

TG-150450-CT



WASTE MANAGEMENT

720 4th Ave, Suite 400
Kirkland WA 98033

March 11, 2015

Steven v. King
Executive Director & Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

**RE: Waste Management of Washington, Inc., Certificate No. G-237
Notice Contracting for Solid Waste Collection with City of Richland
La Pierre Annexation**

Dear Mr. King,

Pursuant to WAC 480-70-141(3), Waste Management of Washington, Inc. ("WMW") hereby advises the Commission that WMW has entered into the enclosed Solid Waste Collection Agreement (La Pierre Annexation) (the "Agreement") with the City of Richland, Washington (the "City"). Under Ordinance No. 26-14, dated October 7, 2014 (the "Ordinance"), and attached to the Agreement, the City annexed certain territory commonly referred to as the La Pierre Annexation (the "Annexed Territory"). Maps from the City of Richland of the Annexed Territory are attached to the Agreement. At the time of the annexation, WMW provided solid waste collection service in the Annexed Territory pursuant to WMW's Certificate No. G-237. WMW will continue to provide solid waste collection service under the terms of the Agreement within the Annexed Territory until December 31, 2024, unless extended or shortened, as provided therein.

If you have any questions about this notice, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Rostami", is written over a horizontal line.

Mindy Rostami
Senior Manager, Contract Compliance
Waste Management of Washington, Inc.

Enclosure

cc: Pete Rogalsky, Public Works Director, City of Richland

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REGIONS MANAGEMENT
2015 MAR 16 PM 2:06
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

**SOLID WASTE COLLECTION AGREEMENT
(Annexation Transition RCW 35.13.280)**

LaPierre Annexation

This SOLID WASTE COLLECTION AGREEMENT ("Agreement") is made and entered into between WASTE MANAGEMENT OF WASHINGTON, INC. ("WMW") and the CITY OF RICHLAND, WASHINGTON ("City"). The parties shall be collectively referred to herein as the "Parties" and individually as a "Party", unless specifically identified otherwise. This Agreement shall be effective upon the date that all Parties have executed this Agreement (the "Effective Date"), as evidenced by the signatures below. The Parties agree as follows.

RECITALS

WHEREAS by Ordinance No. 26-14, dated October 7, 2014 (the "Ordinance") and attached hereto as **Exhibit A**, the City has annexed certain territory identified in the Ordinance and commonly referred to as the LaPierre Annexation;

WHEREAS the LaPierre Annexation is referred to herein as the "Annexed Territory";

WHEREAS WMW holds Certificate No. G-237 issued by the Washington Utilities and Transportation Commission ("WUTC") for the collection of solid waste in certain areas in Washington State, including within Benton County and in the Annexed Territory;

WHEREAS Ed's Disposal, Inc. ("Ed's Disposal") holds Certificate No. G-110 issued by the WUTC for the collection of solid waste in certain areas in Washington State, including within Benton County and in the Annexed Territory;

WHEREAS under RCW 35.13.280, the WUTC regulates the collection of solid waste within the Annexed Territory until such time as the City notifies the WUTC, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020;

WHEREAS the City has given notice under RCW 35.13.280 to the WUTC and the City intends to undertake the collection of municipal solid waste ("MSW"), as defined in WAC 173-350-100, from residents and businesses within the Annexed Territory, and is therefore required by RCW 35.13.280 to grant to WMW a franchise for the collection of MSW in the Annexed Territory for a term of not less than SEVEN (7) years;

WHEREAS in addition to the requirement to grant to WMW a 7-year franchise for the collection of MSW in the Annexed Territory, RCW 35.13.280 also grants to WMW a right of action to recover any measurable damages resulting from the City's decision to contract for MSW collection or provide MSW collection itself;

WHEREAS the City and WMW agree to satisfy the requirements of RCW 35.13.280, including the requirement to grant a 7-year franchise and the waiver of any claims for measurable damages, by entering into this Agreement to grant to WMW the exclusive right (shared with Ed's Disposal) to collect MSW from residential and commercial customers within the Annexed Territory during the Transition Period (as defined herein);

WHEREAS the Parties wish to enter into this Agreement setting forth the terms and conditions governing WMW's MSW collection within the Annexed Territory during the Transition Period;

TERMS AND CONDITIONS

- 1. The "Transition Period".** The Parties agree that the "Transition Period" shall commence on the Effective Date and shall terminate on **December 31, 2024**, unless extended by written agreement of the Parties. The Parties agree and acknowledge that the Transition Period is longer than the 7-year franchise period required under RCW 35.13.280 in order to compensate WMW for any and all measurable damages WMW has incurred as a result of the annexation and cancellation of its MSW collection business within the Annexed Territory.
- 2. Grant of Exclusive Franchise.** Except with respect to Ed's Disposal (as discussed in Section 3 below), the City hereby grants to WMW the exclusive right and obligation to collect MSW from residential and commercial customers within the Annexed Territory during the Transition Period (hereinafter the "Collection Services"). During the Transition Period, the City agrees that, it shall not contract for Collection Services or provide Collection Services within the Annexed Territory.
- 3. Non-Exclusivity re Ed's Disposal, Inc.** Notwithstanding any other provision in this Agreement, the Parties agree that nothing in this Agreement, including the grant of an exclusive franchise for the Annexed Territory, shall interfere with the existing rights of Ed's Disposal under RCW 35.13.280 to provide Collection Services within the Annexed Territory.
- 4. Rates and Compensation.** WMW shall be compensated for the Collection Services hereunder by charging its residential and business customers within the Annexed Territory the same rates and charges authorized under the tariffs approved by the WUTC for WMW's customer's located within WMW's G-237 service territory in Benton County (the "WUTC Tariff"), subject to the following adjustments:
 - 4.1. WMW shall increase the rates and charges to include any taxes, fees, or charges applicable to WMW's Collection Services within the Annexed Territory that are not otherwise included within the WUTC Tariff; and
 - 4.2. WMW shall decrease the rates and charges to exclude any taxes, fees, or charges that are included in the WUTC Tariff, but are not applicable to WMW's Collection Services within the Annexed Territory.
- 5. Notification of Taxes, Fees, and Other Charges.** If, as a result of the City's annexation of the Annexed Territory, the City imposes any taxes, fees, or charges on WMW's Collection Services within the Annexed Territory, the City shall notify WMW of such taxes, fees, or other charges.
- 6. Revisions to WUTC Tariffs.** Nothing in this Agreement is intended to restrict or prohibit WMW from seeking approval from the WUTC for new and/or revised WUTC Tariffs applicable to MSW collection within its Certificate No. G-237 territory in Benton County. In the event that the WUTC approves revisions to WMW's WUTC Tariff, WMW shall adjust the rates and charges applicable to the Collection Services within the Annexed Territory.

7. Additional Services. If the City elects to offer additional solid waste collection services to residential and commercial customers within the Annexed Territory, the City shall notify WMW in writing of the additional services requested, and WMW shall have the right to provide such additional services during the Transition Period. If WMW elects to provide such additional services, WMW shall notify the City in writing within THIRTY (30) days of receipt of the City's notice and shall offer such services either

7.1. consistent with the rates under its WUTC Tariff; or

7.2. if WMW does not offer similar services under its WUTC Tariff, pursuant to written agreement between the Parties.

If WMW either (a) notifies the City in writing of its decision not to provide such additional services, or (b) fails to notify the City in writing within THIRTY (30) days of receipt of the City's notice, the City may contract for those services or provide those services itself within the Annexed Territory

8. Billing. WMW shall be responsible for billing its residential and commercial customers within the Annexed Territory for the Collection Services. WMW shall bill its customer consistent with the WUTC procedures in WAC 480-70-396 through WAC 480-70-416.

9. Delinquent Accounts and Refusal of Service. WMW shall have and retain all rights authorized by law to collect delinquent accounts (as defined WAC 480-70-396), including, but not limited to, the right to cancel Collection Services for any of the reasons under WAC 480-70-376(1). WMW shall have and retain all rights authorized by law to refuse or cancel service to a customer, including the right to refuse or cancel service for any reason under WAC 480-70-366(2).

10. Collection Service Requirements. Except as otherwise stated herein or unless inconsistent with any provision herein, WMW shall provide the Collection Services consistent with the requirements of Chapter 480-70 WAC and WMW's WUTC Tariff.

11. Transition of WMW's Collection Services to City. After the end of the Transition Period,

11.1. the City shall assume full responsibility for MSW collection within the Annexed Territory as authorized under RCW 81.77.020, either by contracting for MSW collection or provide MSW collection itself;

11.2. unless otherwise agreed to in writing by the Parties, WMW shall have no further obligation or right under this Agreement to provide the Collection Services within the Annexed Territory;

11.3. WMW waives all claims under RCW 35.13.280 to enter into a franchise to continue its MSW collection business within the Annexed Territory; and

11.4. WMW waives all claims under RCW 35.13.280 to any measurable damages resulting from the cancellation of its MSW collection business within the Annexed Territory.

Upon request of the City, the Parties shall meet prior to the end of the Transition Period to plan for the transition of the Collection Services within the Annexed Territory. WMW shall cooperate with the City by providing all reasonably necessary information required by the City to

allow for an orderly transition of the Collection Services from WMW to the City or its contractor. Such information shall include service account addresses, billing addresses, current service levels, frequency and types of services, customer container sizes, and other similar information requested by the City and reasonably necessary to the transition of service.

12. Required Notices to WUTC. The City shall be responsible for submitting any and all notices to the WUTC of its decision to contract for MSW collection or provide MSW collection itself within the Annexed Territory pursuant to RCW 81.77.020. As required by WAC 480-70-141(3), WMW shall be responsible for notifying the WUTC that WMW and the City have entered into this Agreement, including submission of this executed Agreement to the WUTC.

13. Cooperation in Execution of Documents. The Parties agree cooperate in preparing, executing, and delivering any and all additional documents that may be necessary to render this Agreement legally and practically effective, provided, however, that this provision shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

14. Force Majeure. If either Party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, fires, typhoons, hurricanes, severe weather, floods, volcanic eruptions, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or threats of such circumstances, or any future laws, rules, regulations, orders, or acts of any local, state, federal, or provincial government ("Force Majeure"), then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming Force Majeure shall promptly notify the other Party when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and a Party shall not be excused from performance under this Agreement for events relating to increased costs, including, without limitation, increased costs of fuel, labor, insurance or other expenses of performing the Services hereunder.

15. Successors and Assigns. Neither Party shall assign this Agreement without the prior written consent of the other Party, except that WMW may assign this Agreement to any subsidiary, parent or affiliated company without the other Party's consent. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

16. Notice. Any notice required or permitted hereunder shall be in writing (including, without limitation, by facsimile transmission) and sent to the address shown below:

If to
WMW: Waste Management of
Washington, Inc.
720 Fourth Avenue, Suite 400
Kirkland, WA 98033-8136
Director of Public Sector
Attention: Services

If to
City: City of Richland
505 Swift Boulevard, MS-26
Richland, Washington 99352
Pete Rogalsky,
Attention: Public Works Director

17. Alternative Dispute Resolution/Legal Fees. Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding breach, termination or invalidity thereof shall be resolved by arbitration (unless both Parties agree to mediation) in Richland, Washington or such other location as agreed to by the Parties, and in accordance with the American Arbitration Association or Judicial Dispute Resolution rules which are deemed to be incorporated by reference in this clause. The maximum number of arbitrators shall be one in any claim, suit, action or other proceeding relating in any way to this Agreement or any claims arising out of this Agreement, except as otherwise agreed to by the Parties. Other than mediation costs, in the event any arbitration or legal action is taken by either Party against the other to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court and/or arbitration costs, reasonable attorney's fees and expenses incurred by the prevailing Party.

18. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

19. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

20. No Third Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.

21. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

22. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

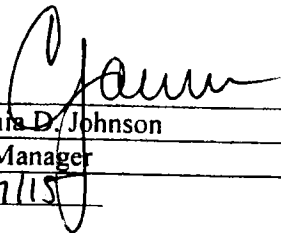
23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

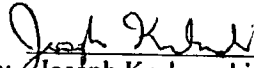
* * *

IN WITNESS WHEREOF, the Parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.


CITY OF RICHLAND

**WASTE MANAGEMENT OF
WASHINGTON, INC.**

By: 
Name: Cynthia D. Johnson
Title: City Manager
Date: 2/17/15

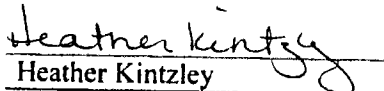
By: 
Name: Joseph Krukowski
Title: Vice President
Date: 1/6/2015

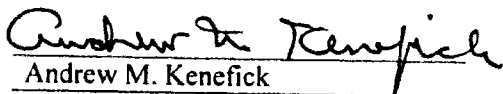
ATTEST

By: 
Name: Marcia Hopkins
Title: City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Name: Heather Kintzley
Title: City Attorney

By: 
Name: Andrew M. Kenefick
Title: Senior Legal Counsel

Attachment:

Exhibit A - Ordinance No. 26-14

EXHIBIT A

2014-027584 ORD
10/30/2014 04:54:02 PM Pages 6 Fee \$77.00
Richland City Clerk
Benton County, Benton County Auditor's Office

WHEN RECORDED RETURN TO:

Richland City Clerk
P.O. Box 190 MS-05
Richland, WA 99352

A CERTIFIED TRUE COPY
Maria Hopkins
CITY CLERK

PID#1-102883012999001

COPY

ORDINANCE NO. 26-14

AN ORDINANCE of the City of Richland, Benton County Washington, annexing approximately 4.8 acres of land located north of Reata Road and south of the LaPierre Baseball Field, providing for assumption of existing City indebtedness and amending the Official Zoning Map.

WHEREAS, the City received a notice of intent from the sole owner of the real property legally described in Exhibit A attached hereto, to commence annexation proceedings for annexation into the City of Richland; and

WHEREAS, a meeting was held on the nineteenth day of November, 2013 between the initiating parties of this annexation and the Council of the City of Richland, at which time the Council passed Resolution No. 82-13, accepting the notice of intention to commence annexation proceedings for the real property legally described in Exhibit A attached hereto, subject to simultaneous adoption of the Comprehensive Plan for the proposed annexation area, and the assumption of the appropriate share of all existing City indebtedness; and

WHEREAS, Resolution 82-13 further authorized and directed the Richland Planning Commission to propose and forward a recommendation to the City Council as to the most appropriate zoning designation for the area proposed to be annexed; and

EXHIBIT A

WHEREAS, a notice of intention to annex was duly filed with the Benton County Boundary Review Board. Jurisdiction of the boundary Review Board was not invoked within 45 days of filing, and thus the proposed annexation was deemed approved by the Boundary Review Board on April 16, 2014 and

WHEREAS, the Richland Planning Commission held a public hearing on December 18, 2013 to consider an appropriate zoning designation for the proposed annexation area;

WHEREAS, on May 6, 2014, Council passed Resolution No. 64-14, authorizing the circulation of an annexation petition for annexation of the real property legally described in Exhibit A attached hereto;

WHEREAS, a petition was circulated and signed by the sole owner of the proposed annexation area, thereby exceeding the state requirement that owners representing at least 60% of the value of the proposed annexation area petition the City for annexation, according to the assessed valuation for general taxation; and

WHEREAS, City Council held a public hearing to consider the annexation on September 2, 2014, which hearing was duly noticed by the City Clerk through publication in a newspaper of general circulation and through the mailing of notice to all property owners within the annexation area, specifying the time and place of the hearing and inviting interested persons to appear and voice approval or disapproval of the annexation; and

WHEREAS, the matter was duly considered by the City Council of the City of Richland and the Council has determined that the annexation would be of general benefit to the residents of the City of Richland;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Richland as follows:

Section 1.01 The real property legally described in Exhibit A attached hereto is hereby annexed to the City of Richland and is hereby declared to be within the corporate limits of the City of Richland, Benton County Washington (the "Annexed Area")

Section 1.02 The Richland Comprehensive Plan, adopted October 6, 1997 by Ordinance 26-97, shall serve as the comprehensive plan for the Annexed Area. All properties within the annexation shall be designated as "low density residential" under the land use map that is part of the comprehensive plan.

Section 1.03 The property within the Annexed Area shall be assessed and taxed at the same rate and on the same basis as other property within the City, including assessments or taxes in payment for all or of any portion of the outstanding indebtedness of the City, approved by the voters, contracted, or incurred prior to, or existing at the date of annexation.

EXHIBIT A

Section 1.04 Title 23 of the City of Richland Municipal Code and the Official Zoning Map of the City as adopted by Section 23.08.040 of said title, hereby amends Sectional Map No. 68 which is one of a series of maps constituting said Official Zoning Map, bearing the number and date of passage of this ordinance and by this reference made a part of this ordinance and of the Official Zoning Map of the City.

Section 1.05 It is hereby found, as an exercise of the City's police power, that the best zoning for the properties included in the Annexed Area shall be R1-10 Single Family Residential, as depicted on Exhibit B, when consideration is given to the interest of the general public.

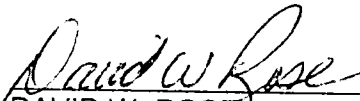
Section 1.06 The City Clerk is directed to file a copy of this annexation with the Board of Commissioners of Benton County and the State of Washington in the manner required by law. The City Clerk is also directed to file with the Auditor of Benton County, Washington a copy of this ordinance and shall attach the amended sectional map as necessary and an amended Annexation map, duly certified by the Clerk as a true copy.

Section 1.07 As authorized and required by RCW 35.13.280, the City shall negotiate a new franchise with the solid waste collection service provider currently serving the Annexed Area on terms that are acceptable to the City and that complies with the City's Solid Waste Management Plan.

Section 1.08 This ordinance shall be effective immediately following the day after its publication in the official newspaper of the City.

PASSED by the City Council of the City of Richland on this 7th day of October, 2014.

COPY



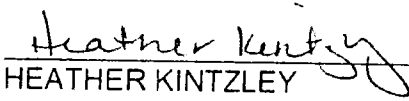
DAVID W. ROSE
Mayor

ATTEST:



MARCIA HOPKINS
City Clerk

APPROVED AS TO FORM:



HEATHER KINTZLEY
City Attorney

Date Published: October 12, 2014

EXHIBIT A

Legal Description for LaPierre Annexation

A portion of the Southwest quarter of Section 2, Township 8 North, Range 28 East W.M., described as follows:

Lot 1 of Short Plat #2999, Recorded 5 3 07, under Auditor's File number 2007-013745 in Volume 1 of Short Plat, Page 2999, Records of Benton County.

This legal description includes the following Assessor Parcel Number:

PD# 102883012999001

COPY

Benton County Auditor's Office Staff
determined that this page does not meet
their scanning requirements.

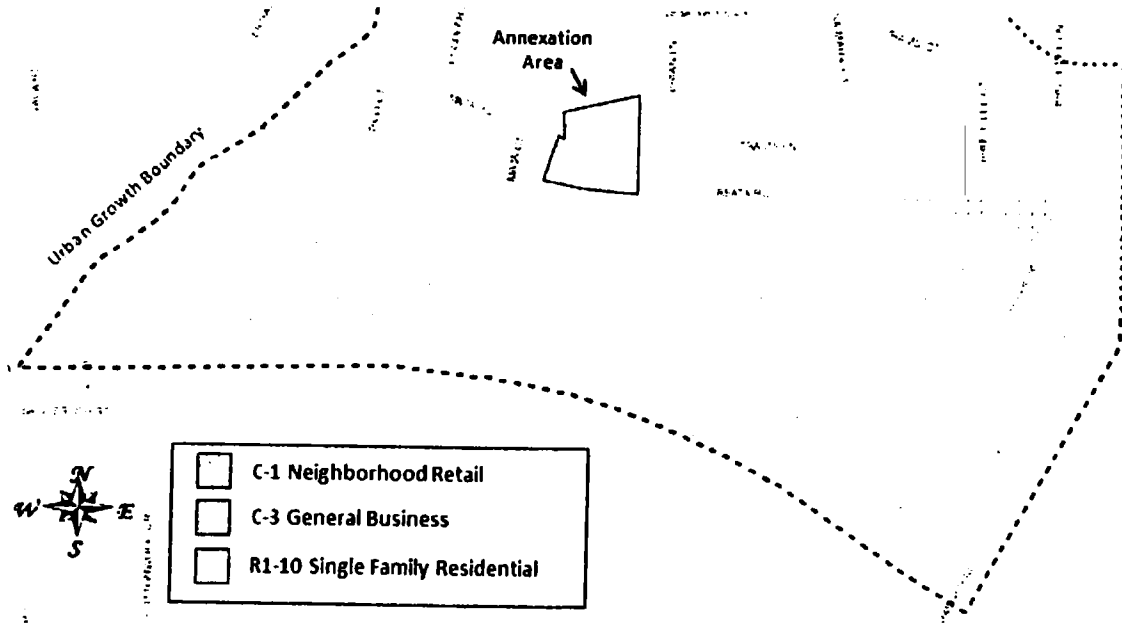
The page contained:

EXHIBIT B

Please contact the City Clerk's Office,
at the City of Richland, to obtain a
copy of this omitted page.

COPY

EXHIBIT B



ZONING FOR LAPIERRE ANNEXATION

