WASTE COLLECTION AND MANAGEMENT AGREEMENT

This Agreement is made by and between Pacific County, a municipal corporation hereinafter referred to as the "COUNTY", and Royal Heights Transfer Station, a Washington Corporation hereinafter referred to as the "CONTRACTOR".

1. **PURPOSES.** The parties agree to participate in one one-day Household Appliance Collection Event during which the public will be permitted to deliver Waste Materials, at the solid waste transfer station located near Raymond, Washington, that is operated by the CONTRACTOR.

2. **DATE.** The parties agree that the Household Appliance Collection Day will occur on the 17th day of September 2016.

3. **DUTIES OF PARTIES.** The parties agree that the following will be their duties in relation to the Household Appliance Collection Day.

   (A) The COUNTY agrees to provide public announcements of the event and to advise the public regarding the types of waste materials that may be deposited at the transfer station on the Collection Day(s).

   (B) The CONTRACTOR agrees that it will provide sufficient staff to oversee the delivery of waste materials to the transfer site by members of the public on the Collection Day(s) and that it will be solely responsible for directing all activities relating to the delivery and storage of waste materials at the transfer station on those date(s).

   (C) The CONTRACTOR agrees to take possession of all waste materials delivered to the transfer site by the public on the Collection Day(s), without any charges other than those set forth in this agreement.

   (D) The CONTRACTOR further agrees that it will store, handle, transfer and recycle all the waste materials delivered to the transfer site on the Collection Day(s).

4. **FEES AND PAYMENT.**

   (A) Pacific County agrees to pay the CONTRACTOR a base rate of $500.00 plus an additional $20.00 for every refrigeration device requiring the removal of chlorofluorocarbons (CFC's) which is delivered to the transfer site on the Collection Day(s) and $5.00 for all other appliance units.

   (B) Upon completion of the Collection Day(s), the parties shall jointly calculate the number of refrigeration devices collected and determine the amount owed by Pacific County for these items.

   (C) Invoices submitted by the CONTRACTOR shall be paid no later than thirty days from the date of invoice.

5. **WASTE MATERIALS.** The materials that are the subject of this agreement are set forth in the Material Profile Sheet attached hereto as *Exhibit A* and incorporated herein by reference. The

materials described in the Materials Profile Sheet are referred to in this Agreement as the "Waste Materials".

6. **TRANSFER OF WASTES AND TITLE.**

(A) Waste Materials tendered to the CONTRACTOR during the Collection Day(s) shall be tendered subject to Pacific County's warranties, indemnifications and obligations, as set forth in this agreement.

(B) At the time the CONTRACTOR signs a standard form of manifest indicating acceptance of delivery of Waste Materials, title, risk of loss and all other incidents of ownership with respect to those Waste Materials shall be transferred to the CONTRACTOR.

(C) If, following signature of a manifest pertaining to the Waste Materials, such Waste Materials are discovered to be "nonconforming" in whole or in part, the CONTRACTOR, may revoke in writing its acceptance of all such nonconforming Waste Materials. A revocation of acceptance shall operate to revest title, risk of loss, and other incidents of ownership in Pacific County at the time revocation is communicated in writing to Pacific County.

(D) Waste Materials shall be considered "nonconforming" for purpose of this agreement if they are not in accordance with the descriptions or specifications stated in the Material Profile Sheet (Exhibit A).

(E) Pacific County shall remove nonconforming Waste Materials from the possession of CONTRACTOR, within a reasonable time, not to exceed seven (7) days after revocation of acceptance has been communicated to CONTRACTOR,

7. **ROYAL HEIGHT TRANSFER STATION WARRANTIES.** CONTRACTOR warrants that:

(A) It understands the currently known hazards which are presented to persons, property, and the environment in the transportation, reclamation, recovery, sale, treatment, distribution, storage, and recycling of the Waste Materials.

(B) It will transport, store, and recycle the Waste Materials in full compliance with all governmental laws, regulations, and orders.

(C) The waste management facilities described in paragraph one of this agreement are now licensed and permitted to store and recycle waste materials within the description of the Waste Materials; and

(D) In the event such waste management facility loses its permitted status during the term of this agreement, the CONTRACTOR will promptly notify Pacific County of such loss.

8. **PACIFIC COUNTY WARRANTIES.** Pacific County warrants that:

(A) The description of Waste Materials made pursuant to the Waste Materials Profile Sheet (Exhibit A) is accurate and correct.

(B) All Waste Materials tendered by the public during the collection day shall conform to such description.

(C) It has and will, during the term of this agreement, continue to communicate to the CONTRACTOR, those hazards and risks known to or learned by Pacific County to be incident to the handling, transportation, storage, treatment, and recycling of the Waste Materials.

9. PUBLIC RECORDS ACT

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONTRACTOR shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONTRACTOR and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the COUNTY's sole obligations shall be to notify the CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

10. OWNERSHIP

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Agreement.

11. IMDEMNIFICATION/HOLD HARMLESS

Indemnification by Contractor. To the fullest extent permitted by law, the CONTRACTOR agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution

costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Contract; or 3) are based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into the Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

Participation County – No Waiver. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONTRACTOR's indemnity obligations under the Contract.

Survival of Contractor's Indemnity Obligations. The CONTRACTOR agrees all CONTRACTORS's indemnity obligations shall survive the completion, expiration or termination of this Contract.

12. INSURANCE

Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

1. **General Liability Insurance.** CONTRACTOR shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 0, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

2. **Professional Liability (Errors & Omissions) Insurance.** CONTRACTOR shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and CONTRACTOR agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.

3. **Workers' Compensation Insurance.** CONTRACTOR shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

4. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to

a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

The CONTRACTOR must name the COUNTY as an additional insured. The CONTRACTOR agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONTRACTOR's liability insurance policy shall so state.

13. SUBCONTRACTING

The services to be furnished under the terms of this Agreement will be performed by the CONTRACTOR personally and will not be delegated or subcontracted in whole or in part without the express written consent of the COUNTY. Subcontractors required by the CONTRACTOR in connection with the services specified herein will be limited to those subcontractors approved in writing, by the COUNTY. Permission for subcontracting will not create any contract or any other relationship between the COUNTY and subcontractor. All subcontracts will contain all applicable provisions of this Agreement.

14. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The CONTRACTOR agrees to utilize to the maximum extent possible, minority- and women-owned businesses as subcontractors in conducting the services of this Agreement. The goals established for minority- and women-owned business participation for this project are as follows:

Minority-owned business participation	10%
Women-owned business participation	6%

The CONTRACTOR will take the following steps in any solicitation or procurement of subcontractors under this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Ensure that qualified minority and women's businesses are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

The CONTRACTOR agrees to incorporate similar requirements in any solicitations, requests for bids, or contract documents prepared for the services required under this Agreement.

15. NON DISCRIMINATION IN SERVICES

The CONTRACTOR will not discriminate because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right.

16. TERMINATION

This Agreement may be terminated by the COUNTY without cause, in whole or in part, upon providing thirty (30) days written notice to the CONTRACTOR.

In the event this Agreement is terminated by the COUNTY other than for default on the part of the CONTRACTOR, a final payment will be made to the CONTRACTOR with consideration given to the actual costs incurred by the CONTRACTOR in performing the work to the date of termination.

No payment will be made for any work completed after ten (10) days following receipt by the CONTRACTOR of the Notice of Termination. If the accumulated payment made to the CONTRACTOR prior to Notice of Termination exceeds the total amount that would be due computed as set forth above, then no final payment will be due and the CONTRACTOR will immediately reimburse the COUNTY for any excess paid.

If the services of the CONTRACTOR are terminated by the COUNTY for default on the part of the CONTRACTOR, the above formula for payment will not apply. In such event, the amount paid will be determined by the COUNTY with consideration given to the actual costs incurrent by the CONTRACTOR in performing the work to do the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the COUNTY at the time of termination; the cost to the COUNTY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the COUNTY of the work performed at the time of termination.

If it is determined for any reason that the CONTRACTOR was not in default or that the CONTRACTOR's failure to perform was not based on its fault or negligence, or the fault or negligence of its officers, agents, or employees, the termination will be deemed to be a termination for the convenience of the COUNTY in accordance with this section of this Agreement.

Payment by the COUNTY for any part of the work performed by the CONTRACTOR will not constitute a waiver by the COUNTY of any remedies of any type it may have against the CONTRACTOR for any breach of this Agreement by the CONTRACTOR, or for failure of the CONTRACTOR to perform work required of it by the COUNTY.

17. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

18. ATTORNEY'S FEES/COST OF SUIT AND VENUE

If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit. The parties agree that any suit pertaining to this Contract shall be filed in the Pacific County Superior Court.

1. **Disputes.** Differences between the CONTRACTOR and the COUNTY, arising under andd by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONTRACTOR shall be decided by the

COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S contract representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**

2. **Choice of Law, Jurisdiction and Venue.** This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

   Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only Superior Court in Pacific County, Washington.

3. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

   If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

   Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

19. CHANGES TO WORK

When required to do so by the COUNTY, the CONTRACTOR will make such changes and revisions in the work it submits under this Agreement as necessary to correct errors appearing therein and omissions, without additional compensation thereof. Should the COUNTY find it desirable for its own purpose to have previously satisfactorily completed work or parts thereof changed or revised, the CONTRACTOR will made such revisions as directed by the COUNTY. This work will be considered a Change in Work and will be paid for as herein provided under Section VI.

20. SOLICITATION OF CONTRACT

The CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this contract, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of making this Agreement. For breach or violation of this warranty, the COUNTY will have the right to annul this contract without further liability.

21. OTHER REQUIREMENTS

A. The CONTRACTOR will maintain accounts and records, including personnel, property, financial, and other records as may be deemed necessary by the COUNTY to ensure proper accounting for project funds and compliance with this Agreement. The CONTRACTOR will keep records that document the direct and indirect costs that are expended and reflect the services provided in the performance of this Agreement. The CONTRACTOR will keep the above records for a period of six (6) years after termination hereof, unless a longer retention period is required by law.

B. The CONTRACTOR will not disclose, nor permit disclosure of any information designated by the COUNTY as confidential, except to its employees and other subcontractors who need such information in order to properly execute the services of this Agreement.

22. ENTIRE AGREEMENT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations of understandings not incorporated herein are excluded. Further, any modification of the Agreement will be in writing and signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed this _____ day of _____, 2016.

BOARD OF COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

_____
Frank Wolfe, Chairman

_____
Lisa Ayers, Commissioner

_____
Steve Rogers, Commissioner

ROYAL HEIGHTS TRANSFER STATION

Larry Bale
_____
SIGNATURE

PRES.
_____
Title

ATTEST:

_____
Marie Guernsey
Clerk of the Board

EXHIBIT A

MATERIAL PROFILE SHEET

Materials to be collected during the two events will include:

- Refrigerators
- Freezers
- Washing Machines
- Dryers
- Dishwashers
- Hot Water Heaters
- Stove/Ovens (including microwave and toaster ovens)

All items must be of household origin.