMOLITION WASTE IN THE TOWN OF EATONVILLE, WASHINGTON

WHEREAS, the Eatonville Town Council approved Resolution 2008-T on March 24, 2008, a contract with Pierce County Refuse to provide solid waste service to the Town of Eatonville; and

WHEREAS, the contract with Pierce County Refuse will expire on March 27, 2018; and

WHEREAS, Eatonville Municipal Code Chapter 8.04, Solid Waste requires garbage service in the Town of Eatonville; and

WHEREAS, the agreement has been reviewed by the Town Attorney; and

WHEREAS, the Town of Eatonville agrees to sign an Exclusive Franchise Agreement with Pierce County Refuse for ten (10) years, commencing on March 19, 2018 and concluding on March 18, 2028 and extending for two (2) successive periods of two (2) years each; provided, that neither party provides the other party with written notice of intend to terminate this agreement at least 180 days prior to the expiration date of this agreement; now therefore

THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

THAT: The Exclusive Franchise Agreement for the collection, hauling and disposal of municipal solid waste, recyclable materials, and construction and demolition waste in the Town of Eatonville is hereby approved. A copy of the agreement is attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 12th day of March 2018.

Mike Schaub, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, AND CONSTRUCTION AND
DEMOLITION WASTE
IN THE TOWN OF EATONVILLE, WASHINGTON**

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of March 12, 2018, by and between Harold LeMay Enterprises, Incorporated d/b/a Pierce County Refuse, a Washington corporation (the "Service Provider"), and the Town of Eatonville (the "Town").

WHEREAS, the Town, subject to the terms and conditions set forth herein and the ordinances and regulations of the Town, desires to grant to the Service Provider the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste (as such terms are defined herein) within the Town's corporate limits pursuant to RCW 35.21.120.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the Town hereby agree as follows:

SECTION I. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Brush - Loose tree limbs, trees, brush growth and shrub trimmings not measuring in excess of six (6) feet in length or two-hundred (200) pounds in weight.

Bulky Item - Any item not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and other similar household items.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the Town.

Commercial Unit - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste, Recyclable Materials, or Construction and Demolition Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

Construction and Demolition Waste - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste, Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Bulky Items.

Container - Any receptacle, including, but not limited to, dumpsters, Roll-Offs, and Roll-Outs, provided to the Town by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste, Industrial Solid Waste, Construction and Demolition Waste, or Recyclable Materials. Containers are designed to hold between thirty-five (35) gallons and forty (40) cubic yards of Solid Waste.

Hazardous Waste - Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended

by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Washington statute, rule, order or regulation.

Holidays - The following days:

- (1) New Year's Day (January 1st)
- (2) Thanksgiving Day
- (3) Christmas Day (December 25th).

Industrial Solid Waste - Solid waste (specifically excluding Hazardous Waste) which constitutes garbage or rubbish and results from or is incidental to any process of industry or manufacturing, mining, or agricultural operations.

Industrial Unit - Any manufacturing, mining or agricultural facility that generates and accumulates waste during, or as a result of, its operations.

Multi-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste.

Municipal Solid Waste - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Recyclable Materials, Construction and Demolition Waste, Industrial Solid Waste, or Hazardous Waste.

Recyclable Materials - Newspapers, magazines, and catalogs, and other paper items such as mail, paper bags, office paper, envelopes, cereal and soda drink boxes, corrugated cardboard, phone books or other paper; glass bottles and jars (excluding mirrors, windows, ceramics, light bulbs, dishes, cups, and other glass products); metal cans composed of tin, steel or aluminum, metal lids from glass jars, empty aerosol cans (excluding scrap metal); and plastic containers including all varieties of the types designated as #1, #2, #3, #4, #5, #6 and #7.

Residential Unit - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

Roll-Off - A Container with twenty (20) cubic yards to forty (40) cubic yards of capacity.

Roll-Out - A Container with thirty-five (35) to ninety-five (95) gallons of capacity.

Single-Family Residential Unit - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

Solid Waste - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Washington under RCW 70.95.030, whether such waste is mixed with or constitutes Recyclable Materials.

White Good - Any item not measuring in excess of either three (3) cubic feet in size or fifty (50) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

SECTION 2. EXCLUSIVE FRANCHISE GRANT.

The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste, the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste over, upon, along and across the Town's present and future streets, alleys, bridges and public properties. In order to maintain the exclusive franchise in favor of the Service Provider contained herein, the Town shall take any and all appropriate legal action against any company, customer or third party infringing upon the exclusive rights of the Service Provider. In the event that the Town fails to pursue appropriate legal action in order to remedy an infringement on the Service Provider's exclusive-franchise rights, the Service Provider may retain a subrogation right from the Town against any and all violations of the exclusive-franchise grant described herein and shall be entitled to any and all actual and consequential damages. The Service Provider shall retain all remedies afforded to it by contract or law to seek enforcement by the Town, including, but not limited to, specific performance, to the extent provided by law.

SECTION 3. OPERATIONS.

A. Scope of Operations. It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste (as provided herein) (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the Town's corporate limits, including any territories annexed by the Town during the term of this Agreement (the "Services").

B. Nature of Operations. The Town hereby grants to the Service Provider, in accordance with the Town's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste, the title to all Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste collected, hauled and disposed of by the Service Provider over, upon, along and across the Town's present and future streets, alleys, bridges and public properties. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

SECTION 4. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.

A. Single-Family Residential Units. The Service Provider will collect Municipal Solid Waste and Recyclable Materials from Single-Family Residential Units at the frequency elected by the Single-Family Resident Unit, but no less than weekly; provided, that (i) such Municipal Solid Waste and Recyclable Materials are placed in Roll-Outs, and (ii) such Roll-Outs are placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day.

B. Excess or Misplaced Municipal Solid Waste and Recyclable Materials. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste and Recyclable Materials placed inside the Roll-Outs. Municipal Solid Waste and Recyclable Materials in excess of the Roll-Outs' limits, or placed outside or adjacent to the Roll-Outs, will not be collected by the Service Provider. However, such excess or misplaced Municipal Solid Waste and Recyclable Materials may be collected on occasion and within reason due to Holidays or other extraordinary circumstances as determined by the Service Provider in its sole discretion.

SECTION 5. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.

The Service Provider will collect Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste from Commercial, Industrial and Multi-Family Residential Units once or twice per week, as provided for in Section 9.B. hereof, but no less than weekly. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof. The parties acknowledge and agree that the Service Provider shall not be responsible for damage to any private pavement or accompanying sub-surface of any route reasonably necessary to perform the Services herein contracted and that the Commercial, Industrial or Multi-Family Residential Unit assumes all liabilities for damage to pavement or road surface.

SECTION 6. ANNUAL TOWN CLEANUP.

The Service Provider will provide, at no cost to the Town, four (4) 40-yard Roll-Off Containers to collect Municipal Solid Waste and one (1) 40-yard Roll-Off Container to collect Brush at the Annual Town Cleanup Day; provided, that the Town and Service Provider mutually agree to the date of such event.

SECTION 7. BULKY ITEMS.

It is understood and agreed that the service provided under Section 4.A. does not include the collection of Brush, Bulky Items, Industrial Solid Waste, Construction and Demolition Waste, White Goods or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items.

SECTION 8. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 9. RATES AND FEES.

Subject to adjustment, as provided in Section 10 hereof, the rates and fees to be charged and received by the Service Provider are listed on addendum A.

A. Single-Family Residential Unit Services. For the Services provided to Single-Family Residential Units under Section 4.A. hereof, the Service Provider shall charge per month for each Single-Family Residential Unit for Municipal Solid Waste and Recyclable Materials collection services the following rates. These rates apply to all Single-Family Residential Units that are located within the Town's corporate limits and billed by the Town for water and sewer.

B. Commercial, Industrial and Multi-Family Residential Unit Services. For the Services provided to Commercial, Industrial and Multi-Family Residential Units under Section 5 hereof, the Service Provider shall charge per month for each Container utilized the following rates:

C. Roll-Off Services. The Service Provider will negotiate agreements with each Commercial, Industrial or Residential Units on an individual basis regarding the Roll-Off Services to be provided. The Roll-Offs provided pursuant to this Section 9.C. must be located within the Town in accordance with Town ordinances and policies.

SECTION 10. RATE ADJUSTMENT.

Pursuant to EMC 8.04.140, rates for the Services to be performed under this Agreement may only be set by an ordinance from the Town of Eatonville Council. The Town hereby agrees to pass appropriate ordinances as may be required to adjust rates based on the following criteria:

A. CPI-U Adjustment. On each anniversary date of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the Town, to increase or decrease the rates set forth in Section 9 hereof (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the Seattle/Tacoma/Bremerton metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 10.A. The amount of the increase or decrease under this Section 10.A. shall be equal to seventy percent (70%) of the percentage that the CPI-U has increased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., at any time during the term of this Agreement, the Service Provider may petition the Town for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations not otherwise the basis of any other rate adjustments herein. At the time of any such petition, the Service Provider shall provide the Town with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The Town shall not unreasonably withhold, condition or delay its consent to any requested rate increase. In the event the Town fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the Town.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste, Industrial Solid Waste, and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right, in its sole discretion, to dispose of the Municipal Solid Waste, Industrial Solid Waste, and Construction and Demolition Waste covered by this Agreement at another landfill of its choosing, and (ii) shall have the right, upon giving prior notice to the Town, to increase the Initial Rates by an amount equal to the sum of (x) the amount, if any, that the disposal fees charged to the Service Provider at such other landfill exceed those previously charged to the Service Provider at the Initial Landfill(s), and (y) the amount, if any, that the transportation costs incurred by the Service Provider in connection with transporting the Municipal Solid Waste, Industrial Solid Waste, and Construction and Demolition Waste to such other landfill exceed those that would have been

incurred by the Service Provider if such Municipal Solid Waste, Industrial Solid Waste, and Construction and Demolition Waste was transported to the Initial Landfill(s).

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding sales taxes and taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

SECTION 11. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human, dead animals, auto parts or used tires from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of Construction and Demolition Waste, Industrial Solid Waste, auto parts or used tires by utilizing the Service Provider's Roll-Off Services.

SECTION 12. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of ten (10) years, commencing on March 19, 2018 and concluding on March 18, 2028. At the expiration of the term of this Agreement, the Agreement will be extended for two (2) successive periods of two (2) years each; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least 180 days prior to the expiration date of this Agreement or 180 days prior to any of the then applicable individual five-year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this ten (10) year Agreement, or at the end of the subsequent two (2) year extension period, as applicable.

SECTION 13. ENFORCEMENT.

During the term of this Agreement and any extension thereof, the Town agrees to adopt and maintain ordinances and revise existing ordinances so as to enable the Service Provider to provide the Services set forth herein. The Town shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. To the maximum extent allowed by applicable law, the Town also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

SECTION 14. PROCESSING, BILLING AND FEES.

A. Monthly Statement. On a monthly basis, the Town agrees to bill and collect all rates and fees identified in Section 9 hereto from all Residential, Commercial, and Industrial Units within the City's corporate limits. Additionally, the City shall provide to the Service Provider a monthly house count. On a monthly basis, the Service Provider agrees to bill the Town the rates and fees charged under Section 9 hereto for all Residential, Commercial, and Industrial Units within the Town's corporate limits (the

"Monthly Statement") on or before the 1st day of the month immediately following the month in which such Services were provided. Thereafter, the Town will remit to the Service Provider in arrears an amount equal to such Monthly Statement. Such remittance shall be made by the Town on or before the 20th day of each month (for the immediately preceding month's service). Along with each monthly remittance, the Town shall provide the Service Provider with a report indicating the number and rate of Residential, Commercial, and Industrial Units which have been billed for that month. The Town shall be solely responsible for billing and collecting such rates and fees from all Residential, Commercial, and Industrial Units within the Town's corporate limits. Nothing herein shall prohibit the Town from collecting sums in addition to those sums called for herein.

B. Taxes. In addition to the amounts billed and collected by the Town under Section 14.A., the Town shall also be responsible for billing, collecting and remitting/paying any and all sales, use and service taxes assessed or payable in connection with the Services.

C. Bad Debt; Unpaid Rates/Fees. The Town agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owed to Town for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Commercial, Industrial or Residential Units; provided, however, that the Town may notify the Service Provider in writing of any account that is fifteen (15) or more days delinquent in paying the Town for the Services provided by the Service Provider. Upon receipt of such written notice of delinquency, the Service Provider shall discontinue its services to such delinquent account.

SECTION 15. SPILLAGE.

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste placed outside of the Containers by any Commercial, Industrial or Residential Unit. The Service Provider may report the location of such conditions to the Town so that the Town can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste. Should excess Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste continue to be placed outside of the Containers, the Town shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, or Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Section 9.B. hereof, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

SECTION 16. HOURS OF SERVICE.

For all the Services provided hereunder, the Service Provider's hours of service shall be between 6:30 a.m. to 6:30 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Service Provider shall provide such services on the immediately following Business Day.

SECTION 17. COMPLIANCE WITH APPLICABLE LAWS.

The Service Provider shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Municipal Solid Waste, Recyclable Materials, Industrial Solid Waste, and Construction and Demolition Waste, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the Town that are not in derogation of this Agreement, including, but not limited to, Chapter 70.95 RCW. Nothing in this Agreement shall be construed in any manner to abridge the Town's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The Town shall have the right to make reasonable inspections of the Service Provider in order to insure compliance with this Section 17.

SECTION 18. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the Town's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 19. PERSONNEL AND PERFORMANCE STANDARDS.

Pursuant to Chapters 39.12 and 39.19, the Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 20. PERFORMANCE BOND.

The Service Provider shall maintain a performance bond in the amount of \$20,000.00 (Twenty Thousand Dollars and no/100) payable to the Town for guaranteeing the performance of the Services set forth herein. The surety on the bond must be a duly authorized corporate surety company authorized to business in the State of Washington. Said bond shall be payable to the Town if the Service Provider fails to cure any default of this Agreement and shall be the sole remedy available to the Town for any default under this Agreement by the Service Provider.

SECTION 21. INSURANCE COVERAGE.

A. Minimum Scope of Insurance. The Service Provider shall obtain insurance at no cost to the Town with the minimum following amounts:

- (i) Automobile Liability insurance 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.
- (ii) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage, and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Town shall be named by endorsement as an additional insured under the Service Provider's Commercial General Liability insurance policy, and

Umbrella policy, with respect to this agreement using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage. The Service Provider's Commercial General Liability policy shall include Waiver of Transfer of Rights of Recovery Against Others to Us endorsement (CG 24 04 05 09) or equivalent coverage.

- (iii) Industrial Insurance Coverage: The Service Provider shall provide or purchase industrial insurance coverage prior to performing work under this Agreement. The Town will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Service Provider or any sub-contractor or employee of the Service Provider which might arise under the industrial insurance laws during the performance of duties and services under this Agreement. If the Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this Agreement, those payments shall be made by the Service Provider; the Service Provider shall indemnify the Town and guarantee payment of such amounts.

B. Minimum Amounts of Insurance. The Service Provider shall maintain the following insurance limits:

- (i) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence with no deductible.
- (ii) Commercial General Liability with limits of \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, which includes general aggregate, products, completed operation, personal injury, fire damage and medical expense.
- (iii) Industrial Insurance Coverage at limits as required by Washington State law.

C. Proof of Coverage. Upon a written request from the Town, the Service Provider shall furnish the Town with a certificate(s) of insurance verifying the insurance required by this Section.

SECTION 22. INDEMNITY.

The Service Provider agrees to indemnify and hold harmless the Town and its agents, directors, employees, officers and servants from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, liabilities, losses or expenses (including, but not limited to, reasonable attorneys' fees) caused by a willful or negligent act or omission of the Service Provider, its officers and employees. However, the Service Provider shall not be liable for any legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees caused by a willful or negligent act or omission of the Town, its agents, directors, employees, officers and servants.

In the event a court of competent jurisdiction determines 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 the Service Provider and the Town, its members, officers, employees, and agents, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider'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.

SECTION 23. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 24. TERMINATION.

Any failure by either party or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the other party, constitute grounds for forfeiture and immediate termination of all the defaulting party's rights under this Agreement, and all such rights shall become null and void.

SECTION 25. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 26. GOVERNING LAW.

Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

SECTION 27. ATTORNEYS' FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including without limitation costs and attorneys' fees related to or arising out of any trial or appellate proceedings.

SECTION 28. NON-ASSIGNABLE.

This Agreement, or any interest herein, shall not be transferred, sold, nor assigned by the Service Provider to any person, firm, or corporation, without prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed.

SECTION 29. INDEPENDENT CONTRACTOR.

The Service Provider is and shall be at all times during the term of this Agreement an independent contractor. The Service Provider, its subcontractors, agents and employees, shall not, as a result of this

Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to Town employees. The Service Provider, its subcontractors, agents and employees shall not have the authority to bind the Town in any way except as may be specifically provided herein.

SECTION 30. LICENSING.

The Service Provider shall obtain a Town of Eatonville business license prior to performing services pursuant to this Agreement and shall at all times maintain the license, along with any and all other licenses and/or registrations required by federal, state or local laws.

SECTION 31. RECORDS.

The Service Provider understands that, as a municipal corporation, the Town is subject to the Public Records Act (Chapter 42.56 RCW) and as such all communications and records related to this Agreement and/or work performed pursuant to this Agreement may be subject to disclosure pursuant to the Public Records Act.

SECTION 32. NOTICE.

Any notices required to be given by the Town to the Service Provider, or by the Service Provider to the Town, shall be in writing and delivered to the parties at the following addresses:

Town:

Abby Gribi
Town Administrator
210 Center Street West
P.O. Box 309
Eatonville, WA 98328
Phone: 360.832.3361
Fax: 360.832.3977

Service Provider:

Pierce County Refuse
Attn: District Manager
4111 192nd Street East
Tacoma, WA 98446
Phone: 253.875.5869
Fax: _____

*[Remainder of Page Intentionally Left Blank;
Signature Page Follows.]*

EXECUTED the day and year first above written.

HAROLD LEMAY ENTERPRISES,
INCORPORATED D/B/A PIERCE COUNTY
REFUSE

TOWN OF EATONVILLE, WASHINGTON

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____