

SOLID WASTE DISPOSAL AGREEMENT

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This SOLID WASTE DISPOSAL AGREEMENT ("Agreement") is made and entered into as of the latest date set forth on the signature page hereto, by and between LAND RECOVERY, INC., a Washington corporation ("LRI") and the CITY OF TACOMA, WASHINGTON, a municipal corporation and a city of the first class (the "City"). LRI and the City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

- A. LRI owns and operates a fully permitted, environmentally-sound solid waste disposal site located at 304th and Meridian Streets, Pierce County, Washington (the "304th Landfill").
- B. The City accepts solid waste materials from residential, governmental, and commercial customers and desires an environmentally sound solid waste disposal site for the disposal of such solid waste materials.
- C. The City owns and operates a solid waste disposal site located in Tacoma, Pierce County, Washington (the "Tacoma Landfill"). The City also owns and operates waste-to-energy facilities in Tacoma, Pierce County, Washington which consist of a resource recovery facility ("RRF") that manufactures refuse-derived fuel ("RDF") and a facility for the conversion of RDF into electricity (the "Power Plant").
- D. Pursuant to an agreement dated May 30, 1989 between LRI and the City, a trust fund (the "Fund") was established "to pay a portion of [LRI's] construction costs related to future solid waste disposal facilities which will be available to the City." LRI and the City now wish to resolve any disagreement between the Parties relating to disposition of the monies in the Fund.
- E. The current Conditional Use Permit for the 304th Landfill (the "CUP") allows the delivery of waste from the City to the 304th Landfill in annual tonnage amounts specified therein or greater as specified in the Pierce County Solid Waste Management Plan ("SWMP"), as the same may be amended from time to time.
- F. The City and LRI desire to enter into this Agreement to provide for the disposal of Acceptable Waste, as defined below, collected, handled and transported by the City and to resolve all matters relating to disposition of monies in the Fund.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS.** As used in this Agreement, in addition to the capitalized terms defined above, the following capitalized terms have the following meanings:
- 1.1 "Acceptable Waste" means any and all waste that is "Solid Waste" as defined herein but is not "Excluded Waste" as defined hereafter. The term "Acceptable Waste" shall exclude "Special Waste" as defined below.
- 1.2 "Agreement" means this Solid Waste Disposal Agreement between City and LRI, as it may be amended or modified in writing from time to time.
- 1.3 "Base Rate" means the initial per ton disposal fee to be paid by the City to LRI as compensation for disposal of Acceptable Waste as set forth in and adjusted in accordance with Section 4 of this Agreement.
- 1.4 "Contract Year" means a one year period commencing on the Effective Date, and/or each anniversary of the Effective Date, during the term of this Agreement.
- 1.5 "Effective Date" means the latest date executed as set forth on the signature page hereto.

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1.6 "Equipment" means any and all containers, tractors, trailers, motor vehicles, cranes, top pickers and other equipment utilized by the City and/or LRI for the collection, transportation, handling, processing and disposal of Acceptable Waste pursuant to this Agreement.

1.7 "Event of Force Majeure" has the meaning given it in Section 10.

1.8 "Excluded Waste" means waste that: (a) is prohibited from receipt at the 304th Landfill by state, federal or local law, regulation, rule, code, ordinance, order, license, permit or permit condition; (b) is or contains Hazardous Waste as defined below; (c) LRI reasonably believes would, as a result of or upon disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions applicable to the 304th Landfill; or (d) in LRI's opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose LRI or the City to potential liability.

1.9 "Fund" shall mean the Escrow Account and fund established pursuant to agreement between the City and LRI dated May 30, 1989 which is managed by Key Trust Company of Ohio, N.A., as successor-in-interest to Puget Sound National Bank.

1.10 "Hazardous Waste" means materials prohibited from disposal in a subtitle D permitted landfill and waste that is designated as extremely hazardous, dangerous or hazardous, as defined now or hereafter amended in WAC 173-303, is of regulated quantities and is required to be accompanied by a written manifest describing the waste as "hazardous waste" or "dangerous waste"; but shall not include any Special Waste as defined below.

1.11 "Solid Waste" means any and all putrescible and non-putrescible solid and semi-solid waste, including garbage, refuse or rubbish resulting from industrial, commercial, residential or community activities, including, without limitation, demolition and construction wastes, food and beverage containers, paper, rubbish, vehicle parts, discarded home and industrial appliances, yardwaste, tires and treated medical waste.

1.12 "Special Waste" means Solid Waste that may require special handling, processing or extraordinary management at any of LRI's facilities, including the 304th Landfill, including, without limitation, white goods, appliances, asbestos, sludge, auto fluff and yardwaste.

2. DELIVERY OF ACCEPTABLE WASTE.

2.1 Delivery of Acceptable Waste. Throughout the term of this Agreement, the City shall deliver to the 304th Landfill all Acceptable Waste generated within or collected, handled or transported by the City except such Acceptable Waste as is handled, disposed of or managed at the Tacoma Landfill and/or the Power Plant or through recycling or composting.

2.2 Capacity at the 304th Landfill. Subject to the provisions of this Agreement, LRI shall accept for disposal at the 304th Landfill all Acceptable Waste delivered by the City up to the annual tonnage limits set forth in the CUP consistent with the SWMP, as the same may be amended from time to time.

3. SCOPE OF OPERATIONS.

3.1 In General. The Company shall be responsible for the management, storage and final disposal of all Acceptable Waste delivered by the City and received at the 304th Landfill, including the recovery, recycling and salvaging of materials from Acceptable Waste. In performing such functions, the Company shall provide sufficient capacity, personnel, equipment, and utilities for operation of the 304th Landfill. The Company shall dispose, or arrange for disposal, of the City's Acceptable Waste utilizing a permitted method of disposal pursuant to the laws and regulations of local, State and Federal government.

3.2 Weighing Operations. The Company shall weigh all Acceptable Waste the City delivers to the 304th Landfill. The Company shall submit to semiannual calibration of its scales by the Department of Agriculture,

Division of Weights and Measures. Should the City dispute the Company's calculation of the weight of Acceptable Waste delivered, the parties shall confer and attempt to negotiate an agreed amount.

4. COMPENSATION FOR DISPOSAL.

4.1 Base Rates. The City shall pay to LRI for disposal services the following rates per ton (the "Base Rates"), as adjusted pursuant to this Section 4, for all Acceptable Waste delivered by the City:

<u>Annual Tonnage of Acceptable Waste</u>	<u>Base Rates (Per Ton) at 304th Landfill</u>
0-40,000	\$28.00
40,001-80,000	\$26.00
80,001-120,000	\$20.00
120,001-160,000	\$16.50
Over 160,000	\$14.50

On a monthly basis during each Contract Year, LRI shall track the tonnage of Acceptable Waste delivered to the 304th Landfill by the City. Commencing each month after the cumulative tonnage of Acceptable Waste delivered by the City to the 304th Landfill reaches each tonnage level set forth above, LRI shall reduce the charges for future deliveries of Acceptable Waste during the Contract Year to the Base Rates corresponding to such cumulative tonnage level.

4.2 CPI Adjustment. Commencing on the first anniversary of the Effective Date and annually on each anniversary of the Effective Date thereafter, (the "Adjustment Date"), the then-current Base Rates, as adjusted under this Section 4, shall be automatically adjusted by eighty-five percent (85%) of the average annual percent change in the Consumer Price Index for All Urban Consumers (CPI-U), Seattle-Tacoma, 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics ("BLS"). LRI may refer to the BLS Internet Site (<http://stats.bls.gov/cpihome.htm>) or other BLS source to calculate the CPI-adjusted Base Rate hereunder as follows: divide the Seattle-Tacoma CPI-U published nearest to but immediately preceding the Adjustment Date by the Seattle-Tacoma CPI-U published for the same period the prior year, subtract 1, multiply the difference by 85%, add 1 and multiply the result by the Base Rates then in effect.

4.3 Rates for Special Waste. Upon the prior approval of LRI, the City may deliver Special Waste to LRI for handling or processing. If accepted, LRI shall charge and the City shall pay the published rates for such Special Waste as published at the applicable LRI facility on the date of delivery.

4.4 Solid Waste Charge Rate Increase. LRI may increase the Base Rates for the imposition of or increase in any solid waste tax, tariff, fee, assessment or other charge levied or assessed on the storage, handling, transportation or disposal of solid waste after the Effective Date. All rate adjustments under this Section 4.4 shall take effect upon written notice from LRI.

4.5 Other Acceptable Base Rate Increases. LRI may after obtaining the City's approval, which approval may not be unreasonably withheld, increase the Base Rate by one hundred percent of LRI's reasonable actual increased costs of receiving Acceptable Waste as defined in Section 1.1 from the City due to the events as described in subparagraphs (a), (b) and (c) below. The City shall approve or disapprove of increases in the Base Rates hereunder within thirty (30) days following LRI's request for approval and all such increases shall compensate LRI retroactively to the date LRI first incurred the increased costs due to the events described below or first gave notice to the City of the events described below, whichever is later. Disapproval by the City of any increase in the Base Rates shall be subject to arbitration in accordance with Section 22.

(a) Events of Force Majeure. Base Rates shall be increased for an Event of Force Majeure other than a business and occupation tax Event of Force Majeure;

(b) Change in Certain Laws. Base Rates shall be increased to reflect the reasonable actual cost of LRI's compliance with changes in federal, state and local laws. For purposes of this

Article, a change in law means the enactment, adoption, promulgation, modification or change in interpretation of any federal, state, City or other local law, ordinance, code rule, requirement, regulation or similar legislation;

(c) Change in Certain Taxes, Fees or Surcharges. Subject to the limitations and conditions of this article, Base Rates shall be increased for the imposition of or increases in the rates of federal, state or local taxes (except Income and Business and Occupation taxes), fees or surcharges;

4.5.1 General Conditions and Limitations on Base Rate Increases. LRI may increase Base Rates under this Section 4.5 only for those costs incurred that are the least costly means of adequately remedying the effects of an Event of Force Majeure (excluding business and occupation tax) or for ensuring full compliance with a change in law or changes in taxes, fees or surcharges. No Base Rate increases shall be allowed for any cost increases that are attributable to conditions, structures, operations or activities at the 304th Landfill caused by LRI or its subcontractors, employees, agents, or servants or are otherwise within LRI's control. LRI must fully demonstrate and document, to the reasonable satisfaction of the City, the costs associated with the Force Majeure event, change in laws or change in taxes, fees or surcharges that give rise to the requested Base Rate increase hereunder. .

4.5.2 Cancellation of Base Rate Increases. On the City's request, LRI shall promptly provide the City with all documents, information or other evidence in LRI's possession or control relating to costs associated with the Force Majeure event, change in laws or change in taxes, fees or surcharges that give rise to the requested Base Rate increase. The City may at any time cancel or reduce any Base Rate increase made under this Article if the City determines in its reasonable judgment, based on the documents and information provided by LRI hereunder, that the costs that gave rise to the Base Rate increase no longer warrant an increase in the Base Rates or if the level of the increase is greater than required to cover the costs or if the original increase was in error. LRI may dispute such determination by the City in accordance with the arbitration procedures under Section 22 . Unless disputed, LRI shall reduce the Base Rate accordingly within 30 days of the date the City notifies LRI of the City's determination. LRI shall at all times keep the City informed as to whether any increase remains necessary.

4.6 Base Rate Reductions.

4.6.1 Reductions: Notice. Subject to the provisions of this Article, LRI shall reduce the Base Rates by one hundred percent of the reduced costs of LRI's performance under this Agreement for reduced costs attributable to a condition or event set forth in Section 4.5(a), (b) or (c). The City shall provide LRI with notice and explanation of the City's request that LRI reduce the Base Rates hereunder. Within thirty days of receipt of that notice, LRI shall respond in writing to the City. The written response shall state whether or not LRI believes that any reduction in the Base Rate is justified by the Force Majeure Event (other than business and occupation tax), change in law or change in taxes, fees or surcharges and shall itemize the reduction in cost of performing the Agreement, if any, due to such condition or event. LRI shall fully document and otherwise support its response to the City's notice under this Section. Any dispute regarding a reduction in costs shall be settled in accordance with the arbitration procedure set forth in Section 22.

4.6.2 Reductions—Cancellation. The City shall cancel Base Rate reductions made under this Section upon approval of a petition by LRI, which approval shall not be unreasonably withheld, showing that the reduction in costs that gave rise to the Base Rate reduction has changed or expired or that a reduction was made in error. LRI shall at all times keep the City informed as to when any reduction due to a condition or event set forth in Section 4.5(a), (b) or (c) is appropriate and when any reduction is no longer appropriate.

4.7 Cumulative Adjustments. If, as a result of adjustments under Sections 4.4, 4.5 and 4.6 cumulatively, the Base Rates increase by greater than ten percent (10%) but less than twenty percent (20%) over the Base Rates set forth in Section 4.1, as adjusted under Section 4.2, then the Parties shall attempt to renegotiate the Base Rates to a mutually acceptable level, subject to arbitration, in accordance with Section 22, of any dispute relating to the impact on the Base Rates of the event or condition that gave rise to the adjustment. If, as a result of adjustments under Sections 4.4, 4.5 and 4.6 cumulatively, the Base Rates increase by greater than twenty percent (20%) over the Base Rates set forth in Section 4.1, as adjusted under Section 4.2, then the City shall have the right to terminate this Agreement after providing LRI at least sixty (60) days' written notice of the City's intent to terminate and provided that LRI fails to decrease the rates to below the twenty percent (20%) threshold during such sixty (60)-day period.

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4.8 Minimum Payment. If the City fails to deliver to the 304th Landfill all Acceptable Waste that is generated within or collected, handled or transported by the City and that is not otherwise handled, disposed of or managed at the Tacoma Landfill and/or the Power Plant or through recycling or composting (the "Net Tonnage"), the City shall pay to LRI an amount equal to the Base Rates, as adjusted, times the tonnage difference between the Net Tonnage and the actual tons of Acceptable Waste delivered by the City.

4.9 Payment. On or before the 10th day of each month, LRI shall submit an invoice to the City showing (i) the number of tons of the City's Acceptable Waste and Special Waste disposed of at the 304th Landfill in the preceding month and the total Base Rate charges owed therefor, and (ii) the minimum payment amount owed under Section 4.8, if any. The City shall pay the Company the full amount of the invoice within thirty (30) days after receipt of such invoice. In the event of a dispute as to services rendered or payment owed, the City shall pay the undisputed portion of each invoice and the parties shall confer and attempt to negotiate a settlement of the dispute. The City shall pay a late fee and service charge on all past due amounts accruing from the date of the invoice at a rate of twelve percent (12%) per annum.

5. EXCLUDED WASTE; INSPECTION, REJECTION. Prior to delivery to the 304th Landfill, the City shall, consistent with its current solid waste handling business practices, use reasonable efforts to inspect all waste received, collected, handled, processed and/or transported by the City and shall remove any and all Excluded Waste. LRI shall have the right to inspect, analyze or test any waste delivered by the City. LRI shall have the right to reject, refuse or revoke acceptance of any waste if, in the opinion of LRI, the waste or tender of delivery fails to conform to, or the City fails to comply with, the terms of this Agreement, including by delivery of Excluded Waste. In the event LRI, by notice to the City, rejects or revokes acceptance of waste hereunder, the City shall, at its sole cost, immediately remove or arrange to have the rejected waste removed from LRI's control or property. If the rejected waste is not removed within three (3) days from receipt of notice, LRI shall have the right and authority to handle and dispose of the rejected or Excluded Waste. The City shall pay and/or reimburse LRI for any and all costs, damages and/or fines incurred as a result of or relating to City's tender or delivery of Excluded Waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of Excluded Waste. Title to, ownership of and liability for Excluded Waste shall at all times remain with the City.

6. COMPLIANCE WITH LAWS. The City and LRI shall fully comply with all federal, state and local statutes, regulations, permits, approvals and restrictions, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, that is/are applicable to the collection, handling, transport, processing, storage or disposal of Solid Waste, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, building codes, non-discrimination and the payment of minimum wages.

7. TERM OF AGREEMENT. The initial term of this Agreement shall be twenty (20) years, commencing on the Effective Date, unless terminated earlier by the provisions of this Agreement. The term of this Agreement may be extended on the same terms and conditions herein upon a mutual written agreement of the Parties to extend the term.

8. LIMITED LICENSE TO ENTER. The City and its subcontractors shall have a limited license to enter the 304th Landfill for the sole purpose of off-loading Acceptable Waste at an area designated, and in the manner directed, by LRI. The City shall comply with all rules and regulations of the 304th Landfill, including those relating to the use and operation of the 304th Landfill and conduct of persons on the premises of the 304th Landfill, as the same may be amended by LRI from time to time. LRI may reject Acceptable Waste, deny the City entry to the 304th Landfill and/or terminate this Agreement in the event of the City's failure to follow such rules and regulations.

9. TIME OF DELIVERY. The City shall be entitled to deliver Acceptable Waste to the 304th Landfill during all times the landfill is open to receive waste but not less than Monday through Saturday between the hours of 8:00 am and 6:00 pm or such other hours as LRI may authorize in writing, except for legal holidays.

10. EVENT OF FORCE MAJEURE. An "Event of Force Majeure" shall mean any circumstance not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that (a) such event materially adversely affects (in cost or time) the ability of such Party to perform its obligations under this Agreement, and

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such Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (b) such Party has given the other Party prompt notice describing such event, the effect thereof and the actions being taken in order to comply with this Section 10.

10.1 Instances of Force Majeure. Events of Force Majeure shall include:

- (a) acts of war or the public enemy, whether war be declared or not;
- (b) public disorders, insurrection, rebellion, sabotage, riots or violent demonstrations;
- (c) fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other natural disasters or acts of the elements, or the discovery of hazardous materials or historical artifacts on the 304th Landfill;
- (d) strikes or lockouts or other industrial action by workers or employees of a Party or any contractor or subcontractor of such Party, other than non-manual personnel; and
- (e) the adoption, enactment or application to a Party, any contractor or subcontractor of a Party or the 304th Landfill of any new or increased business and occupation tax after the Effective Date.

10.2 Effect of Force Majeure. Except as provided in Section 10.4, either Party shall be excused from performance and shall not be construed to be in default in respect of any obligation hereunder for so long as failure to perform such obligation shall be due to an Event of Force Majeure and the term of this Agreement shall be extended for an equivalent time period; provided, however, that Force Majeure shall not under any circumstances excuse any payment obligation of either Party. Each Party shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate acceptable sources of services, equipment and materials and construction equipment; provided, however, that nothing in this Agreement shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

10.3 Notice of Force Majeure. As soon as practicable, but in any event within 10 days, following the date of commencement of any Event of Force Majeure, if either Party desires to invoke such Event of Force Majeure as a cause for delay in the performance of any obligation hereunder (subject to Section 10.4), it shall advise the other Party by notice of such date and the nature, effect and expected duration of such Event of Force Majeure

10.4 Efforts Required to Resume Performance after Termination of Force Majeure. As soon as practicable, and in any event within three days, following the termination of such Event of Force Majeure, the Party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other Party reasonable proof of the nature of such delay and its effect upon the time of performance. The Party having invoked such Event of Force Majeure shall be required to resume performance after termination of the Event of Force Majeure and shall use best efforts to ensure resumption of normal performance of this Agreement after the termination of any Event of Force Majeure and both Parties shall perform their obligations to the maximum extent practicable and agreed between the Parties; provided, however, that LRI shall have a reasonable time during which to assess the impacts caused by an Event of Force Majeure and sole discretion to determine whether it will resume all or part of the operations or whether it will terminate all operations at the 304th Landfill.

10.5 Business and Occupation Tax. Given the permanent nature of a change in the business and occupation tax, as opposed to a temporary condition, if the Event of Force Majeure that affects LRI's ability to perform this Agreement is a change in the business and occupation tax, then LRI may discontinue performance of this Agreement and shall not be construed in default hereunder. If the Parties, within ninety (90) days after LRI discontinues performance as a result of a change in the business and occupation tax, are unable to agree upon an adjustment in the Base Rates to address the change in the business and occupation tax, then LRI may terminate this Agreement upon giving written notice to the City.

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11. **TERMINATION; DEFAULT.** Either Party shall have the right to terminate this Agreement upon giving the other Party thirty (30) days written notice if the other Party: (i) fails to make any payment required hereunder within thirty (30) days after receiving notice of nonpayment from the non-defaulting Party, or (ii) materially breaches any of its representations and warranties set forth in Sections 12 or 13 below, or (iii) materially fails to comply with any federal, state or local laws, rules, orders or ordinances, or regulations that pertain to the collection, handling, storage, transportation, processing and/or disposal of the Acceptable Waste, or (iv) defaults in the performance of any other material obligation of the defaulting Party under this Agreement and fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting Party, provided, that, with regard to defaults identified in clauses (iii) or (iv) above, in the event the defaulting Party shows cause why it should be entitled to reasonable additional time to cure the default, the non-defaulting Party shall allow such additional time. In addition, LRI shall have the right to terminate this Agreement upon ninety (90) days' written notice to the City if the laws, regulations or orders of any governmental body having jurisdiction over LRI prohibit LRI from operating the 304th Landfill as contemplated in this Agreement.

12. **WARRANTIES OF THE CITY.** The City warrants and represents that:

12.1 The waste delivered to the 304th Landfill by the City shall conform to the definition of Acceptable Waste set forth in Section 1.1 of this Agreement and shall not contain any Excluded Waste;

12.2 The City shall establish and maintain a program of operating and monitoring procedures for its Solid Waste collection activities to prevent the transportation or delivery to the 304th Landfill of Excluded Waste;

12.3 The City possesses the Equipment, plant and employee or subcontractor resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

12.4 The City shall collect, handle and transport all Solid Waste in a safe and workmanlike manner in full compliance with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations; and

12.5 The City has advised its drivers of LRI's prohibition on delivery of Excluded Waste, of the definitions and listing of Hazardous Waste under applicable federal and state law and regulations and of the definition of Acceptable Waste herein.

13. **WARRANTIES OF LRI.** LRI warrants and represents that:

13.1 It possesses the Equipment, plant and employee resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

13.2 The 304th Landfill has been issued, and LRI will maintain throughout the term of this Agreement, all permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the 304th Landfill to accept and dispose of Acceptable Waste; and

13.3 It will handle and dispose of 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.

13.4 It will secure and maintain in full force and effect throughout the term of this Agreement policies of insurance providing commercial general liability, automobile liability and workers' compensation coverage as is customary in LRI's industry.

14. **INDEMNITY**

14.1 LRI's Indemnity. LRI shall defend, indemnify and hold the City and its employees and appointed and elected officials free and harmless from (1) liability from claims, demands, losses, or expenses, including

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attorneys' fees and costs, occurring directly from any negligent actions or omissions or willful misconduct of LRI, its agents, employees or subcontractors in the performance of this Agreement, (2) liability arising from federal or state law from claims, demands, losses, or expenses, including site remediation costs and attorneys' fees and costs, occurring as a result of any pollution, contamination or release of chemicals or landfill gas arising from the operation at the 304th Landfill, and (3) liability for all costs, including attorneys fees, associated with the necessary removal of the City's Acceptable Waste from the 304th Landfill; provided that, such indemnity shall not include (a) claims arising as a result of any negligent actions or omissions or willful misconduct of the City or its agents, employees or appointed and elected officials or (b) any liability, costs or claims associated with or arising from the City's delivery of Excluded Waste.

14.2 City's Indemnity. The City shall defend, indemnify and hold LRI and its employees, agents, subcontractors, directors, officers and owners free and harmless from liability from claims, demands, losses, or expenses, including attorneys' fees and costs, occurring directly from any negligent actions or omissions or willful misconduct of the City or its agents, employees or appointed or elected officials, including any such claims which arise from Excluded Waste disposed of at the 304th Landfill; provided that, such indemnity shall not include claims arising as a result of any negligent actions or omissions or willful misconduct of LRI, its agents, employees or subcontractors.

14.3 Defense of Suit. In the event of any suit against any party indemnified under this Section 14, the indemnifying party shall appear and defend such suit, provided that the indemnifying party is notified in a timely manner of the suit and the indemnified party shall have the right to approve counsel chosen by the indemnifying party to litigate such suit, which approval shall not be unreasonably withheld.

14.4 Insurance Coverage. The indemnified party shall make and pursue claims against its insurance coverage for all costs and expenses related to third party claims. Nothing in this Agreement shall constitute a waiver or relinquishment of any claims which the parties may have against their insurers, nor shall any provision of this Agreement waive or relinquish any subrogation or contribution rights that the parties or their insurers may have against another insurer or other potentially liable party. Any monies received from the insurers shall be used to pay any claims covered by such insurance and reimburse the applicable party for all reasonable costs and expenses, including attorneys' fees, expended by it to seek recovery of sums from its insurers. If the City or LRI, or their officers, agents, or employees are held to be jointly or severally liable for injuries, damage or loss caused by pollution, contamination or release of chemicals or landfill gas arising from the operation of the 304th Landfill, any settlement or judgment shall be paid first from the parties' insurance, if any.

15. DISPOSITION OF FUND. By entering into and in consideration of the terms of this Agreement, the City hereby agrees to relinquish all claims to any monies in the Fund and agrees that all such monies shall be disbursed to LRI to reimburse for costs of construction of the 304th Landfill. LRI and the City shall jointly notify the escrow agent in writing of this agreed disposition of the Fund.

16. BINDING EFFECT, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns; provided that the rights, obligations and duties of each Party as specified in this Agreement may not be transferred, assigned or otherwise vested in any other company, entity, or person without the prior written approval of the other Party which approval shall not be unreasonably withheld.

17. NOTICES. All notices required under this Agreement shall be personally delivered or mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight carrier, or confirmed facsimile to the Parties' addresses on the signature page hereto, or to such other address as either Party shall specify by written notice so given. Any notice sent by mail in the manner set forth above shall be deemed given and received three (3) business days after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier or confirmed facsimile in the manner set forth above shall be deemed given upon receipt.

18. INDEPENDENT CONTRACTOR. Each Party hereto is and shall perform this Agreement as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other Party.

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19. **NON-WAIVER.** The failure of either Party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

20. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both Parties hereto.

21. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed to be severed from this Agreement and shall not affect the remainder hereof, which shall remain in full force and effect; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed by law, to the intent and meaning of the severed provision.

22. **ARBITRATION.** If any dispute cannot be resolved between the Parties, then such dispute shall be settled exclusively and finally by arbitration. It is specifically understood and agreed that any dispute that cannot be resolved between the Parties shall be submitted to arbitration irrespective of the magnitude thereof, the amount in question or whether such dispute would otherwise be considered justiciable or ripe for resolution by any court or arbitral tribunal. This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding, which award shall determine, if the circumstances so require, whether and when cancellation or termination of this Agreement shall become effective and the liability of the Parties for the costs of the arbitration.

22.1 Each arbitration shall be governed by, and conducted in accordance with the provisions of the American Arbitration Association as then in effect (as modified by this Agreement). Each arbitral tribunal shall consist of a panel of three arbitrators (or such lesser number as the Parties may agree) appointed in accordance with the American Arbitration Association Rules. If any party fails to timely appoint an arbitrator in accordance with the American Arbitration Association Rules, or if the two party-appointed arbitrators fail to timely appoint a third arbitrator, the Pierce County Superior Court shall act as appointing authority for such arbitrators.

22.2 The arbitration proceedings shall be conducted in Seattle, Washington. The award of the arbitrators shall be final and binding, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings, presented to the tribunal. Any monetary award shall be made and payable free of any tax or other deduction, and shall include interest from the date of any breach or other violation of this Agreement to the date on which the award is paid, at a rate determined by the arbitrators.

22.3 Judgment upon the award rendered by the arbitrators may be entered by Pierce County Superior Court in connection with any question of law or fact arising in the course of the arbitration or with respect to any award made, except for actions to enforce this arbitration agreement or an arbitral award made hereunder and actions seeking interim, interlocutory or other provisional relief in Pierce County Superior Court. By agreeing to arbitration, the Parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings and the enforcement of any award. Without prejudice to such provisional remedies in aid of arbitration as may be available under the jurisdiction of a national court, the arbitral tribunal shall have full authority to grant provisional remedies and to award damages for the failure of any Party to respect the arbitral tribunal's orders to that effect.

22.4 The costs and fees of the arbitration shall be allocated by the arbitrators, who shall have the authority to award costs and fees to the prevailing Party.

23. **GOVERNING LAW; ATTORNEYS' FEES.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington regardless of any conflict of law provisions. In any action or proceeding between the Parties arising from or related to the terms of this Agreement, the prevailing Party in such action shall be entitled to its reasonable costs and expenses, including, without limitation, attorney's fees, in addition to damages, injunctive relief or other relief.

ORIGINAL

EXECUTED AND EFFECTIVE as of the latest date set forth below.

Harold F. LeMay
LAND RECOVERY, INC.

THE CITY OF TACOMA, WASHINGTON

By: HAROLD F. LEMAY
Its: PRESIDENT

By: _____
Its: _____

Date: 2-2-00

Date: _____

Address for Notice:

Address for Notice:

Land Recovery, Inc.
17925 Meridian Street South
Puyallup, WA 98373
Attn: President
Fax (253) 847-7713
Phone (254) 847-7555

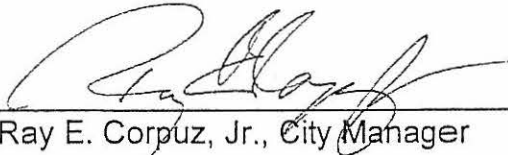
The City of Tacoma Public Works Department
747 Market Street, Suite 408
Tacoma, WA 98402-3769
Attn: Solid Waste Utility Manager
Fax _____
Phone _____

SOLID WASTE DISPOSAL AGREEMENT

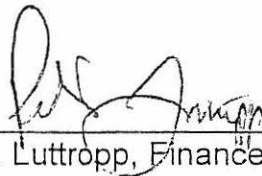
CITY OF TACOMA

ORIGINAL

Approved as to Availability of Funds:


Ray E. Corpuz, Jr., City Manager

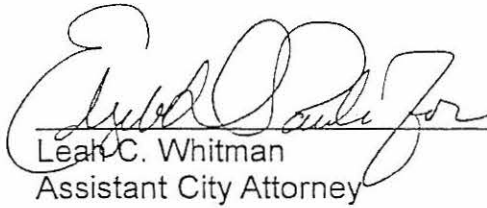
2/4/00
Date


Peter C. Luttropp, Finance Director

2/3/00
Date

PUBLIC WORKS DEPARTMENT


Approved as to form:


Leah C. Whitman
Assistant City Attorney

2/3/00
Date



William L. Pugh, P.E., Director

2/3/00
Date


Andrew Michels, Risk Manager

2/4/00
Date

Attest:


Rick Rosenblatt, City Clerk (acting)

2-4-00
Date

AMENDMENT NO. 1 TO SOLID WASTE DISPOSAL AGREEMENT

(PIERCE COUNTY RECYCLING, COMPOSTING AND DISPOSAL, LLC)

THIS FIRST AMENDMENT (Amendment No. 1) to the Solid Waste Disposal Agreement entered into on February 2, 2000 by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter called the "City") and **PIERCE COUNTY RECYCLING, COMPOSTING, AND DISPOSAL, LLC, a Washington limited liability company doing business as LRI (LRI)** (hereinafter called the "LRI") is made and entered into and effective as of the 6th day of September, 2017; LRI and the City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS the City accepts solid waste materials from residential, governmental, and commercial customers and desires an environmentally sound solid waste disposal site for the disposal of such solid waste materials, and

WHEREAS on February 1, 2000, pursuant to Resolution No. 34662, the City Council approved a new Solid Waste Disposal Agreement dated February 2, 2000 (the "Agreement") providing for the City's delivery of municipal solid waste to the solid waste disposal site owned and operation by LRI located at 304th and Meridian Streets, Pierce County, Washington (the "304th Landfill"), and

WHEREAS the City and LRI desire to amend the 2000 Agreement to provide for, among other things, a ten-year extension of the term, an adjustment to the base rate, and the City's option to convert its solid waste transportation system to a more efficient system to achieve a cost savings to the City, all as more specifically set forth in this Amendment No. 1;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

Section 1. Subsections 1.2, 1.11 and 1.12 of the Agreement are hereby amended to read in their entirety as follows:

1.2 "Agreement" means this Solid Waste Disposal Agreement, as amended by Amendment No. 1, between City and LRI, as it may be amended or modified in writing from time to time.

1.11 “Solid Waste” and “Acceptable Waste” means and includes any and all putrescible and non-putrescible solid and semi-solid waste, including garbage, refuse or rubbish resulting from industrial, commercial, residential or community activities, including, without limitation, demolition and construction wastes, food and beverage containers, paper, rubbish, vehicle parts, discarded home and industrial appliances, yardwaste, tires and treated medical waste; provided that, the terms Solid Waste and Acceptable Waste shall not mean or include Excluded Waste as defined in the Solid Waste Disposal Agreement and Special Waste as defined below. For purposes of this Agreement, the terms Solid Waste and Acceptable Waste are synonymous.

1.12 “Special Waste” means Solid Waste that may require special handling, processing, or extraordinary management at any of LRI’s facilities, including the 304th Landfill. Such Solid Waste include, without limitation, asbestos containing material (ACM), contaminated soil, dredge material, sludge, and auto shred residual (“auto fluff”), and typically but not always, requires issuance of a Waste Disposal Authorization from the Tacoma-Pierce County Health Department (TPCHD) or designated regulatory agency, prior to disposal.

Section 2. Subsections 2.1 and 2.2 of the Agreement are hereby amended to read in their entirety as follows:

2.1 Delivery of Acceptable Waste. Throughout the term of this Agreement, the City shall deliver to the 304th Landfill all Acceptable Waste generated within or collected, handled or transported by the City, with the exception of solid wastes that are actually and legitimately recycled, diverted for material recovery, or reused.

2.2 Capacity at the 304th Landfill. Subject to the provisions of this Agreement, LRI shall accept for disposal at the 304th Landfill all Acceptable Waste delivered by the City for the term of this Agreement.

Section 3. Subsections 3.1 and 3.2 of this Agreement are hereby amended to read in their entirety as set forth below. Section 3 is further amended by the addition of new Subsections 3.3 (Flat-Floor Closed-Top and Open-Top “Possum Belly” (PB) Aluminum Trailers), 3.4 (Tipper Operation), 3.5 Trailer Maintenance and Repair), and 3.6 (Excessive Wear and Tear and Damage), all as set forth herein in their entirety:

3.1 In General. LRI shall be responsible for the management, storage and final disposal of all Acceptable Waste delivered by the City and received at the 304th Landfill. In performing such functions, LRI shall provide sufficient capacity, personnel, equipment, and utilities for operation of the 304th Landfill. LRI shall dispose, or arrange for disposal, of the City’s Acceptable Waste utilizing a permitted method of disposal pursuant to the laws and regulations of local, State and Federal government.

3.2 Weighing Operations. LRI shall weigh all Acceptable waste the City delivers to the 304th Landfill. LRI shall submit to semiannual calibration of its scales by the Department of Agriculture, Division of Weights and Measures. Should the City dispute LRI’s calculation of the weight of Acceptable Waste delivered, the Parties shall confer and attempt to negotiate an agreed amount.

3.3 Flat-Floor Closed-Top and Open-Top “Possum Belly” (PB) Aluminum Trailers. The City, in its sole discretion, may elect to convert its solid waste transportation system from live floor (walking floor) trailers to a combination of closed-top flat-floor, aluminum trailers and open-top PB trailers, collectively referred to hereafter as “Trailers”. LRI agrees that within 60 days of receipt of written notice by the City that it intends to convert its solid waste transportation system to Trailers, LRI will prepare and submit to the City, for the City’s review and approval, a detailed estimate in writing of the capital costs for the purchase of the Trailers and the proposed Trailer Capital Charge (as defined in Section 4), including interest rate, and amortization schedule for the purchase of the Trailers, together with the proposed monthly Trailer Maintenance Charge. LRI agrees that within 60 days of LRI’s receipt of written approval of the proposed Trailer Capital Charge and proposed Trailer Maintenance Charge, LRI will purchase the requested number and combination of Trailers as specified by the City in its notice and approval and deliver them to the City in accordance with an agreed upon schedule. Upon delivery and commencement of operation of the Trailers, the Trailer Capital Charge will be implemented and assessed as provided in Section 4 and will be in addition to the Base Rate, as adjusted pursuant to Section 4. Additional Trailers may, subsequent to the initial notice and request, be purchased upon written request by the City and approval of the proposed Trailer Capital Charge as adjusted to include the capital costs of such subsequently purchased trailers.

3.4 Tipper Operation. Within 60 days following receipt of the City’s approval of the proposed Trailer Capital Charge, LRI will place an order for the purchase of an additional tipper. Upon the delivery and completion of tipper set-up and commencement of use by the City of the Trailers as described in Subsection 3.3, LRI will initiate operation of the tipper which shall be dedicated to the priority tipping of the City’s Trailers. The Base Rate will be adjusted to include the Tipper Operation Charge as described in Section 4. For purposes of this section, priority shall mean that City Trailers shall have priority in use of the tipper over other LRI customers.

3.5 Trailer Maintenance and Repair. Except as otherwise provided herein, LRI will inspect and perform routine and unscheduled maintenance as more specifically set forth in Exhibit “A”, attached hereto and incorporated herein. The City will be responsible for maintenance and replacement of tires, and reserves the right to perform minor repairs such as the replacement of bulbs in tail lamps and headlights. The monthly Trailer Maintenance Charge as defined below will be implemented and assessed as provided in Section 4 and will be in addition to the Base Rate, as adjusted pursuant to Section 4 .

3.6 Excessive Wear and Tear and Damage. LRI agrees that it shall be responsible, at its own cost and expense, for repair or replacement of Trailers damaged by LRI, its employees or agents, and for extraordinary wear and tear caused by, during or from, tipping operations or transport by LRI drivers. The costs to perform such maintenance, repairs and replacement shall not be included in the Trailer Maintenance Charge.

Section 4. Section 4 is hereby amended in its entirety to read as follows:

4. COMPENSATION FOR DISPOSAL.

4.1 Base Rates. Subject to the implementation of the new base rate as set forth in Section 4.2 herein and adjustment pursuant to Section 4.4 herein, effective upon the effective date of this Amendment No. 1, the City shall pay to LRI for disposal services the following rates per ton (the “Base Rates”), for all Acceptable Waste delivered by the City.

Annual Tonnage of Acceptable Waste	Base Rates (Per Ton) Current Rates at 304th Landfill
0 - 40,000	\$41.15
40,001 – 80,000	\$38.34
80,000 – 120,000	\$30.04
120,001 – 160,000	\$25.15
Over 160,000	\$22.37

On a monthly basis during each Contract Year, LRI shall track the tonnage of Acceptable Waste delivered to the 304th Landfill by the City. Commencing each month after the cumulative tonnage of Acceptable Waste delivered by the City to the 304th Landfill reaches each tonnage level set forth above, LRI shall reduce the charges for future deliveries of Acceptable Waste during the Contract Year to the Base Rates corresponding to such cumulative tonnage level.

4.2 New Base Rate. Except as provided at Subsection 4.6 herein, effective on February 2, 2020, the Base Rate for disposal services shall be adjusted to reflect a new Base Rate of \$39.00 per ton. The new Base Rate shall supersede and replace the Base Rates as set forth in Subsection 4.1 above and shall be subject to the CPI-U Adjustment as set forth at Subsection 4.4 on the first annual anniversary of implementation of the new Base Rate and annually thereafter as set forth in Subsection 4.4.

<u>New Base Rate</u>	<u>Dollar Amount</u>
Acceptable Waste Disposal	\$39.00/ton

4.3 Tipper Operation; Adjusted Base Rate. Effective upon commencement of operation of the Tipper pursuant to Subsection 3.4 herein, the Base Rate shall be adjusted to include the amount charged per ton for the costs of the tipper operation (the “Tipper Operation Charge”).

<u>Adjusted Base Rate Component</u>	<u>Dollar Amount</u>
Tipper Operation	\$1.88/ton

4.4 CPI Adjustment (Acceptable Waste Disposal Component and Tipper Operation Component). Commencing on the “Adjustment Date” of February 2nd, and the Adjustment Date annually thereafter, the then-current Base Rate, as adjusted under this Section

4, shall be automatically adjusted by Eighty-Five Percent (85%) of the average annual percent change in the Consumer Price Index for All Urban Consumers (CPI-U), Seattle-Tacoma, 1982-84=100, published by the United States Department of Labor, Bureau of Labor Statistics (“BLS”) (the “CPI-U Adjustment”). LRI may refer to the BLS Internet Site (<https://stats.bls.gov/cpihome.htm>) or other BLS source to calculate the CPI-adjusted Base Rate hereunder as follows: divide the Seattle-Tacoma CPI-U published nearest to but immediately preceding the Adjustment Date by the Seattle-Tacoma CPI-U published for the same period the prior year, subtract 1, multiply the difference by Eighty Five Percent (85%), add 1 and multiply the result by the Base Rate then in effect.

4.5 Trailer Purchase; Trailer Maintenance. In the event that the City, pursuant to Subsection 3.3, elects to request LRI to purchase Trailers, LRI shall be entitled to implement and assess a monthly charge to the City for recovery of the capital costs of the Trailers purchased (“Trailer Capital Charge”), amortized over a ten-year period (the “Amortization Period”), and to implement a monthly charge to the City to recover LRI’s costs for maintenance of the Trailers (“Trailer Maintenance Charge”).

4.5.1 Trailer Capital Charge. The Trailer Capital Charge shall be a monthly charge applicable during the amortization period, and shall be calculated based upon, (1) the total capital costs of purchasing all trailers during the Term of the Agreement, including actual trailer purchase price, tax, and delivery fees (the “Allowable Costs”), and (2) an interest charge which shall be calculated as follows: actual trailer purchase price multiplied by .06 (6%). The Trailer Capital Charge shall be the sum of (1) and (2) above and shall be divided into equal monthly Trailer Capital Charges over the Amortization Period. In the event that any Trailers are purchased after February 2, 2020, the ten-year amortization period shall be reduced to be commensurate with the number of months remaining in the term of the Agreement, and the Trailer Capital Charge shall be adjusted to include the Allowable Costs and interest for Trailers that are purchased subsequent to the initial purchase of Trailers. At the end of the amortization period, the City shall have the option of purchasing each of the Trailers from LRI for \$1.00 and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged.

4.5.2 Trailer Maintenance Charge. LRI shall be entitled to recover its Trailer maintenance costs, including parts, labor, materials and any third party costs, plus ten percent for overhead (indirect costs such as office expense, staff salaries, depreciation expense, facilities, utilities, etc.) (the “Allowable Maintenance Costs”) through implementation and assessment of a monthly “Trailer Maintenance Charge”. The initial Trailer Maintenance charge approved by the City pursuant to Subsection 3.3, shall be based upon LRI’s best estimate of the Trailer Maintenance Costs anticipated to be incurred during the first year of the City’s use and operation of the Trailers. Within 30 days following each annual anniversary of implementation of Trailer Maintenance Charge, LRI shall prepare and submit to the City a detailed statement of all the Allowable Maintenance Costs incurred by LRI over the prior year (subject to review by the City of all records supporting such detailed statement) together with a proposed adjustment to the Trailer Maintenance Charge. If the City does not within ten days of receipt of the notice of proposed increase, provide notice that it disputes the proposed adjustment or request additional information, LRI shall be entitled to implement the adjustment to the Trailer Maintenance Charge on the next billing cycle and to recover any adjustment amounts not previously assessed

for the period of the adjustment. In the event that the proposed adjustment would result in a decrease in the Trailer Maintenance Charge, the City shall be entitled to a credit for any amounts paid during the adjustment period that were in excess of the adjusted Trailer Maintenance Charge and a reduction in the Trailer Maintenance Charge. The City and LRI agree to the Maintenance Charge calculation methodology provided in Exhibit "B".

4.6 Rates in Prior Agreement. The Parties acknowledge that the Agreement, prior to this Amendment No. 1, had a term until February 2, 2020. The Base Rates (as defined in Subsection 4.1) shall remain in effect until February 2, 2020, unless the new Base Rate set forth in Subsection 4.2 takes effect sooner based on mutual written agreement of the Parties. If however, the City requests that LRI purchase the Trailers prior to February 2, 2020, the Trailer Capital Charge, the Tipper Operation Charge, and the Trailer Maintenance Charge, shall be added to the base rates described in Section 4.1 until February 2, 2020. After February 2, 2020, the Trailer Capital Charge, the Tipper Operation Charge, and the Trailer Maintenance Charge will be added to the new base rate described in Section 4.2. The new Base Rate, as adjusted by the Tipper Operation, shall be subject to the annual CPI-U adjustment, where and when applicable as provided in Sections 3 and 4.

4.7 Rates for Special Waste. LRI and the City agree to negotiate in good faith for the establishment of rates for special waste on a case-by-case basis.

4.8 Solid Waste Charge Rate Increase. LRI may, after obtaining the City's approval (which approval may not be unreasonably withheld, conditioned, or delayed), increase the Base Rates for the imposition of or increase in any solid waste tax, tariff, fee, assessment or other charge levied or assessed on the storage, handling, transportation or disposal of solid waste after the Effective Date. All rate adjustments under this Section 4.8 shall take effect upon written notice from LRI.

4.9 Other Acceptable Base Rate Increases.

4.9.1 Special Events. LRI may after obtaining the City's approval (which approval may not be unreasonably withheld, conditioned or delayed), increase the Base Rate by One Hundred Percent (100%) of LRI's reasonable actual increased costs of receiving Acceptable Waste as defined in Section 1.1 from the City due to the events as described in Subsections 4.9.1.1, 4.9.1.2, and 4.9.1.3 below. The City shall approve or disapprove of increases in the Base Rates hereunder within thirty (30) days following LRI's request for approval and all such increases shall compensate LRI retroactively to the date LRI first incurred the increased costs due to the events described below or first gave notice to the City of the events described below, whichever is later. Disapproval by the City of any increase in the Base Rates shall be subject to arbitration in accordance with Section 22.

4.9.1.1 Events of Force Majeure. Base Rates shall be increased for an Event of Force Majeure other than a business and occupation tax Event of Force Majeure.

4.9.1.2 Change in Certain Laws. Base Rates shall be increased to reflect the reasonable actual cost of LRI's compliance with changes in federal, state and local laws. For purposes of this Section, a "change in law" means the enactment, adoption,

promulgation, modification or change in interpretation of any federal, state, municipal or other local law, ordinance, code, rule, requirement, regulation or similar legislation.

4.9.1.3 Change in Certain Taxes, Fees or Surcharges. Subject to the limitations and conditions of this Article, Base Rates shall be increased for the imposition of or increases in the rates of new and existing federal, state or local taxes (except Income and Business and Occupation taxes), fees or surcharges.

4.9.2 General Conditions and Limitations on Base Rate Increases. LRI may increase Base Rates under this Subsection 4.9 only for those costs incurred that are the least costly means of adequately remedying the effects of an Event of Force Majeure (excluding business and occupation tax) or for ensuring full compliance with a change in law or changes in taxes, fees or surcharges. No Base Rate increases shall be allowed for any cost increases that are attributable to conditions, structures, operations or activities at the 304th Landfill caused by LRI or its subcontractors, employees, agents, or servants or are otherwise within LRI's control. LRI must fully demonstrate and document, to the reasonable satisfaction of the City, the costs associated with the Force Majeure event, change in laws or change in taxes, fees or surcharges that give rise to the requested Base Rate increase hereunder.

4.9.3 Cancellation of Base Rate Increases. On the City's request, LRI shall promptly provide the City with all documents, information or other evidence in LRI's possession or control relating to costs associated with the Force Majeure event, change in laws or change in taxes, fees or surcharges that give rise to the requested Base Rate increase. The City may at any time cancel or reduce any Base Rate increase made under this Article if the City determines in its reasonable judgment, based on the documents and information provided by LRI hereunder, that the costs that gave rise to the Base Rate increase no longer warrant an increase in the Base Rates or if the level of the increase is greater than required to cover the costs or if the original increase was in error. LRI may dispute such determination by the City in accordance with the arbitration procedures under Section 22. Unless disputed, LRI shall reduce the Base Rate accordingly within thirty (30) days of the date the City notifies LRI in writing of the City's determination. LRI shall at all times keep the City informed as to whether any increase remains necessary.

4.10 Base Rate Reductions.

4.10.1 Reductions: Notice. Subject to the provisions of this Section, LRI shall reduce the Base Rates by One Hundred Percent (100%) of the reduced costs of LRI's performance under this Agreement for reduced costs attributable to a condition or event set forth in Subsections 4.9.1.1, 4.9.1.2 or 4.9.1.3. The City shall provide LRI with written notice and explanation of the City's request that LRI reduce the Base Rate(s) hereunder. Within thirty (30) days of receipt of that written notice, LRI shall respond in writing to the City. The written response shall state whether or not LRI believes that any reduction in the Base Rate is justified by the Force Majeure Event (other than business and occupation tax), change in law or change in taxes, fees or surcharges and shall itemize the reduction in cost of performing the Agreement, if any, due to such condition or event. LRI shall fully document and otherwise support its response to the City's notice under this Section. Any dispute regarding a reduction in costs shall be settled in accordance with the arbitration procedure set forth in Section 22.

4.10.2 Reductions: Cancellation. The City shall cancel Base Rate reductions made under this Section upon approval of a petition by LRI (which approval shall not be unreasonably withheld, conditioned or delayed) showing that the reduction in costs that gave rise to the Base Rate reduction has changed or expired or that a reduction was made in error. LRI shall at all times keep the City informed as to when any reduction due to a condition or event set forth in Subsections 4.9.1.1, 4.9.1.2 or 4.9.1.3 is appropriate and when any reduction is no longer appropriate.

4.11 Cumulative Adjustments. If, as a result of adjustments under Subsections 4.8, 4.9 and 4.10 cumulatively, the Base Rates increase by greater than Ten Percent (10%) but less than Twenty Percent (20%) over the Base Rates set forth in Section 4.1, as adjusted under Subsections 4.2, 4.3, 4.4 and 4.6, then the Parties shall attempt to renegotiate the Base Rate(s) to a mutually acceptable level, subject to arbitration, in accordance with Section 22, of any dispute relating to the impact on the Base Rate(s) of the event or condition that gave rise to the adjustment. If, as a result of adjustments under Subsections 4.8, 4.9 and 4.10 cumulatively, the Base Rate(s) increase by greater than Twenty Percent (20%) over the Base Rate(s) set forth in Section 4.1, as adjusted under Subsection 4.2, 4.3, 4.4 and 4.6 then the City shall have the right to terminate this Agreement after providing LRI at least sixty (60) days' written notice of the City's intent to terminate and provided that LRI fails to decrease the Base Rate(s) to below the Twenty Percent (20%) threshold during such sixty (60)-day period.

4.12 Minimum Payment. If the City fails to deliver to the 304th Landfill all Acceptable Waste that is generated within or collected, handled or transported by the City and that is not otherwise handled, disposed of or managed through recycling, diverted for material recovery, reuse, or composting (the "Net Tonnage"), the City shall pay to LRI an amount equal to the Base Rates, as adjusted, times the tonnage difference between the Net Tonnage and the actual tons of Acceptable Waste delivered by the City.

4.13 Payment. On or before the tenth (10th) day of each month, LRI shall submit an invoice to the City showing (i) the number of tons of the City's Acceptable Waste and Special Waste disposed of at the 304th Landfill in the preceding month and the total Base Rate charges, as adjusted, owed therefor, (ii) the minimum payment amount owed under Section 4.12, if any, (iii) the monthly Trailer Capital Charge, if any, and (iv) the monthly Trailer Maintenance Charge, if any. The City shall pay LRI the full amount of the invoice within thirty (30) days after receipt of such invoice. In the event of a dispute as to services rendered or payment owed, the City shall pay the undisputed portion of each invoice and the Parties shall confer and attempt to negotiate a settlement of the dispute. The City shall pay a late fee and service charge on all past due amounts accruing from the date of the invoice at a rate of Twelve Percent (12%) per annum.

Section 5. Section 7 is hereby amended to read in its entirety as follows:

7. TERM OF AGREEMENT. The initial term of this Agreement commence on the Effective Date and end on February 1, 2030, unless terminated earlier by the provisions of this Agreement (the "Term"). The Term may be extended on the same terms and conditions herein upon a mutual written agreement of the Parties to extend the Term.

Section 6. Section 9 is hereby amended to read in its entirety as follows:

9. TIME OF DELIVERY. The City shall be entitled to deliver Acceptable Waste to the 304th Landfill during all times the 304th Landfill is open to receive waste but not less than Monday through Friday between the hours of 8:00 AM and 4:30 PM and Saturday between the hours of 8:00 AM and 2:30 PM. Extended hours of operation on Saturdays can be provided with 24-hour advance notice from City.

Section 7. Subsection 10.1(d) shall be stricken and Subsection 10.1(e) shall be renumbered as Subsection 10.1(d), with subsection 10.1(d) to read as follows:

(d) the adoption, enactment or application to a Party, any contractor or subcontractor of a Party or the 304th Landfill of any new or increased business and occupation tax after the Effective Date.

Section 8. Subsections 14.1, 14.2 and 14.3 are hereby amended to read as follows:

14.1 LRI's Indemnity. LRI shall defend, indemnify and hold the City and its employees and appointed and elected officials free and harmless from (1) liability from claims, demands, losses, or expenses, including reasonable attorneys' fees and costs, occurring directly from any negligent actions or omissions or willful misconduct of LRI, its agents, employees or subcontractors in the performance of this Agreement, (2) liability arising from federal or state law from claims, demands, losses, or expenses, including site remediation costs and reasonable attorneys' fees and costs, occurring as a result of any pollution, contamination or release of chemicals or landfill gas arising from the operation at the 304th Landfill, and (3) liability for all costs, including reasonable attorneys' fees, associated with the necessary removal of the City's Acceptable Waste from the 304th Landfill; provided that, such indemnity shall not include (a) claims arising as a result of any negligent actions or omissions or willful misconduct of the City or its agents, employees or appointed and elected officials or (b) any liability, costs or claims associated with or arising from the City's delivery of Excluded Waste.

14.2 City's Indemnity. The City shall defend, indemnify and hold LRI and its employees, agents, subcontractors, directors, officers and owners free and harmless from liability from claims, demands, losses, or expenses, including reasonable attorneys' fees and costs, occurring directly from any negligent actions or omissions or willful misconduct of the City or its agents, employees or appointed or elected officials, including any such claims which arise from Excluded Waste disposed of at the 304th Landfill; provided that, such indemnity shall not include claims arising as a result of any negligent actions or omissions or willful misconduct of LRI, its agents, employees or subcontractors.

14.3 Defense of Suit. In the event of any suit against any Party indemnified under this Section 14, the indemnifying Party shall appear and defend such suit, provided that the indemnifying Party is notified in a timely manner of the suit and the indemnified Party shall have the right to approve counsel chosen by the indemnifying Party to litigate such suit, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 9. Section 16 is hereby amended to read as follows:

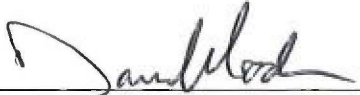
16. BINDING EFFECT, ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns; provided that the rights, obligations and duties of each Party as specified in this Agreement may not be transferred, assigned or otherwise vested in any other company, entity, or person without the prior written approval of the other Party which approval shall not be unreasonably withheld, conditioned or delayed.

Section 10. All remaining terms, conditions and provisions of the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to the Solid Waste Disposal Agreement by their duly authorized agents, as of the date first above written.

**PIERCE COUNTY RECYCLING,
COMPOSTING, AND DISPOSAL, LLC:**

CITY OF TACOMA

By: 
Its: DIVISION VP
Name: DAN SCHOOLER

By: 
Elizabeth A. Pauli,
City Manager

Address for Notice:

Approved:

LRI
Attention: Division Vice President
17925 Meridian Street East
Puyallup, Washington 98375
Facsimile:

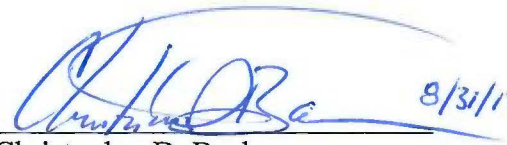
By: 
Michael P. Slevin, III P.E.
Director, Environmental Services

By: 
Andrew Cherullo, Finance Director LN

With a copy to:

Approved as to Form:

Waste Connections, Inc.
Attention: Legal Department
3 Waterway Square Place, Suite 110
The Woodlands, Texas 77380
Facsimile: (832) 442-2291

By:  8/31/17
Christopher D. Bacha,
Chief Deputy City Attorney

Address for Notice:

747 Market Street
Tacoma WA, 98402
Attention: Environmental Services Director

With a copy to:

747 Market Street
Tacoma WA, 98402
Attention: City Attorney

Attach: Exhibit "A" (Trailer Maintenance and Repair Program)

EXHIBIT A

Trailer Maintenance and Repair Program

1.0 Nature of Repairs

As described in Subsections 3.5, 3.6, 4.5, and 4.5.2 of Amendment No. 1, LRI will be responsible for maintenance and repair of trailers purchased by LRI for use by the City of Tacoma. For purposes of this plan, categories of repairs are defined as follows:

1. **Routine Scheduled Maintenance** – including brakes, suspension, greasing and lubing, and miscellaneous parts such as lights and door seals. Based on industry experience, anticipated routine maintenance tasks will occur at the following frequency under normal use:
 - a. Brakes – once / year per trailer
 - b. Suspension – including airbags and springs – one / year per trailer
 - c. Lube and grease – every 90-days
 - d. Miscellaneous – such as lights - varies
2. **Unscheduled Non-routine Maintenance** – may include but are not limited to cracks in frame, cracks or tears in trailer side walls, top, and / or bottom, damaged or bent landing gear or axles.
3. **Excessive wear and tear or damage due to accident** – could include any damage resulting from abuse and / or accident.
4. **Tires** – tires repair and replacement will remain the responsibility of the City, while in transit, on City property, or on LRI property. In the event that a tire repair or replacement is needed the City will dispatch tire repair services to the appropriate location.

2.0 Scheduling and Completion of Repairs

All trailers will be entered into the LRI Equipment Maintenance System which will provide notification to LRI Maintenance Personnel of recommended manufacturers regular maintenance and service tasks. In addition, 90-day inspections of all trailers will be conducted by LRI Maintenance Personnel to identify any additional repairs that are deemed necessary.

Identification of other necessary repair items through routine daily operation and daily inspection by City of Tacoma drivers will also prompt the scheduling of repairs. It is also an expectation that in the event that City personnel identify necessary repairs that such repair needs will be communicated to the designated LRI maintenance representative. Daily inspection reports performed and completed by the City of Tacoma drivers will be sent to the LRI Maintenance Contact. In addition, any repairs performed by the City will be communicated to the City so that the repair can be tracked in the LRI Equipment Maintenance System.

Designated LRI Maintenance personnel will notify the City designee a minimum of 2-days in advance of a scheduled repair. Notification will consist of trailer number and general description of the repair. LRI will make every effort for timely completion of maintenance and repairs and will designate a mechanic to provide priority service to City trailers.

3.0 Repair and Maintenance Location

The primary, designated trailer repair and maintenance location will be at the LRI-Hidden Valley facility, at a location adjacent to the facility Compost Factory located at:

LRI – Hidden Valley (adjacent to Compost Factory)
17925 Meridian Street E
Puyallup, WA 98375

Upon identification and scheduling of maintenance and / or a repair, it will be the responsibility of the City to drop the respective trailer at this location. Upon delivery of the trailer, a spare trailer purchased in accordance Subsection 4.5 and Subsection 4.5.1 of the Amendment will be made available for exchange.

Trailers can be dropped at this location from 7:00 AM to 4:30 PM Monday through Saturday.

4.0 Alternate Repair and Maintenance Location

Note that LRI may decide to select a different primary or add an alternate repair and maintenance location with 60-day prior notice and mutual agreement with the City.

5.0 Third Party Repair Facility

In certain circumstances, the nature of some repairs may require the services of a third party including the trailer manufacture. Such repairs may include but are not limited to cracked frames, siding, and structural damage and may be completed at the primary or alternate location, or at the third party location. In the event of a repair being completed at a third party location, LRI or the third party will provide trailer towing services to the repair location.

6.0 Trailer Repair and Maintenance while in Transit

In the event of trailer breakdown while in transit to an LRI facility or while located at a City facility, it will be the responsibility of the City to complete the repair by dispatching and utilizing City repair services and report the repair to the LRI Maintenance designee in accordance with Section 2.0.

7.0 Repair and Maintenance Costs and Reporting

In accordance with the LRI Equipment Maintenance System, LRI will maintain detailed service records for all trailers and make available for inspection by the City upon request. Records will include the costs for parts and materials and labor hours for all maintenance and repairs, and any

third party costs. LRI will provide a tally of these records and costs to the City in accordance with Subsection 4.5.2 of the Amendment.

EXHIBIT B

Example Methodology for Trailer Maintenance Charge Calculation

Baseline Line – Year 1

- Assume total number of trailers in operation by City – 20
- Assume Year 1, per month trailer maintenance cost (based on Section 4.5.2) - \$250 per trailer
- Per month Trailer Maintenance Charge billed to City – 20 trailers x \$250 = \$5,000

Scenario 1 – Trailer Maintenance Charge Decrease – Year 2 (and subsequent years of term)

- Assume trailers in operation by City remains at – 20
- Year 1 actual, per month trailer costs are determined to be (based on Section 4.5.2) - \$200 per trailer ($\$200 \times 20 = \$4,000$) – *see note 1*
- Monthly Trailer Maintenance Charge credit due City: $\$4,000 - \$5,000 = <\$1,000>$
- Year 2 monthly Trailer Maintenance Charge billed to City: $(\$200 \times 20) - \$1,000$ (credit) = \$3,000

Scenario 2 – Trailer Maintenance Charge Increase – Year 2 (and subsequent years of term)

- Assume trailers in operation by City remains at – 20
- Year 1 actual, per month trailer costs are determined to be (based on Section 4.5.2) - \$300 per trailer ($\$300 \times 20 = \$6,000$) – *see note 1*
- Monthly Trailer Maintenance Charge recovery adjustment due LRI: $(\$6,000 - \$5,000 = \$1,000)$
- Year 2 monthly Trailer Maintenance Charge billed to City: $(\$300 \times 20) + \$1,000 = \$7,000$

Note 1: - Actual trailer maintenance costs are based on total recoverable expenses as described in Section 4.5.2, for the 12-month period leading up to corresponding anniversary dates of the Amendment term. The total recoverable costs for the respective period are to be divided by 12-months to establish the Monthly Trailer Maintenance Charge for the next 12-month period, with City credit or LRI cost recovery adjustment included (whichever is applicable).