

**INTERLOCAL AGREEMENT**  
**BETWEEN CLARK COUNTY AND \_\_\_\_\_**  
**FOR**  
**DECANT AND/OR STREET SWEEPINGS PROCESSING**  
**AND DISPOSAL SERVICES**

THIS IS AN INTERLOCAL AGREEMENT, entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, Washington, a political subdivision of the State of Washington, (the “County”) and The City of \_\_\_\_\_, hereinafter referred to as the “Agency”, a municipal corporation and charter Agency of the first class of the State of Washington, by which the County will allow utilization of the County’s Whatley Facility for the treatment and disposal of storm water liquids and solids, and/or street sweepings generated by the Agency.

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government services which each is by law authorized to perform; and

WHEREAS, the county has the resources available to provide such services to the Agency in a cost-effective manner; and

WHEREAS, for purposes and intent of this Agreement, the facility is defined as the upper-portion of the Whatley site which encompasses the main gate access to, and including the scale, wash rack, upper asphalt stockpile pad, Decant facility, stormwater systems and retention ponds.

WHEREAS, as set forth in the Charter for the Whatley Decant and Street Sweeping Recycling Facility Steering Committee; hereinafter referred to as Steering Committee, the county and partnership agencies within aforementioned committee shall serve in an advisory role to assist in decision making related to this facility; and

NOW, THEREFORE,

THE COUNTY AND AGENCY agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to provide for utilization of the County's Whatley Facility for treatment and disposal of storm water solids and liquids, and/or street sweepings generated by the Agency.

SECTION 2. TERM. The initial term of the Agreement, not including any extensions is a (5) five-year period from January 1, 2017 through December 31, 2022.

SECTION 3. TERMINATION. Either party may choose to terminate this Agreement by notifying the other party in writing 180 days prior to termination. The Agency agrees to reimburse the County for the cost of services provided, and includes any amounts owed related to import fees or costs of Agency-contributed portion of stockpiled materials, and furthermore; Agency shall be responsible for any remaining proportional projected costs of materials, equipment, hauling, tipping fees, taxes, labor, grinding, screening, chipping, etc., associated with movement of Agency-generated materials. The Agency hereby agrees to payment and/or reimbursement as expressed within the body of this agreement, and understands that the amount owed may be based on actual or projected costs of remaining materials as identified within this agreement. The County reserves the right to accept services in lieu of monetary funds if in the best interest of the site objectives and if approved in advance by the Steering Committee.

SECTION 4. EXTENSIONS. The term of this Agreement may be extended in two-year increments of subsequent years by mutual written agreement of both parties, up to maximum of four additional (4) years. The extension agreements shall be executed at least fifteen (15) days prior to the expiration of the contract. The County Manager is authorized to approve and execute such two-year extensions without further authorization from the Board of County Councilors.

SECTION 5. DEFINITION OF FACILITY AND PARTICIPANTS. The facility, located at 11203 N.E. 76<sup>th</sup> Street, Vancouver, Washington was designed and built to treat and store solids, and to treat, store and dispose of storm water liquids removed from storm water and drainage systems, and municipal street sweepings. The original cost of construction of the facility was borne by Clark County, and subsequent expansion occurred through contributions from the Washington State Department of Transportation (State) and the City of Vancouver (Agency) for their impacts related to sizing of the facility. Currently, Clark County, City of Vancouver, Washington State Department of Transportation, City of Battle Ground, City of Camas and City of Washougal compose a Steering Committee which serves in an advisory role to assist in decision making related to this facility.

SECTION 6. SCOPE OF SERVICES. The County will allow the Agency to bring storm water solids and liquids and/or street sweepings collected inside the Agency boundaries, for treatment and coordinated disposal as-defined within this agreement. The County will provide all labor and equipment necessary for the treatment of liquids and solids, and disposal of liquids from the decant and sweepings processes; and shall provide disposal services as outlined in Section 7B, as-necessary to maintain sufficient pad space related to solids treatment and storage areas on the solids pad. The Agency hereby agrees that necessary pad storage space shall be as-determined by the County, with the understanding that pad space for storage and treatment of solids material shall take precedent over any implied or intended cost-savings related to a local reuse event. The Agency also hereby acknowledges that a determination to move solids based on aforementioned storage space may result in the Agency's solids disposal costs increasing significantly higher than costs which are dependent upon participation from the Agency during reuse/disposal haul-out events described in Section 7B.

SECTION 7. COST OF SERVICES – GENERAL. Costs will be based per weight of each imported load, and shall be derived from the sum of separate, described herein operations for accounting and billing purposes. The first operation; liquids and treatment, covers overall decant facility operations, and includes daily operations, liquid treatment, testing, maintenance, associated stormwater facilities, and handling of solids related to treatment such as solids movement from decant or street sweeping materials, pile separation and turning. The second service is defined by the solids that remain following the liquid and treatment service, which include screening, testing, loading, transporting, overage disposal, various tipping-related fees and equipment related to re-use/disposal sites such as excavators/loaders needed for material handling, as well as other on-site and/or reuse/disposal site requirements or upgrades, services such as planting operations or site improvements. The Agency understands that the cost of some of these aforementioned services is highly subject to Agency participation during partnership supported reuse projects of solids materials, and may fluctuate significantly annually.

SECTION 7A. COSTS FOR LIQUIDS AND TREATMENT. The cost of liquids and treatment services under this Agreement are established by the County on an annual basis, and based on the projected budget amount over each biennium and the quantity of imported materials from the previous year; unless, at the discretion of the County, there is found to be a more suitable accounting of imported material costs. These costs shall be defined in Attachment A, incorporated herein by reference, and attached. Costs will be based on the budgeted data, tonnages of decant and sweepings material brought into the facility, equipment, upgrades and/or repairs, and any uncollected costs from previous year(s), including costs from redirection of solids to the landfill site or any other less cost-effective options than local reuse.

Liquids and treatment services reporting category costs do not include costs specific to the lower pit area or solids disposal/reuse. The lower pit area is designated only for Clark County Public Works Operations use, and Clark County Public Works will be responsible for any and all costs and

fees associated with the lower pit, including operations, maintenance, permitting, etc., and any other items related to requirements, needs or projects that occur which are exclusive to Clark County.

SECTION 7B. FEES FOR SOLIDS. Fees of solids-related services under this Agreement are based on scale weights of imported material, an estimated level of decomposition and drying of material, and remaining solids. To achieve consistency for all partnership agencies, each agency will pay an annually determined amount for the type and weight of material they bring in to the site, which covers anticipated costs for disposal during a local reuse event. Each agency is responsible for payment of their respective portion of the solids they have imported onto the site.

The Agency understands that participation in local reuse events is critical to keeping costs and fees low for all partnership agencies, and participation is preferred but not mandatory. The Agency hereby understands that although not mandatory; significant non-participation causes overall cost and fee increases to other partnership agencies. The burden of significant non-participation should not be placed on other partnership agencies, and is subject to a separate, proportionally-determined payment exclusive to the non-participating agency with a majority vote from the Steering Committee. In the event of a majority vote of significant non-participation, costs shall be billed to the Agency based on the Agencies percentage-based proportion of material(s) brought in to Whatley.

The Agency understands that fees per wet ton generally vary annually due to overall quality of material, regulator directive, storage pad space restraints, hauling to a landfill, and all other disposal, tipping, tax, overhead, or any other costs or savings subject to variation based on internal or external sources, agreements and/or contracts.

The fees per wet ton (Attachment A) will be annually adjusted, and for disclosure purposes of this Agreement, the Agency and County hereby recognizes and agrees that:

1. There is currently no reserve fee for major maintenance projects, as these projects will be determined by the Steering Committee on an annual basis, and the overall fees will be distributed amongst all partnership agencies. The County reserves the

right to create a reserve fund if needed during the scope or extended scope of this agreement, with approval through a majority vote of the Steering Committee.

2. A program overhead charge is included on all imported solids, and includes costs for program administration and division support. Changes will be updated annually on Attachment A.
3. Solid waste collection tax, currently 3.6%, is included in the import fee for overage material. This tax applies to materials that do not get reused, including overage and solids that are transported to the dump per WAC 458-20-250. Changes to anticipated solids waste collection tax, including tax rate and/or changes in quantity of material to be taxed will be reflected on Attachment A.

SECTION 8. BILLING METHOD AND PROCESS. Per wet ton fees based on type of material imported to the facility will be charged by the County to the Agency on a monthly basis. The invoice will identify the dates, type of material and weight of the solid material delivered, with the amount owed during that billing period.

Import records will be taken directly from Whatley scale documentation, input into an electronic format by County staff, then sent to the County's Accounting Department for processing and formal billing to the Agency. The County Accounting Department will send billings to the Agency's Finance office for payment and will simultaneously send an informational copy of the billing to the Agency. Payment by the Agency shall be due within thirty days after issuance of the bill. Payments that are not paid within the allotted time periods shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at a County set interest rate, which is currently one percent (1%) per month.

In the event of dispute due to lack of, or illegible information on the scale documentation, the County shall take an average of the most previous three (3) loads of the Agencies similar type of material with completed scale data, and annotate through supporting documentation and/or directly

on invoice that an average was applied for billing; this average will be utilized until complete information is available.

SECTION 9. CONTRIBUTIONS AND AGENCY PAYMENT. The Agency may submit invoices for services or improvements provided and agreed upon by Clark County and/or the Steering Committee for any portion that is reimbursable through the intent of this agreement. The County, with any requested guidance from the Steering Committee shall consider all items and/or services on an individual agency basis, and reserves the right to accept or deny payment/credit for any item or service that is not conducive to the intent of this agreement and/or the overall benefit to the Whatley Facility or members. Each agency must provide invoices to County within 60 days of each solids disposal and/or local reuse project completion. Payment may be subject to the approval of Steering Committee if the contribution was not pre-authorized. Reimbursable services or improvements would include items such as the following not all-inclusive examples:

1. Hourly cost and total quantity of hours of labor provided by the Agency
2. Any vehicles, machinery or rentals costs provided by the Agency
3. Any materials (including ground cover, vegetation, herbicides, etc.) associated with loading, disposal or application of Whatley solids.
4. Any other items or services that are provided which are determined as desirable by the Steering Committee for the general purposes of the overall site or individual project provided the County pre-authorizes the aforementioned items or services prior to the agency commencing said items or services.

SECTION 10. COMPLIANCE TO OPERATING PROCEDURES. The Agency will be required to follow the terms and conditions outlined in the Clark County Public Works Decent Facility Standard Operations and Procedures Manual, incorporated by reference and available to all partnership agencies.

SECTION 11. ADMINISTRATION/COMMUNICATIONS. Contract managers designated by the County Administrator and Agency Manager shall administer this Agreement. Contract managers shall monitor service level and budget provisions of this Agreement. The County and Agency contract managers shall review service levels, service delivery, and costs on an annual basis. The contract managers shall, during the interim, communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

SECTION 12. DISPUTE RESOLUTION. In the event of a dispute between the County and Agency regarding the delivery of services under this Agreement, which cannot be resolved by their respective designated contract managers, the Clark County Administrator and the Agency Manager or their designated representatives shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the Clark County Board of Commissioners. The decision of the County Board and the Agency Manager regarding the dispute shall be final as between the parties.

Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the County Board and the Agency Manager may be submitted to mediation and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 13. INDEPENDENT CONTRACTOR. The County is and shall at all times be deemed to be an independent contractor in the provision of the services set forth in this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the County and Agency or between any of the County's or Agency's employees. The County shall retain all authority for provision of services, standards of performance, discipline



and control of personnel, and other matters incident to the performance of services by the County pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the Agency or any employee of the Agency an employee of the County for any purpose, including but not limited to, for withholding taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

#### SECTION 14. HOLD HARMLESS/INDEMNIFICATION.

a. COUNTY RESPONSIBILITY. The County agrees to indemnify, defend, save and hold harmless the Agency, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind of nature, arising out of, or in connection with, or incident to, the performance of services by the County pursuant to this Agreement. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Agency; the Agency retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the Agency by an employee of the County or subcontractor or agent of the County, even if the County is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW.

b. AGENCY RESPONSIBILITY. The Agency agrees to indemnify, defend save and hold harmless the County, its officials, employees, and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind of nature, arising out of, or in connection with, or incident to, the provision of services by the Agency pursuant to this Agreement.

In the event that any suit bases on such a claim, demand, loss, damage, cost, or cause of action is brought against the Agency, the County retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the County by an employee of the Agency or subcontractor or agent of the Agency, even if the Agency is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW.

c. ATTORNEYS FEES AND COSTS. All parties shall bear their own costs of enforcing the rights and responsibilities under the contract.

SECTION 15. ASSIGNMENT/SUBCONTRACTING. Neither party shall transfer or assign, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other. The County shall not subcontract for the provision of any services it is to provide the Agency under this Agreement without the prior written consent of the Agency.

SECTION 16. NO THIRD PARTY BENEFICIARY. The County does not intend by this Agreement to assume any contractual obligations to anyone other than the Agency. The Agency does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and Agency do not intend there be any third-party beneficiary to this Agreement.

SECTION 17. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the Agency:

CITY OF \_\_\_\_\_  
\_\_\_\_\_, Washington, \_\_\_\_\_  
Attention: \_\_\_\_\_

To the County:

CLARK COUNTY PUBLIC WORKS  
4700 NE 78<sup>th</sup> Street  
Vancouver, Washington 98665  
Attention: Safety and Asset Manager

The name and address to which notices shall be directed may be changed by either the County or Agency giving the other notice of such change as provided in this section.

SECTION 18. WAIVER. No waiver by either party of any term or condition of this Agreement incorporated in the Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.

SECTION 19. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 2 (Term) and 2 (Extensions). Its method of termination is set forth in Section 3. Its manner of financing and of establishing and maintaining a budget therefore is described in Sections 6 (Scope of Service) and 7 (Cost of Services). No property shall be acquired pursuant to this Agreement, which will need to be disposed of upon partial or complete termination of this Agreement.

SECTION 20. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

SECTION 21. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be

valid unless made in writing and formally approved and executed by the duly authorized agents of both parties, provided that pursuant to Sections 4 and 5, respectively, the County Administrator or designated agent may approve up to two (2), two-year extensions of this Agreement and additional compensation to the County for additional service hours without further approval of the Board of Commissioners.

SECTION 22. DOCUMENT EXECUTION AND FILING. The County and Agency agree that there shall be four (4) signed originals of this Agreement procured and distributed for signature by the necessary officials of the County and Agency. Upon execution, the executed originals of this Agreement shall be returned to the contract manager who shall file copies of the Agreement with the Agency Clerk, the Clark County Auditor, and the Washington State Secretary of State. Upon receipt by the Clark County Auditor of the signed originals, each such signed original shall constitute an agreement binding upon both County and Agency.

SECTION 23. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

SECTION 24. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the County and Agency have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be in effect as of the First day of January, 2017.

FOR CLARK COUNTY, WASHINGTON,  
a subdivision of the State of Washington

\_\_\_\_\_  
Mark McCauley,  
County Manager

Approved As To Form Only:  
ANTHONY F. GOLIK  
*Prosecuting Attorney*

\_\_\_\_\_  
Deputy Civil Prosecutor

FOR CITY OF \_\_\_\_\_

\_\_\_\_\_  
By

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Approved As To Form Only:

\_\_\_\_\_  
By  
City Attorney