

SOLID WASTE ANNEXATION TRANSITION AGREEMENT

This Solid Waste Annexation Transition Agreement (“**Agreement**”) is entered into between Harold LeMay Enterprises, Inc., a Washington corporation, dba Pierce County Refuse (“**LeMay**”), and the City of Tacoma, Washington, a municipal corporation operating under the laws of the state of Washington as a first class city (“**City**”). The parties shall collectively be referred to in this Agreement as the “**Parties**” and individually as a “**Party**.” This Agreement shall be effective upon the date that all Parties have executed this Agreement (the “**Effective Date**”), as evidenced by the signatures below. The Parties now agree as follows:

RECITALS

A. LeMay is an investor-owned Solid Waste Collection company, and is the holder of Certificate of Public Convenience and Necessity G-98, issued by the Washington Utilities and Transportation Commission (“**UTC**”), authorizing LeMay to perform solid waste collection services in, among other places, portions of unincorporated Pierce County, Washington. The authority to collect solid waste under Certificate G-98, a copy of which is attached hereto as Appendix A, is a property right under state law.

B. City intends to annex an area of unincorporated Pierce County commonly referred to as the Manitou Annexation Area (or the “**Annexed Area**”), more specifically described in Appendix B.

C. Certificate G-98 currently authorizes LeMay to provide solid waste collection services within the entire Annexed Area.

D. City will be giving notice under RCW 35.13.280 to the UTC, and City intends to undertake the collection of Solid Waste, as defined in RCW 81.77.010, from residents and businesses within the Annexed Area, and is therefore required by RCW 35.13.280 to pay damages for the portion of its existing property right cancelled upon annexation. LeMay therefore acknowledges that upon annexation and appropriate notification, the portion of its Certificate contained in Appendix B will be canceled.

E. In order to satisfy City’s obligations pursuant to RCW 35.13.280, the Parties wish to enter into this Agreement, satisfying City’s obligations under RCW 35.13.280 and establishing the terms of an orderly transition to a Solid Waste Collection service provided by City within the Annexed Area.

AGREEMENT

1. Definitions. When used herein, the following terms shall be ascribed the meanings in this Section:

1.1. Annexed Area. “Annexed Area” means the area described in Appendix A.

1.2. Payment. “Payment” refers to the payment required by City to LeMay included in Section 4.

1.3. Solid Waste. “Solid Waste” is to have the meaning set forth at RCW 81.77.010(7).

1.4. Solid Waste Collection. “Solid Waste Collection” is to have the meaning set forth in Section 81.77.010(8) of the Revised Code of Washington.

1.5. Transition Date. The “Transition Date” will be the date on which the city commences and LeMay ceases providing Solid Waste Collection Services in the Annexed Area.

1.6. UTC. UTC means the Washington Utilities and Transportation Commission.

2. Notice to the UTC. City is to provide written notice to the UTC of its intent to provide Solid Waste Collection service in the Annexed Area commencing on the Transition Date, as required under RCW 81.77.020.

3. Consideration. The Parties have bargained for and expressly agree that the rights and obligations of each Party contained in the Agreement, including without limitation, the City’s payment obligation are sufficient consideration for the other Party’s obligations.

4. Payment. As payment in settlement for damages incurred by LeMay as a result of City’s Annexation and pursuant to RCW 35.13.280, City will pay the total sum of three hundred and twenty five thousand United States Dollars (\$325,000.00) to LeMay.

5. Service Transition. Commencing on the Transition Date, City will provide Solid Waste Collection services to customers within the Annexed Area on or about April 1, 2024. As of the Transition Date, LeMay will have no further right or obligation to provide Solid Waste Collection services in the Annexed Area.

5.1. Customer Information. City acknowledges that LeMay is prohibited from releasing customer information, including the name, address, telephone number, service level, credit and deposit information, and billing history pursuant to Section 480-70-421 of the Washington Administrative Code.

5.2. Notice to Customers. LeMay will provide written or electronic notice to its customers that its Solid Waste Collection service will cease in the Annexed Area no less than 60 days prior to the Transition Date. The notice required by this Section will include contact information for City and instructions to customers as to how they may continue, change, or establish new Solid Waste Collection service through the City on or after the Transition Date. City is to provide to LeMay its contact information and customer instructions no later than 90 days prior to the Transition Date. The Parties agree that LeMay’s duties under this provision are discharged upon depositing a notice containing the details required by this section either: (1) properly addressed and with proper postage in the United States mail; or (2) delivered electronically to the last known email address affiliated with the customer account.

5.3. Limitations of Impact on Certificate Rights. The Parties acknowledge that the cancellation of the portion of Certificate G-98 authorizing LeMay to provide Solid Waste Collection in the Annexed Area as set forth in this Agreement will not limit or have any effect upon LeMay’s certificate authority to provide Solid Waste Collection services outside of the Annexed Area.

6. Delinquent Accounts/Accounts Receivable/Accounts Payable.

6.1. Rights and Duties of LeMay. LeMay shall have the sole right to receive and collect amounts owed for Solid Waste Collection service provided by LeMay in the Annexed Area prior to the Transition Date, including delinquent accounts and accounts receivable. LeMay shall also have the sole obligation for costs or expenses incurred in providing Solid Waste Collection services in the Annexed Area prior to the Transition Date, including its accounts payable.

6.2. Rights and Duties of City. City shall have the sole right to receive and collect amounts owed for Solid Waste Collection service provided by City in the Annexed Area after the Transition Date. City shall also have the sole obligation for costs or expenses incurred in providing Solid Waste Collection services in the Annexed Area after the Transition Date.

7. Release. LeMay acknowledges that the Payment required in Section 4 is the entire amount owed by City for damages pursuant to RCW 35.13.280, which were incurred as the result of City's annexation of the Annexed Area and commencement of Solid Waste Collection services under RCW 81.77.020., and in exchange for the Payment hereby waives and releases all claims, demands, sums of money, actions, rights, causes of action, obligations and liabilities of any kind whatsoever, at law or in equity, known or unknown, whether existing in the past, present or future, and whether arising in tort, contract, or statute, caused by City's annexation of the Annexed Area and the corresponding cancellation of that portion of Certificate G-98 which authorized LeMay to provide Solid Waste Collection service in the Annexed Area.

8. Indemnity and Hold Harmless.

8.1. By LeMay. LeMay hereby agrees to indemnify and hold City harmless from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, and damages of any nature whatsoever, which is caused by or arises out of LeMay's provision of Solid Waste Collection services prior to the Transition Date and to the extent caused solely by LeMay's actions or omissions.

8.2. By City. City hereby agrees to indemnify and hold LeMay harmless from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, and damages of any nature whatsoever, which is caused by or arises out of City's provision of Solid Waste Collection services on or after the Transition Date and to the extent caused solely by City's actions or omissions.

9. Damages Limitation. In no event shall either party to this Agreement, its affiliates or any of their officers, directors, employees, agents or subcontractors be liable under any provision of this Agreement for any lost profits, exemplary, punitive, special, incidental or consequential damages arising out of any act or failure to carry out any duty or obligation under this Agreement, even if that party has been advised of or has foreseen the possibility of such damages.

10. Warranties.

10.1. Warranties of LeMay. LeMay warrants that it is a corporation validly existing and in good standing with the state of Washington, that it has been issued Certificate G-98 by the UTC, that Certificate G-98 authorizes LeMay to provide Solid Waste Collection service in the Annexed Area, and that authority to provide such service has not been terminated or suspended by the UTC as of the Effective Date. LeMay further warrants that its execution and delivery of this Agreement has been duly authorized by all requisite persons.

10.2. Warranties of City. City warrants that it has the full municipal authority to enter and to carry out its obligations under this Agreement. City further warrants that its execution and delivery of this Agreement has been duly authorized by all requisite persons.

11. Governing Law/Venue. This Agreement shall be construed and interpreted according to the laws of the state of Washington. Venue for all disputes and litigation arising under this Agreement shall be in the state or federal courts of Pierce County or King County, Washington.

12. Dispute Resolution. If a dispute or claim arises under this Agreement (a “Dispute”) that the Parties are unable to resolve, a Party will notify the other Party of the Dispute in writing (which may be via email) with as much detail as possible. The Parties will use good faith efforts to resolve the Dispute within twenty (20) business days after receipt of a Dispute notice. If the Parties’ are unable to resolve the Dispute, or agree upon the appropriate corrective action to be taken, within such twenty (20) business days, then either Party may pursue any course of action available to it. Pending resolution of the Dispute, both Parties will continue to perform their respective undisputed responsibilities under this Agreement. Nothing contained in this Section will limit or delay the right of either Party to seek injunctive relief from a court of competent jurisdiction, whether or not such Party has pursued informal resolution in accordance with this Section. In the event of a Dispute relating to the interpretation of, or to enforce this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorneys’ fees, costs, and expenses incurred in relationship with such Dispute.

13. Severability. The provisions of this Agreement are severable, and, if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which together shall constitute one instrument.

15. Drafting. The Parties have had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language.

16. Assignees and Successors. This Agreement shall be binding upon and inure to the benefit of each of the Parties hereto, their respective heirs, executors, administrators, personal representatives, corporate parents, subsidiaries, affiliates successors and assigns.

17. Entire Agreement. This Agreement constitutes the final and entire agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be modified, interpreted, amended, waived, or revoked orally, but only in writing signed by all Parties. This Agreement supersedes and replaces all prior agreements, discussions, and representations, all of which are merged into, and superseded by, this Agreement. No Party is entering this Agreement in reliance upon any oral or written promises, inducements, representations, understandings, interpretations, or agreements other than those contained in this Agreement.

18. Full Understanding; Independent Legal Counsel. The Parties acknowledge, represent and agree: (a) that they have read this Agreement, (b) that they fully understand all terms of this Agreement, (c) that they have had an opportunity to seek and have sought advice from legal counsel, accountants, and other advisors of their choosing with respect to this Agreement, and (d) that they are knowingly and voluntarily entering into this Agreement.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives as on the _____ day of _____, 2023 (the "Execution Date").

Harold LeMay Enterprises, Inc.

City of Tacoma

By: _____

By: _____

APPENDIX A

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

621 Woodland Square Loop S.E., Lacey, Washington 98503

PO Box 47250, Olympia, WA 98504-7250

(360) 664-1222

This permit authorizes the following operations under the provisions of RCW Title 81:

HAROLD LEMAY ENTERPRISES, INC.
d/b/a BUTLERS COVE REFUSE SERVICE; CITY
SANITARY CO.; EGH DISPOSAL; HARBOR
DISPOSAL CO.; JOE'S REFUSE SERVICE;
LAKEWOOD REFUSE SERVICE; PACIFIC DISPOSAL;
PIERCE COUNTY REFUSE; RURAL GARBAGE
SERVICE; WHITE PASS GARBAGE CO.
4111 192ND STREET E
TACOMA, WA 98446

Certificate No.
G000098

SOLID WASTE GARBAGE COLLECTION SERVICE In that portion of Pierce County described as follows: beginning at the intersection of 72nd Street East and Waller Road; thence south on the centerline of Waller Road to 112th Street; thence east on the centerline of 112th Street (becomes 39th St in Puyallup) to Meridian Street (also State Highway 161); thence south on the centerline of Meridian Street to the Kapowsin Highway; thence east on the centerline of Kapowsin Highway to its point of intersection with Electron County Road (also the north line of Section 5, T17N, R5E); thence east along the centerline of Electron County Road to the Southwest corner of Section 33, T18N, R5E; thence east along the south line of said Section extended to its intersection with the East boundary line of Mt. Rainier National Park (along the south line of Section 34, T18N, R10E); thence south along said boundary to its intersection with the Pierce-Yakima County boundary line; thence south along the Pierce-Yakima County line to the intersection of said line with the Pierce- Lewis County line; thence west along the Pierce-Lewis County line to the intersection of the Thurston-Pierce-Lewis County line; thence northerly along the Thurston-Pierce County line to its intersection with the shoreline of Puget Sound; thence northerly along the east shoreline of Puget Sound (including service to Anderson Island, McNeil Island and Ketron Island) to the intersection with the centerline of Chambers Bay; thence east along the centerline of Chambers Bay to its intersection with the centerline of Chambers Creek; thence following the centerline of Chambers Creek east to its intersection with the centerline of Leach Creek; thence northerly along the centerline of Leach Creek to its intersection with Alameda Avenue extended; thence north on Alameda Avenue extended to South 48th Street extended west; thence east on South 48th Street extended to its meeting with the

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION



By Amanda Maxwell

*NOTE: A copy of this permit **MUST** be carried in each vehicle being operated under this authority.*

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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centerline of Leach Creek; thence northerly along the centerline of Leach Creek to its intersection with 40th Street; thence east on 40th Street to the intersection with Orchard Street extended; thence north along centerline of Orchard Street extended to the intersection with South 19th Street; thence west along centerline of South 19th Street (also the Tacoma city limits) to the intersection with Day Island Waterway (east side of The Narrows); thence following the shoreline of Puget Sound in a northerly direction to Point Defiance and Commencement Bay; thence following the shoreline of Commencement Bay to its intersection with the west city limits of Tacoma located in Section 21, T21N, R3E; thence following the city limits of Tacoma in a clockwise direction to its intersection with 72nd Street East (also the south line of the northwest quarter of Section 26, T20N, R3E); thence east along said street to its intersection with Waller Rd, the point of beginning.

SOLID WASTE COLLECTION SERVICE In Lewis County.

SOLID WASTE COLLECTION SERVICE in Grays Harbor County.

SOLID WASTE COLLECTION SERVICE in Mason County.

SOLID WASTE COLLECTION SERVICE in Thurston County.

REFUSE COLLECTION SERVICE From the Puget Sound Navy Yard at Bremerton to dumps in Kitsap County.

SOLID WASTE COLLECTION SERVICE In that portion of Pacific County described as follows: Starting at a point at the northeast corner of Section 13, T. 15 N., R. 11 W.; thence south along the east line of said Section 13, extended to Tokeland Peninsula (Section 12, T. 14 N., R. 11 W.); thence following the shoreline of Willapa Bay and the Pacific Ocean westerly and northerly to its intersection with the Pacific-Grays Harbor County line; thence east along said county line to its intersection with the northeast corner of Section 13, T15N, R11W, the point of beginning.

The operating authority held by Harold and Nancy Lemay, d/b/a City Sanitary Company, in Certificate No. G-47, voluntarily cancelled May 26, 2004, by Commission Order TG-040953, is fully duplicated in Certificate No. G-98 held by Harold Lemay Enterprises, Inc.

TO THE EXTENT THAT THE AUTHORITY GRANTED IN THIS ORDER DUPLICATES ANY AUTHORITY PREVIOUSLY GRANTED OR NOW HELD SHALL NOT BE CONSTRUED AS CONFERRING MORE THAN ONE OPERATING RIGHT NOR SHALL ANY DUPLICATING RIGHTS BE AVAILABLE FOR PURPOSES OF TRANSFER.

TG-220145

March 14, 2022

APPENDIX B

Legal Description of the Annexed Area:

That portion of the east half of the northeast quarter of Section 26, Township 20 North, Range 02 East, Willamette Meridian, more particularly described as follows: Lying north of the south margin of 70th Street West as dedicated by the plat of Manitou acre tracts, according to plat recorded in Book 10 of Plats at page 96, records of the Pierce County Auditor, and lying east of the west margin of Lakewood Drive West (also known as 54th Avenue Southwest and Hannah Pierce County Road) according to deed to Pierce County recorded under Auditor's fee No. 2451560, records of Pierce County Auditor, and lying south of the south margin of South 64th Street per deed to Pierce County recorded under Auditor's fee No. 421700, records of Pierce County Auditor, and quit claim deed to Pierce County recorded under Auditor's fee No. 8505280134. Situate in the County of Pierce, State of Washington.