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MAY 27 2019

WASH. UT. & TP. COMM

WASTE MANAGEMENT

720 4<sup>th</sup> Ave, Suite 400  
Kirkland WA 98033

May 24, 2019

Mark Johnson  
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 Mattawa  
Evans/Thomas and Sonrise Annexations

RECEIVED  
2019 MAY 29 AM 8:23  
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Dear Mr. Johnson:

Pursuant to WAC 480-70-141(3), Waste Management of Washington, Inc. ("WMW") hereby advises the Commission that WMW has entered into the enclosed Small Annexation Transition and Waiver Agreements (Evans/Thomas and Sonrise Annexations) (the "Agreements") with the City of Mattawa, Washington (the "City"). Under Ordinance No. 480, dated August 20, 2009, and Ordinance No. 17-607, dated October 5, 2017 (the "Ordinances") and attached to the respective Agreements, the City annexed certain territories commonly referred to as the Evans/Thomas Annexation and Sonrise Annexation (collectively, the "Annexed Territories"). At the time of the annexation, WMW provided solid waste collection service in the Annexed Territories pursuant to WMW's Certificate No. G-237. WMW will continue to provide solid waste collection service under the terms of the Agreements within the Annexed Territories until January 1, 2029, unless extended or shortened, as provided therein.

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

Sincerely,

Mindy Rostami  
Senior Manager, Strategic Contracting & Municipal Legal Affairs

Enclosures

cc: *via e-mail only* Anna Franz, Legal Counsel for City of Mattawa

RECEIVED  
MAY 2 1951  
WASH. UT. & TR. COMM.

**SMALL ANNEXATION  
TRANSITION AND WAIVER AGREEMENT  
(Annexation Transition RCW 35A.14.900)**

**ISONRISE ORCHARDS ANNEXATION**

This SMALL ANNEXATION TRANSITION AND WAIVER AGREEMENT ("Agreement") is made and entered into between WASTE MANAGEMENT OF WASHINGTON, INC. ("WMW") and the CITY OF MATTAWA, 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.

**RECITALS**

**WHEREAS** by Ordinance No. 17-607, dated October 5, 2017 (the "Ordinance") and attached hereto as Exhibit A, the City has annexed certain territory identified in the Ordinance and commonly referred to as the Sonrise Orchards Annexation (the "Annexed Territory");

**WHEREAS** WMW holds Certificate No. G-237 issued by the Washington Utilities and Transportation Commission ("WUTC") whereby WMW provides solid waste collection services (the "Collection Service") within the Annexed Territory;

**WHEREAS** under RCW 35A.14.900, 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** upon such notice to the WUTC, the City is required to grant to WMW a franchise to continue its Collection Services for a term of at least SEVEN (7) years and to pay to WMW any "measurable damages" incurred by WMW as a result of the City's annexation of the Annexed Territory;

**WHEREAS** the Parties acknowledge and agree that, for the annexation of small areas such as the Annexed Territory, it is burdensome and unnecessary for the Parties to negotiate and implement a separate franchise for WMW to continue Collection Services within the Annexed Territory and to determine the amount of "measurable damages" incurred by WMW because of the City's annexation of the Annexed Territory; and

**WHEREAS** to avoid the unnecessary burden of negotiating and implementing a separate franchise for the Annexed Territory and determining "measurable damages", the Parties agree that, subject to the terms and conditions herein, WMW shall continue to provide Collection Services within the Annexed Territory pursuant to Certificate No. G-237 and subject to regulation by the WUTC for the duration of the "Transition Period", but shall thereafter waive (1) its rights to enter into a separate franchise, and (2) its claim to any "measurable damages".

## TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

1. **The "Transition Period"**. The Parties agree that the "Transition Period" shall be a minimum of TEN (10) years, commencing on December 31, 2018 and continuing until the date upon which the City elects to terminate the Transition Period ("Transition Date") by providing NINETY (90) days advance written notice to WMW, provided however that the "Transition Date" shall not be any earlier than January 1, 2029.

2. **WMW's Collection Services During the Transition Period**. During the Transition Period, WMW shall continue to provide Collection Services pursuant to Certificate No. G-237 and subject to regulation by the WUTC under Chapter 81-77 RCW, applicable regulations, and tariffs. Nothing in this Agreement is intended to affect WMW's rights and obligations to provide Collection Services under Certificate No. G-237 to the Annexed Territory during the Transition Period.

3. **Deferral of Notice to WUTC**. To effectuate the terms of this Agreement, the City agrees that during the Transition Period it shall defer notifying the WUTC of its intent to contract for solid waste collection or provide solid waste collection itself. After the City has provided written notice of the Transition Date to WMW under Section 1 above, but prior to the Transition Date, the City shall provide written notice to the WUTC (a) that it has decided to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020, and (b) that the Transition Date (as defined above) is the effective date for the City to assume responsibility for solid waste collection.

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

4.1. the City shall assume full responsibility for solid waste collection within the Annexed Territory as authorized under RCW 81.77.020, either by contracting for collection or providing collection itself; and

4.2. unless otherwise agreed to in writing by the Parties, WMW shall have no further obligation or right to provide the Collection Services 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.

5. **Waiver of Franchise Rights and Damages under RCW 35A.14.900**. In exchange for the 10-year Transition Period under Section 1 above and the City's deferral under Section 3 above, WMW hereby waives:

5.1. all claims under RCW 35A.14.900 to enter into a franchise to continue its solid waste collection business within the Annexed Territory; and

5.2. all claims under RCW 35A.14.900 to any measurable damages resulting from the cancellation of its solid waste collection business within the Annexed Territory.

**6. 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.

**7. 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 solid waste collection within its Certificate No. G-237 territory, including within the Annexed Territory. If 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.

**8. 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.

**9. 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	Waste Management of	If	to
WMW:		<u>Washington, Inc.</u>	City:	<u>City of Mattawa</u>
		<u>720 Fourth Avenue, Suite 400</u>		<u>P.O. Box 965</u>
		<u>Kirkland, WA 98033-8136</u>		<u>Mattawa, WA 99349</u>
		Director of Public		
Attention:		<u>Sector Services</u>	Attention:	<u>City Clerk</u>

**10. 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.

**11. 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 because this Agreement, whether as a third-party beneficiary or otherwise.

**12. 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.

13. **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.

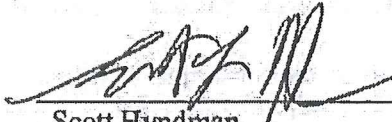
14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

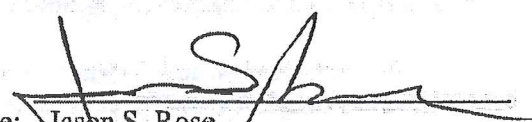
\* \* \*

**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 MATTAWA**

**WASTE MANAGEMENT OF WASHINGTON, INC.**

By:   
Name: Scott Hyndman  
Title: Mayor  
Date: 4/18/19

By:   
Name: Jason S. Rose  
Title: President  
Date: 5/10/19

**Attachments:**

Exhibit A - Ordinance No. 17-607 (October 5, 2017)

ORDINANCE NO. 17-607

AN ORDINANCE ANNEXING CERTAIN LANDS KNOWN AS  
SONRISE ORCHARDS ANNEXATION TO THE CITY

THE CITY COUNCIL OF THE CITY OF MATTAWA, WASHINGTON DO ORDAIN AS  
FOLLOWS:

**Section 1. Annexed Lands.** Pursuant to Chapter 35A.14 RCW and Title 35A RCW, the City of Mattawa does hereby annex the following described real estate situated in Grant County, Washington into the corporate limits of the City of Mattawa:

*See Exhibit A attached hereto and incorporated herein by this reference.*

**Section 2. Zoning and Regulation.** The City's comprehensive plan shall be adopted for the area annexed by this ordinance, and these lands shall be subject to all City regulations. Tax parcels 02-1856-000 and 02-1857-000 shall be zoned R2 and Tax Parcel 02-1855-000 shall be zoned C-2.

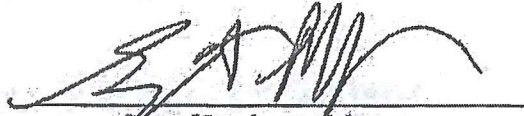
**Section 3. Existing indebtedness.** This entire area to be annexed and described above, shall be required to assume all existing City indebtedness. No portion of the property annexed herein shall be released from any outstanding indebtedness levied against it prior to this annexation.

**Section 4. Filing.** A certified copy of this ordinance shall be filed with the Board of County Commissioners and the County Auditor of Grant County, Washington.


**Section 5. Extension of Franchise.** By operation of law, there is hereby granted to any franchise garbage hauler serving any portion of the annexed property a seven year franchise to continue the collection and disposal of garbage and other solid waste for the areas served on the date of the adoption of this ordinance.

**Section 6. Effective Date.** This annexation shall be effective five days after passage of this ordinance and publication of its summary.

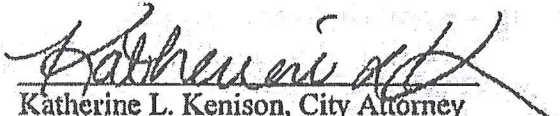
PASSED by the City Council of the City of Mattawa, Washington, this 5<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
Scott Hyndman, Mayor

ATTEST:

  
\_\_\_\_\_  
Inabel Martin  
City Clerk  
Deputy

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Katherine L. Kenison, City Attorney

PASSED the 5<sup>th</sup> day of October, 2017.

APPROVED the 5<sup>th</sup> day of October, 2017.

PUBLISHED the 27<sup>th</sup> day of September, 2017.



**SMALL ANNEXATION  
TRANSITION AND WAIVER AGREEMENT  
(Annexation Transition RCW 35A.14.900)**

**EVANS/THOMAS ANNEXATION**

This SMALL ANNEXATION TRANSITION AND WAIVER AGREEMENT ("Agreement") is made and entered into between WASTE MANAGEMENT OF WASHINGTON, INC. ("WMW") and the CITY OF MATTAWA, 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.

**RECITALS**

**WHEREAS** by Ordinance No. 480, dated August 20, 2009 (the "Ordinance") and attached hereto as Exhibit A, the City has annexed certain territory identified in the Ordinance and commonly referred to as the Evans/Thomas Annexation (the "Annexed Territory");

**WHEREAS** WMW holds Certificate No. G-237 issued by the Washington Utilities and Transportation Commission ("WUTC") whereby WMW provides solid waste collection services (the "Collection Service") within the Annexed Territory;

**WHEREAS** under RCW 35A.14.900, 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** upon such notice to the WUTC, the City is required to grant to WMW a franchise to continue its Collection Services for a term of at least SEVEN (7) years and to pay to WMW any "measurable damages" incurred by WMW as a result of the City's annexation of the Annexed Territory;

**WHEREAS** the Parties acknowledge and agree that, for the annexation of small areas such as the Annexed Territory, it is burdensome and unnecessary for the Parties to negotiate and implement a separate franchise for WMW to continue Collection Services within the Annexed Territory and to determine the amount of "measurable damages" incurred by WMW because of the City's annexation of the Annexed Territory; and

**WHEREAS** to avoid the unnecessary burden of negotiating and implementing a separate franchise for the Annexed Territory and determining "measurable damages", the Parties agree that, subject to the terms and conditions herein, WMW shall continue to provide Collection Services within the Annexed Territory pursuant to Certificate No. G-237 and subject to regulation by the WUTC for the duration of the "Transition Period", but shall thereafter waive (1) its rights to enter into a separate franchise, and (2) its claim to any "measurable damages".

## TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

1. **The "Transition Period".** The Parties agree that the "Transition Period" shall be a minimum of TEN (10) years, commencing on December 31, 2018 and continuing until the date upon which the City elects to terminate the Transition Period ("Transition Date") by providing NINETY (90) days advance written notice to WMW, provided however that the "Transition Date" shall not be any earlier than January 1, 2029.

2. **WMW's Collection Services During the Transition Period.** During the Transition Period, WMW shall continue to provide Collection Services pursuant to Certificate No. G-237 and subject to regulation by the WUTC under Chapter 81-77 RCW, applicable regulations, and tariffs. Nothing in this Agreement is intended to affect WMW's rights and obligations to provide Collection Services under Certificate No. G-237 to the Annexed Territory during the Transition Period.

3. **Deferral of Notice to WUTC.** To effectuate the terms of this Agreement, the City agrees that during the Transition Period it shall defer notifying the WUTC of its intent to contract for solid waste collection or provide solid waste collection itself. After the City has provided written notice of the Transition Date to WMW under Section 1 above, but prior to the Transition Date, the City shall provide written notice to the WUTC (a) that it has decided to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020, and (b) that the Transition Date (as defined above) is the effective date for the City to assume responsibility for solid waste collection.

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

4.1. the City shall assume full responsibility for solid waste collection within the Annexed Territory as authorized under RCW 81.77.020, either by contracting for collection or providing collection itself; and

4.2. unless otherwise agreed to in writing by the Parties, WMW shall have no further obligation or right to provide the Collection Services 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.

5. **Waiver of Franchise Rights and Damages under RCW 35A.14.900.** In exchange for the 10-year Transition Period under Section 1 above and the City's deferral under Section 3 above, WMW hereby waives:

5.1. all claims under RCW 35A.14.900 to enter into a franchise to continue its solid waste collection business within the Annexed Territory; and

5.2. all claims under RCW 35A.14.900 to any measurable damages resulting from the cancellation of its solid waste collection business within the Annexed Territory.

**6. 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.

**7. 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 solid waste collection within its Certificate No. G-237 territory, including within the Annexed Territory. If 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.

**8. 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.

**9. 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	Waste Management of	If	to
WMW:		Washington, Inc.	City:	City of Mattawa
		<u>720 Fourth Avenue, Suite 400</u>		<u>P.O. Box 965</u>
		<u>Kirkland, WA 98033-8136</u>		<u>Mattawa, WA 99349</u>
		Director of Public		
Attention:		<u>Sector Services</u>	Attention:	<u>City Clerk</u>

**10. 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.

**11. 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 because this Agreement, whether as a third-party beneficiary or otherwise.

**12. 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.

**13. 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.


**14. 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.

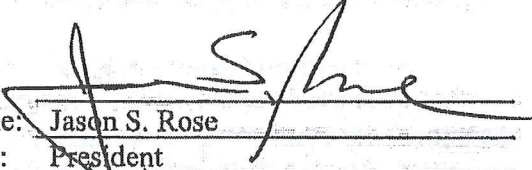
\* \* \*

**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 MATTAWA**

**WASTE MANAGEMENT OF  
WASHINGTON, INC.**

By:   
Name: Scott Hyndman  
Title: Mayor  
Date: 4/18/19

By:   
Name: Jason S. Rose  
Title: President  
Date: 5/10/19

**Attachments:**

Exhibit A - Ordinance No. 480 (Aug. 20, 2009)

ORDINANCE NO. 480

AN ORDINANCE ANNEXING CERTAIN LANDS KNOWN AS THE  
EVANS/THOMAS ANNEXATION TO THE TOWN

THE TOWN COUNCIL OF THE TOWN OF MATTAWA, WASHINGTON ORDAINS AS  
FOLLOWS:

*Section 1. Annexed Lands.* Pursuant to RCW, Chapter 35.13 and RCW Title 35, the Town of Mattawa does hereby annex the following described real estate situated in Grant County, Washington into the corporate limits of the Town of Mattawa:

Pat-Chee Subdivision Lots 1,2,3,4 and 5 per the plat thereof recorded with the Grant County Auditor in Book 11 of Plat, Pages 64-69 together with the following: Beginning at the Southwesterly corner of said Lot 5, thence Easterly to the Eastern right-of-way of State Route 243, thence North along said Eastern right-of-way boundary to the South boundary of the right-of-way of County Road 24 SW, thence West to the Northwestern corner of said Lot 1.

*Section 2. Zoning and Regulation.* The Town's comprehensive plan shall be adopted for the area annexed by this ordinance, and these lands shall be subject to all Town regulations. This area shall be zoned Commercial-2 until its designation is changed.

*Section 3. Existing indebtedness.* This entire area to be annexed and described above, shall be required to assume all existing Town indebtedness. No portion of the property annexed herein shall be released from any outstanding indebtedness levied against it prior to this annexation.

*Section 4. Filing.* A copy of this ordinance shall be filed with the Board of County Commissioners of Grant County, Washington.

*Section 5. Extension of Franchise.* By operation of law, there is hereby granted to any franchise garbage hauler serving any portion of the annexed property a ten year franchise to continue the collection and disposal of garbage and other solid waste for the areas served on the date of the adoption of this ordinance.

*Section 6. Effective Date.* This annexation shall be effective five days after passage of this ordinance and publication of its summary.

PASSED by the Town Council of the Town of Mattawa, Washington, this 20 day of August, 2009.

Judy K. Esser  
Judy K. Esser, Mayor

ATTEST:

Patricia A. Gerdes  
Patricia A. Gerdes, Town Clerk

APPROVED AS TO FORM:

James A. Whitaker  
James A. Whitaker, Town Attorney

PASSED the 20 day of August 2009.

APPROVED the 20 day of August 2009.

PUBLISHED the 26 day of August 2009.

I certify this a true and accurate copy of Ordinance No. 480 Annexing certain lands known as the Evans/Thomas annexation to the town.

Diane Hanson

Diane Hanson, City Clerk

ORDINANCE NO.

PAGE 2