

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works, Road Maintenance & Operations

DATE: March 10, 2020

REQUESTED ACTION: Authorize the County Manager to execute agreement with the Columbia Resources Company, L.P. for solid waste transportation, disposal and alternate daily cover (ADC) management services.

Consent Hearing County Manager

BACKGROUND

Clark County operates the Whatley facility, a permitted solid waste facility which functions as a processing and loading area for road maintenance-specific materials generated by the County and other participating municipalities. These materials include screening debris, street sweepings, decant solids, and soils from ditching, shouldering, and swale maintenance that are not approved by regulators for local use and must go to an approved landfill for disposal or use as alternate daily cover.

The County has an existing agreement with Columbia Resource Company, L.P. (CRC Agreement) regarding solid waste recycling, transfer, transport, and out-of-county disposal dated January 1, 2006. This new contract for the transport and disposal of the Whatley facility materials will run concurrently with the CRC Agreement with a first term ending on December 31, 2021, with the option to extend the contract to December 31, 2026.

Since Whatley facility materials transport and disposal services provided by Columbia Resource Company do not use the Solid Waste transfer center or transport barges and the material may be utilized for alternate daily cover at the landfill, we receive a substantially lower rate for these services. Revenue is received by the County through fees established for the non-County users of the Whatley facility. These fees, in conjunction with County budget for the County portion of the site use, provide the funding for this new contract.

COUNCIL POLICY IMPLICATIONS

There are no policy changes or implications associated with this agreement.

ADMINISTRATIVE POLICY IMPLICATIONS

There are no policy changes or implications associated with this agreement.

COMMUNITY OUTREACH

A Steering Committee composed of multiple public agencies associated with Whatley operations is aware and approves of the intent and purposes related to this agreement.

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
	X	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	X	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

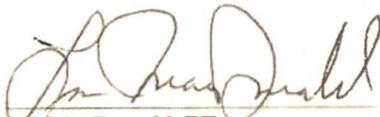
BUDGET DETAILS

Local Fund Dollar Amount	Funded in whole by Import Fees
Grant Fund Dollar Amount	N/A
Account	Road fund
Company Name	Columbia Resources Company, LLC

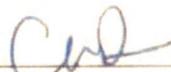
DISTRIBUTION:

Council staff will post all staff reports to the web. <https://www.clark.wa.gov/council-meetings>

ATTACHMENTS: (1) Solid Waste Transportation, Disposal, and ADC Management Agreement


 Les MacDonal, PE
 Public Works Deputy Director


 Ahmad Qayoumi, PE
 Public Works Director/County Engineer

for 
 Cherie Sabug
 Interim Finance Division Manager

Primary Staff Contact: Gregg Ganson, ext. 1682

APPROVED: 
 CLARK COUNTY, WASHINGTON
 CLARK COUNTY COUNCIL

DATE: March 10, 2020

SR# 638-20



SOLID WASTE TRANSPORTATION, DISPOSAL AND ADC MANAGEMENT AGREEMENT

THIS SOLID WASTE TRANSPORTATION, DISPOSAL AND ADC MANAGEMENT AGREEMENT (this "Agreement"), made and entered into as of March 10, 2020, by and between COLUMBIA RESOURCE CO., L.P., , hereinafter referred to as "Contractor," and CLARK COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "Customer."

RECITALS

- A. Customer desires to obtain from Contractor environmentally sound solid waste transportation, disposal and ADC (as defined below) management services for non-hazardous street sweepings, decanted solids and other solids and soil-related materials generated by multiple public agencies and stored and/or treated at the Collection Site (as hereinafter defined below).
- B. Contractor Columbia Resource Co., L.P., a wholly owned subsidiary of Waste Connections US, Inc., has a current contract with Customer to provide transportation, recycling, transfer station and disposal services.
- C. Contractor is the owner and operator of a solid waste disposal facility in Wasco County, Oregon, known as the Wasco County Landfill (the "Designated Disposal Site"), and holds all required permits, including all permits required by the Oregon Department of Environmental Quality (ORDEQ).
- D. Wasco County Landfill is identified as a Designated Disposal Site in the Customer's approved Comprehensive Solid Waste Management Plan.
- E. Contractor is capable of providing for the transportation of Acceptable Waste; as-defined below, from the Collection Site to the Designated Disposal Site, which transportation service may, at Contractor's option, be provided by means of a subcontract entered into by Contractor with a qualified third party.
- F. Contractor and Customer wish to enter into this Agreement for the transportation by Contractor, or its subcontractor, of Acceptable Waste from the Collection Site, and for the disposal and/or management as ADC of such Acceptable Waste at the Disposal Site using transportation and disposal methods permitted under the laws and regulations of local, state and federal governments.
- G. This Agreement sets forth the terms and conditions of the arrangement between Customer and Contractor with respect to such transportation, disposal and/or management as ADC of such Acceptable Waste.

NOW THEREFORE, under the terms and conditions set forth herein, Contractor and Customer hereby enter into this Agreement:

DEFINITIONS

- A. 2006 CRC Contract means the existing contract regarding solid waste recycling, transfer, transport and out-of-county disposal between Customer and Columbia Resource Company, L.P.
- B. Acceptable Waste means non-hazardous Special Waste that has been approved for disposal or Alternate Daily Cover, as defined below, management by Contractor and which, in compliance with governmental licenses and permits in effect, may be disposed and/or managed as Alternate Daily Cover at the Disposal Site; provided, however, for the avoidance of doubt, such term explicitly excludes Unacceptable Waste.
- C. Alternate Daily Cover ("ADC") means waste materials that are approved by Oregon Department of Environmental Quality as a replacement for soils required to be used at the Disposal Site at the end of each day.
- D. Collection Site means the Whatley Decant Facility in Clark County, Washington. The parties reserve the right to add other collection sites to this agreement, provided other site(s) is/are mutually agreed by both Contractor and Customer.
- E. Contractor means Columbia Resource Company, L.P.
- F. Customer means Clark County.
- G. Designated Disposal Site means Wasco County Landfill, Inc.
- H. Effective Date means the date of formal action by the Customer accepting the agreement.
- I. Effective Anniversary Date means the yearly anniversary, same month and day, of the Effective Date.
- J. Electronically Transmitted means any transmission communication hereunder by electronic means, including but not limited to facsimile transmission, e-mail or other electronic means of transmitted documents.
- K. Force Majeure means acts of God, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, labor disturbances, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, equipment or material shortages, or other similar causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the party whose ability to perform under this Agreement is impaired or prevented by the Force Majeure event.

- L. Free Liquid means liquid in excess of twenty-five (25) gallons per contained load of waste which readily separates from the solid portions of such waste on delivery to the Disposal Site under ambient temperature and pressure; i.e., liquid in the waste load that causes the waste to fail the "paint filter test" prescribed by the Environmental Protection Agency in its "Method 9095".
- M. Hazardous Waste shall have the meaning set forth in Oregon Revised Statutes §466.005(7), or any successor thereto, and/or matter that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste" or "dangerous waste" pursuant to any state or federal law, including but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. 6901; et seq., and the regulations promulgated thereunder.
- N. Solid Waste shall have the meaning set forth in Oregon Revised Statutes §459.005(24), or any successor thereto; incidental Household Hazardous Wastes; or Small Quantity Generator Waste; Special Waste and all other acceptable solid waste that requires landfill disposal. The term "Solid Waste" shall not include Hazardous Waste or liquids of any kind.
- O. Special Waste for the purposes of this agreement means Solid Waste resulting from:
- a. municipal operations (i.e. street sweepings, eductor trucks and petroleum-contaminated soil from sources such as asphalt, leaves, small wood debris, vehicle fluids or garbage picked up by eductor trucks or sweepers, swales, shouldering, ditching, bank cutting, dig outs, storm water facilities, etc.)
 - b. dead animals under 200 pounds picked up by road crews, which requires handling or extraordinary management at the Disposal Site
 - c. Containerized ash, wire, bulk tanker waste, waste containing free liquids and other wastes that may be covered by a Special Waste Management Plan for the Disposal Site as approved by ORDEQ in accordance with the Disposal Site Permit or any other waste of a character that is significantly different from general mixed residential Solid Waste and that is produced by the commercial, industrial or agricultural operations of a single generator in sufficient quantities to be handled or disposed of by Contractor at the disposal site that may be pursuant to a specially negotiated contract with Customer and approved by Contractor.
- P. Suspicious Waste means waste which Contractor determines, or reasonably suspects may be or contains "Unacceptable Waste."
- Q. Transport and Tipping Fee This fee includes all labor costs, transport fees, state fees, taxes and disposal fees.
- R. Transport Vehicles means dump trucks and pup trailers suitable for hauling Acceptable Waste from Collection Site to Designated Disposal Site.

S. Unacceptable Waste means any and all waste:

1. the disposal of which at the Disposal Site would violate any applicable local, state, or federal laws, regulations, or orders, or conditions of the Designated Disposal Site's operating permit;
2. which constitutes Hazardous Waste;
3. which constitutes Special Waste without an approval in accordance with Contractor's Special Waste approval process;
4. which in Contractor's sole but reasonable discretion Contractor considers to be unacceptable; or
5. containing Free Liquid without an approved Special Waste Application.

T. Uncontrollable Circumstances means a Force Majeure event or a change of local law, state or federal law or regulation, which substantially affects the operating or capital costs of the Customer or the Designated Disposal Site.

AGREEMENTS

In consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Acceptable Waste Covered by this Agreement; Loading, Transportation, Disposal and ADC Management of Acceptable Waste. During the term of this Agreement and subject to the terms and provisions hereof, Customer shall load or cause to be loaded all Acceptable Waste generated at the Collection Site that is not being stored for retreatment, reuse or utilization as sub-grade fill or other regulatory approved locally sustainable purposes. Transport Vehicles shall be made available by Contractor at the Collection Site, and Contractor shall transport or cause to be transported all Acceptable Waste so loaded into Transport Vehicles from the Collection Site to the Designated Disposal Site and disposed and/or managed as ADC at the Designated Disposal Site. Customer and Contractor shall each perform their respective obligations hereunder using methods of loading, collection, transportation, handling and disposal permitted under the laws and regulations of local, state and federal government.

1.1 Other Material Uses. Collection Site operates under guidance of a multiagency steering committee that may or may not elect to store material for aforementioned purposes. The Contractor understands and accepts that the Customer is under no obligation to provide any amount of Acceptable Waste to Contractor. Acceptable Waste that is not stored for retreatment, reuse or utilization as sub-grade fill or other regulatory approved locally sustainable purposes shall be disposed of by Contractor pursuant to the terms of this Agreement. Contractor also understands that Acceptable Waste may or may not be made available to Contractor, at the sole discretion of Customer, and that no payment shall be due to Contractor for any services outside of what is effectively performed by Contractor under this Agreement.

1.2 Transportation, Disposal and ADC Management of Acceptable Waste. During the term of this Agreement and in accordance with the terms and provisions hereof, Contractor shall make, or cause to be made, available, at the Collection Site within Clark County, Washington, as Customer may specify, Transport Vehicles. Contractor shall provide the transportation services described above itself or through subcontracts entered into by Contractor. Contractor shall cause all Transport Vehicles loaded with Acceptable Waste by Customer, as provided below, to be transported to Designated Disposal Site and Acceptable Waste loaded therein to be disposed and/or managed as ADC at the Designated Disposal Site, but subject to Contractor's right to inspect and reject Unacceptable Waste and Suspicious Waste as provided herein. Contractor shall be responsible for all costs of securing and operating the Transport Vehicles required hereunder. Contractor shall only be obligated to transport Acceptable Waste from the Collection Site to the Disposal Site.

1.3 Loading of Transport Vehicles. Customer, at its sole cost and expense, shall cause each Transport Vehicle to be properly and lawfully loaded at the Collection Site with no more than that amount of Acceptable Waste that can be legally hauled over the streets, roads and highways to be used by Contractor in transporting such Acceptable Waste. Except as otherwise agreed in writing by Customer and Contractor, Customer shall make the Collection Site available to Contractor and cause Transport Vehicles to be loaded with Acceptable Waste from 7:00a.m. to 11:00 a.m., Monday through Thursday of each week, and every other Friday, excluding holidays and days with inclement weather as Customer scheduled staff shifts allow. Other times may be scheduled, later in the aforementioned days, until 2:30 p.m., with a 48-hour (business days) notice prior to loading.

2. Right to Inspect, Reject. Contractor shall not be required to receive, accept or dispose of any Unacceptable Waste. Contractor reserves the right to inspect, at the Designated Disposal Site, any and all waste and other material delivered to the Designated Disposal Site hereunder for proposed treatment or disposal and may reject any Unacceptable Waste or such Suspicious Waste that Contractor reasonably and in good faith believes would, upon disposal, not be consistent with Contractor's special waste management plan, be a violation of local, state or federal law or regulations or in its reasonable opinion would present a significant risk to human health or the environment or create or expose Contractor or Customer or any Affiliate to potential liability.

3. Term of Agreement and Extension Period(s). Upon date of execution of this Agreement, the term and extension period(s) of this Agreement shall run concurrently with the remaining term and extension period(s) of the 2006 CRC Contract, first executed and dated April 11, 1990, and amended and restated on February 27, 2006, then notarized on March 9, 2006. The 2006 CRC Contract is currently active through December 31, 2021 and may be extended through December 31, 2026.

4. Compensation, Transport, Taxes and Fees.

4.1 Compensation, Transport and Tipping Fee. For all Acceptable Waste that is designated by Customer and transported and disposed by Contractor, Customer shall pay to Contractor a transportation, disposal and/or management fee of Thirty-One and 00/100 Dollars

(\$31.00) per ton. This fee includes all labor costs, transport fees, state fees, taxes and disposal fees.

4.2 Customer Cap. An initial agreement cap shall be set based on the Customer's annual budget process to ensure funds are available within Customer's internal finance system. Contractor is aware that payments over the capped amount may be subject to delay. Customer is aware that payment delays are subject to stipulations within this agreement. Customer will make every reasonable effort to ensure the cap amount is not reached and reserves the right to raise this cap amount without Contractor approval if determined necessary by Customer.

4.3 Consumer Price Index Adjustment. Beginning on the first anniversary of the Effective Date and continuing on every subsequent anniversary of the Effective Date thereafter for the term of this Agreement, the per ton Transport and Tipping Fee may be increased or decreased with mutual consent of both parties on January 1 of each year up to the rate of 100% of the percentage point increase or decrease in the Consumer Price Index for the most recent twelve (12) month period for which such index is available. The Consumer Price Index, or "CPI," means the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Portland-Vancouver Metropolitan Area, as prepared by the United States Department of Labor, Bureau of Labor Statistics ("BLS"), or its successor. If BLS designates an index with a new title or code number or table number as being the continuation of the index cited above, the new index will be used. Otherwise, the parties shall agree upon a new index or index substitution.

4.4 Governmental Charges. Transport and Tipping Fees owing hereunder may be surcharged or changed by governmental entities or other entities beyond the control of the parties. In the event the Transport and Tipping Fees charged to Customer are surcharged or increased by any mechanism by any governmental entity or otherwise, the parties shall renegotiate the Transport and Tipping Fee in good faith.

4.5 Payment. At the Designated Disposal Site, Contractor shall weigh all Transport Vehicles loaded at the Collection Site as provided herein to determine the number of tons of Acceptable Waste transported and disposed of hereunder each month. On or before the 10th day of each month, Contractor shall submit an invoice to Customer showing the volume and types of tons of Acceptable Waste disposed, and/or managed as ADC at the Designated Disposal Site in the preceding month and the amounts owed by Customer to Contractor hereunder for such month. Customer shall pay Contractor the full amount of the invoice within thirty (30) days after the date of such invoice. In the event of a dispute as to services rendered or payment owed, Customer shall pay the undisputed portion of each invoice and the parties shall resolve the dispute as provided in Section 10. Payments of undisputed amounts, after the 30-day period, shall be subject to a fee of one percent (1%) monthly of the invoice amount. Contractor shall maintain records of the types and weight or volume of Customer's Acceptable Waste disposed and/or managed as ADC at the Disposal Site and the charges therefore and shall provide copies of such records to Customer with invoices.

5. Allocation of Risk/Uncontrollable Circumstances.

5.1 Uncontrollable Circumstances. Provided that the requirements of this Section 5 are met, neither party hereto shall be considered in default in the performance of its obligations

under this Agreement to the extent that such performance is prevented or impaired by the occurrence of an event of Uncontrollable Circumstances. Contractor and Customer agree that no other events shall excuse nonperformance of either party of its obligations under this Agreement and no events within the control of the parties, including breakage or accidents to machinery, equipment or other facilities, shall excuse nonperformance of the parties' obligations under this Agreement.

5.2 Notice of Uncontrollable Circumstances: Suspension of Performance. If, as a result of an event of Uncontrollable Circumstances, either Contractor or Customer is wholly or partially unable to meet its obligations under this Agreement, then the affected party shall give the other party prompt notice of such event, describing it in reasonable detail. The obligations under this Agreement of the party giving the notice of the event of Uncontrollable Circumstances shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists. The affected party shall use due diligence to resume performance at the earliest practicable time and shall notify the other party when the effect of the event has ceased. Notwithstanding anything to the contrary in this Agreement, if an event of Uncontrollable Circumstances continues for sixty (60) consecutive days, either party may terminate this Agreement with five (5) days' notice to the other party.

5.3 Right to Resolve Certain Force Majeure Events. Notwithstanding anything to the contrary expressed or implied herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances, and litigation, including appeals, shall be entirely within the discretion of the particular party involved therein, and such party may make settlement thereof at such time, and on such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive such party of the benefit of this Section 5.

6. Compliance with Laws: Limitations on Access.

6.1 Compliance with Laws. During the term of this Agreement, Contractor and Customer and their respective Affiliates and subcontractors shall each fully comply with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations that pertain to the handling, loading, storage, transportation, treatment, disposal and management as ADC of Solid Waste and operation of the Designated Disposal Site and the performance of the obligations and agreements of Contractor and Customer hereunder. Contractor and/or Customer shall be deemed to be in compliance with laws, ordinances, rules and regulations if they are in timely compliance with any regulatory order, including but not limited to any preliminary assessment, remedial investigation, remedial action or corrective action or any legal appeal or review of such orders or requirements. Contractor agrees to give Customer written notice of any noncompliance or notice of violation with respect to Contractor's operating permit for the Designated Disposal Site or of any action commenced in any court of competent jurisdiction involving the operations conducted by Contractor at the Designated Disposal Site.

6.2 Limitations on Access. Both Contractor and Customer may refuse the right of access to their respective Disposal or Collection Site to the other party. In addition, either party may suspend the performance of its obligations hereunder in the event the other party is in

breach of their duties or obligations under Agreement, or if more than forty-five (45) days delinquent in the payment of all or any undisputed portion of Fees owed by Customer.

7. Scope of Operation. Contractor shall be responsible for the transportation from the Collection Site to the Designated Disposal Site of Transport Vehicles loaded by Customer; and Contractor shall also be responsible for the management, storage, treatment, use, processing and final disposal of all Acceptable Waste received at the Designated Disposal Site. Contractor shall also be responsible to comply with the state and federal requirements to fund and implement closure and post-closure maintenance of the Designated Disposal Site until such time as final closure and post closure of the Disposal Site is certified complete by ORDEQ or other successor regulatory agency with jurisdiction. In performing such functions, Contractor shall provide sufficient personnel, equipment and utilities for operation of the Disposal Site in accordance with this Agreement and for closure and post-closure maintenance in accordance with state and federal law.

8. Representations and Warrantics.

8.1 Customer. Customer represents and warrants that: (a) all of the waste loaded onto Transport Vehicles by Customer shall conform to the definition of Acceptable Waste set forth in this Agreement; (b) Customer shall, and shall cause its agents, subcontractors, officers or employees which it contracts, to handle and load the Acceptable 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 (c) Customer and each of its agents, subcontractors, officers or employees has, or will obtain by the Effective Date, all required power and authority (including from any governmental entity pursuant to any applicable franchise agreement) to enter into and be bound by the terms and conditions of this Agreement and to carry out Customer's obligations hereunder.

8.2 Contractor. Contractor represents and warrants that (a) it shall, or shall cause its subcontractors to, transport and dispose of the Acceptable Waste loaded onto Transport Vehicles hereunder in a safe and workmanlike manner in full compliance with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations, and (b) it shall, and shall cause its Affiliates and any other non-Affiliate with which it contracts, to transport, unload, dispose and/or manage as ADC the Acceptable 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 (c) it has all requisite power (corporate or otherwise) to enter into and be bound by the terms and conditions of this Agreement and to carry out its obligations hereunder.

9. Insurance. During the term of this Agreement, Customer and Contractor shall each provide and maintain in force, at its respective expense, insurance coverage that meets the minimum limits set forth on Exhibit A, which is attached hereto and made a part hereof. Customer and Contractor shall provide the other with a certificate of insurance on a standard ACORD form evidencing the coverage required above prior to the disposal of Acceptable Waste under this Agreement. Every such certificate shall state that the policies of insurance described therein have been issued and are in force on the date of execution of the certificate.

10. Indemnities.

10.1 Contractor Indemnity. Contractor shall defend, indemnify and hold harmless Customer and its Affiliates, their employees, officers, owners, directors, agents and subcontractors, from and against any and all claims, demand, lawsuits, administrative proceedings, liabilities, penalties, fines, forfeitures, causes of action, suits, judgments and costs and expenses incidental thereto, including reasonable attorneys' fees and expenses whether incurred at trial, on appeal, in negotiations or otherwise related to the resolution of such matter (collectively, "Damages") which any or all of them may hereafter suffer, incur, be responsible for as a result of bodily injury, property damage, or contamination of or adverse effects on the environment, to the extent caused by, or arising from or in connection with the breach of any representations and warranties of Contractor set forth in this Agreement, or any negligent or intentional actions or omissions or willful misconduct of Contractor, its employees, officers, owners, directors, agents or subcontractors in the performance of its obligations under this Agreement or in the operation, closure or post-closure of the Designated Disposal Site. The failure of Contractor to discover Unacceptable Waste delivered to the Designated Disposal Site by Customer or its Affiliates shall not constitute a breach by Contractor of this Agreement, or any representation or warranty made by Contractor herein. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent or intentional actions or omissions or willful misconduct of Customer and its Affiliates and their employees, officers, owners, directors, agents or subcontractors.

10.2 Customer Indemnity. Customer shall defend, indemnify and hold harmless Contractor, its employees, officers, owners, directors, agents and subcontractors, from and against any and all Damages which any or all of them may hereafter suffer, incur, be responsible for as a result of bodily injury, property damage, contamination of or adverse effects on the environment, or other loss, to the extent caused by, or arising from or in connection with the breach of any obligations, representations or warranties of Customer set forth in this Agreement, or the use or operation of any Transport Vehicle by, or any negligent or intentional actions or omissions or willful misconduct of, Customer, its Affiliates or their agents, employees, officers, owners, directors, or subcontractors in the performance of Customer's obligations under this Agreement, or the delivery by Customer or its Affiliates of Unacceptable Waste to the Disposal Site (including, without limitation, the delivery to the Designated Disposal Site by Customer or its Affiliates of Unacceptable Waste that is not discovered by Contractor and the mistaken acceptance thereof by Contractor). Such indemnity shall be limited to exclude Damages to the extent they arise as a result of: (a) any negligent or intentional actions or omissions or willful misconduct of Contractor or its employees, officers, owners, directors, agents or subcontractors; (b) the landfill gas arising from the operation of the Disposal Site; or (c) pollution, contamination or release of chemicals or other substances arising from the operation of the Designated Disposal Site but only to the extent such pollution, contamination or release does not result from Unacceptable Waste delivered to the Designated Disposal Site by Customer or its Affiliates (including, without limitation, Unacceptable Waste that is not discovered by Contractor).

10.3 Defense of Suit. In the event of any suit against any party indemnified under this Section (the "Indemnitee"), the indemnifying party (the "Indemnitor") shall appear and defend such suit provided that the Indemnitor is notified in a timely manner of the suit. The Indemnitee shall have the right to approve counsel chosen by the Indemnitor to litigate such suit which approval shall not be unreasonably withheld. In the event a dispute exists over whether a party is entitled to indemnification under this Section 10, each party shall defend itself until the dispute is

resolved and upon resolution of such a dispute, the prevailing party shall be entitled to indemnification for its reasonable attorney's fees and expenses whether incurred at trial, on appeal, in negotiations or otherwise related to the resolution of such matter.

10.4 Limitations. If any claims indemnified against under this Section 10 have the potential for coverage under any Insurance, then the indemnities set forth in this Agreement shall be limited as follows:

(a) The indemnities under this Section 10 shall apply only to the extent the amount of any indemnified claim exceeds all amounts collectable under any insurance of Indemnitor covering such claim. Before pursuing recovery under this indemnity, the Indemnitee shall exhaust all recovery available for such claim from Indemnitor's insurance.

(b) The Indemnitor shall not be obligated to pay for the defense of any claim or suit that any insurer of Indemnitor has a duty to defend. If no insurer of Indemnitor defends, then the Indemnitor shall, to the extent obligated to do so by this Agreement, pay for the defense, but shall be entitled to Indemnitor's insured's rights against all Indemnitor's insurers with a potential for coverage of such claim.

10.5 Payment. Once the Indemnitee has exhausted all recovery under all Indemnitor's insurance, the Indemnitor shall pay only the amount of the loss, if any that exceeds the total amount that all insurance has paid for the loss.

10.6 Insurance; Subrogation. Nothing in this Agreement shall constitute a waiver or relinquishment of any claims, which the parties may have against 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 insured for all reasonable costs and expenses, including attorneys' fees and expenses (whether incurred at trial, on appeal, in negotiations or otherwise related to the resolution of such matter), expended by it to seek recovery of sums from its insurers.

11. Default; Opportunity to Cure, Termination.

11.1 Events of Default. The following shall constitute events of default by either party under this Agreement:

- (a) breaches of any representations and warranties set forth in this Agreement;
- (b) defaults in the performance of any other material obligations under this Agreement, including, without limitation, noncompliance with laws and failure to maintain insurance;
- (c) seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession of, the operating equipment of the parties of such proportion as to impair their ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted in forty-eight (48) hours, excluding weekends and holidays; or

(d) filing of a voluntary petition for debt relief or the entry of a decree or order by a court in any involuntary case brought under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or the consent to the appointment of or the entry of a decree or order appointing or the taking of possession by a receiver, liquidator, assignee (other than as a party of a transfer of equipment no longer useful or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, or sequestrator (or similar official) of the parties' operating assets, or the making of any general assignment for the benefit of the parties' creditors, or the order for the winding up or liquidation of the affairs of the parties.

11.2 Opportunity to Cure, Termination. If at any time either party determines or becomes aware of an event of default by the other party, the non-defaulting party shall transmit a written notice to the other party as to the nature of such default. Unless the default involves the failure to pay any amounts due under this Agreement (for which the defaulting party shall have ten (10) days to cure such default, but such cure period shall not diminish or otherwise affect Customer's obligation to pay, or Contractor's right to receive, the late payment penalty provided for in Section 4.5 hereof), the defaulting party shall have thirty (30) days from the receipt of said notice to commence actions to cure said default and a reasonable period of time to cure. If the defaulting party fails to cure the default within a reasonable period of time (but in no event longer than sixty (60) consecutive days), the non-defaulting party, in addition to any other remedies it may have hereunder or at law or in equity, shall have the right to terminate this Agreement upon giving written notice.

12. Assignment: Successors and Assigns.

12.1 This Agreement shall be binding upon the successors and assigns of the parties hereto; provided, however, no assignment by a party hereunder shall be valid unless consented to in writing by the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. The party assigning this Agreement shall provide the other party with written notice and a true copy of the assignment. In the event the non-assigning party objects to the assignment, it shall specify the reasons therefore in writing within ten (10) days of notice of the assignment.

12.2 No assignment shall be valid and binding which endeavors to relieve the assigning party of any obligations to make payments hereunder which accrued prior to the date of assignment or to which the assignee does not affirmatively agree, in writing, to assume all obligations of the assignor under this Agreement.

13. Amendments. This Agreement may only be amended by a written agreement executed by Customer and Contractor.

14. Waiver. No waiver by either party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

15. Entire Agreement. This Agreement and any exhibits attached hereto and referenced herein shall represent the entire understanding between the parties and, unless set forth in this

Agreement, no representations, statements or agreements, unless agreed to by the parties in writing, shall modify, change, amend or otherwise affect the obligations undertaken in this Agreement.

16. Change in Law/Regulations. This Agreement is subject to all present and future valid laws and lawful orders of all regulatory bodies, except as otherwise provided herein. Should either of the parties, by force of any such law or regulation, at any time during the term hereof, be ordered or required to do any act relative to this Agreement which substantially impairs or materially changes the party's ability to perform under this Agreement, then the affected party shall notify the other party of this condition. Unless the parties agree in writing to continue this Agreement within thirty (30) days after the effective date of any such law, rule or order, then the Agreement shall terminate on the 31st day after the effective date of such law, rule or order. Nothing in this Agreement shall prohibit either party from obtaining or seeking to obtain modification or repeal of such law or regulation or restrict either party's right to legally contest the validity of such law or regulation. Neither party shall be considered in breach of this Agreement during such time as that party is contesting or appealing any notice of violation, ordinance, rule, regulation or law.

17. Confidentiality of Terms of Agreement. The terms and conditions of this Agreement (including without limitation any terms and conditions of this Agreement such as the disposal fees payable hereunder that may be set forth in any invoice, document or other communication provided hereunder) are subject to the Public Records Act (RCW 42.56 et seq) and are subject to disclosure without any redaction as required by statute and case law.

18. Severability. If any provision of this Agreement is declared invalid or unenforceable, then such portion shall be deemed to be severable from this Agreement and shall not affect the remainder hereof.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

20. Execution by Electronic Means. An Electronically Transmitted copy of this Agreement bearing copied signatures will act as an original. Original signatures will be provided as soon as practicable after execution.

21. Notices. All notices required or provided for under this Agreement shall be in writing and shall be effective if: (a) Electronically Transmitted; (b) delivered personally; or (c) sent by certified or registered mail with postage prepaid, or by overnight carrier; and addressed as follows:

If to Customer, addressed to:

Whatley Site Management
Clark County Public Works
4700 NE 78th Street
Vancouver, WA. 98665
Attention: Whatley Management
Fax number: 360-576-0525
E-mail: pubwks.eservice@clark.wa.gov

If to Contractor, address to:

Columbia Resource Co., L.P.
Attn: Pacific Northwest Regional Vice President
501 S.E. Columbia Shores Blvd., Suite 350
P.O. Box 61726
Vancouver, WA 98661

Attention: District Manager
Fax number: ~~360-695-5091~~
E-mail: dansl@wcnx.org

Wasco County Landfill, Inc.
2550 Steele Road
The Dalles, Oregon 97058

Attention: District Manager
Fax number: 541-296-6449
E-mail: wasco@skyride.com

and to the attorney for Contractor:

Waste Connections US, Inc.
Attn: Legal Department
3 Waterway Square Place
Suite 110
The Woodlands, Texas 77380
Phone: (832) 442-2200
Fax: (832) 442-2290

or to such other address as any party shall specify by written notice so given. Any notice sent by mail 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 shall be deemed given upon delivery by the carrier. Any notice or communication Electronically Transmitted shall be deemed given upon the confirmation by the sender of such transmission (which, in the case of an e-mail, shall be deemed to be confirmed if

the sender, subsequent to the sending of the same, does not receive an e-mail indicating that the transmitted e-mail has not been delivered).

22. Independent Contractor. Contractor shall always be an independent contractor and not an employee of the Customer and shall not be entitled to compensation or benefits of any kind, except as specifically provided herein.

23. Wage and Hour Compliance. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall always save Customer free, clear and harmless from all actions, claims, demands and expenses arising out of said act and the rules and regulations that are or may be promulgated in connection therewith.

24. Social Security and Other Taxes. The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by city, state or federal legislation that is currently enacted or may be enacted during the term of this agreement as to all persons employed by the Contractor in performance of the work pursuant to this Agreement and shall assume exclusive liability therefore, and meet all requirements thereunder, pursuant to any rules and regulations that are now and may be promulgated in connection therewith.

25. Equal Employment Opportunity: Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, ~~gender identity~~, sexual orientation, age, disability, marital status or national origin.

26. Public Records Act: Notwithstanding the provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the laws of the State of Washington, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist Customer in producing such records, within the time frames and parameters set forth in state law. Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify Customer by providing a copy of the request to Customer's Public Records Officer.

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

EXECUTED as of the day and year first written above.

Customer:

CLARK COUNTY, WASHINGTON

Contractor:

COLUMBIA COUNTY RESOURCE CO.,L.P.

By: 

Name: Shawn W. Hennessee

Title: County Manager

By: 

Name: DAN SCHOOLER

Title: REGION V.P.

Approved as to form only:

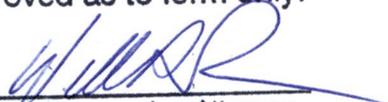
By: 
Deputy Prosecuting Attorney

EXHIBIT A

INSURANCE COVERAGE LIMITS

<u>Coverage</u>	<u>Limits of Liability</u>
1. Automobile Liability with broadened form pollution coverage, for all vehicles used in the performance of duties under this Agreement	\$ 2,000,000 minimum CSL per occurrence
2. Automobile Property Damage, for all vehicles used in the performance of duties under this Agreement.	\$ 2,000,000 minimum CSL per occurrence
3. Commercial General Liability	\$ 2,000,000 minimum CSL per occurrence
4. Employer's Liability	\$1,000,000 each accident \$1,000,000 disease \$1,000,000 each employee
5. Pollution Legal Liability	\$5,000,000 minimum CSL per incident
6. Workers' Compensation	Statutory as prescribed by state law
7. Excess / Umbrella Liability	\$5,000,000 in excess of 1. 2. 3. & 4. above
• All policies, except workers' compensation, will add the other party as an additional insured.	
• All policies will contain waivers of subrogation in favor of the other party.	
• All policies of each party shall be primary and non-contributory to any insurance policies carried by the other party, to the extent of such party's indemnification obligations hereunder.	
• All policies will be written on an occurrence form basis.	
• All insurance companies providing the policies herein shall be listed in the most recent edition of A.M. Best's insurance reports with a size category of VII or larger, and a rating classification of A- or better. These A.M. Best ratings are to be maintained throughout the Term of this Agreement.	

Agreement with Columbia Resources Company

Public Works

March 10, 2020



Whatley Overview

- **The County's Whatley facility is a solid waste facility which functions as a processing and loading area for road maintenance-specific materials**
 - These materials include debris, street sweepings, decant solids, and soils from ditching, shouldering, and swale maintenance
 - These materials are not approved by regulators for local use and must go to an approved landfill for disposal or to be used as alternate daily cover (ADC)



Agreement

- Clark County has an existing agreement with Columbia Resources Company, L.P. for solid waste recycling, transport, and out-of-county disposal
- This new contract will run concurrently with the current contract and will allow for the transport and disposal of Whatley Pit materials
- Contract is funded through import fees established for non-County users of Whatley Pit
- A Steering Committee composed of multiple public agencies associated with Whatley operations has reviewed and approves the intent and purposes of the agreement



Whatley – 11203 NE 76th Street

