

ORIGINAL

G U P Y

Whatcom County
Contract No.
200310005

LEASE AGREEMENT

**FOR THE USE OF COUNTY-OWNED PROPERTY FOR
SOLID WASTE DROP BOX FACILITY**

THIS AGREEMENT made and executed on the 22nd day of October, 2003, by and between WHATCOM COUNTY, a municipal corporation hereafter referred to as the "COUNTY" and POINTS RECYCLING AND REFUSE, L.L.C., located at PMB 1542, 145 Tye Dr., Pt. Roberts, Washington 98281, hereafter referred to as the "Company".

I. RECITALS

WHEREAS, the County has closed its solid waste landfill facility located on County owned property in the Johnson area in Point Roberts; and

WHEREAS, it has been determined by the County that solid waste handling at Point Roberts can be more effectively accomplished by private enterprise; and further, that it is in the public interest to continue to provide citizens of the County the opportunity to recycle and to dispose of self-hauled waste at the Johnson Road Landfill site; and

WHEREAS, Whatcom County has in existence a facility at the Johnson Road Landfill site suitable for continued operation of the solid waste drop box/container and recycling facility; and

WHEREAS, Points Recycling and Refuse, L.L.C. currently holds a lease agreement for the Facility, entered into on June 2nd, 1999; and

WHEREAS, the current lease agreement contains an option to renew for an additional five years; and

WHEREAS, Whatcom County and Points Recycling and Refuse mutually agreed to the terms of the agreement;

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED:

II. DEFINITIONS

A. "Acceptable Waste" means any and all waste that is "solid waste" as defined in RCW 70.95.030 except "Unacceptable Waste" as defined hereafter.

B. "Drop Box/Container and Recycling Site" means the drop box/container facility for solid waste and recyclable materials to be operated by the Company on County property located at the Johnson Road Landfill.

C. "Effective Date" means the date following the execution of this Agreement by the Parties when this Agreement is approved by the Whatcom County Executive.

D. "Facility" shall mean the Drop Box/Container and Recycling Site and the improvements and equipment located thereon and operated by the Company under the terms of this Agreement.

E. **"Force Majeure"** means acts of God, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or accident to machinery, pipelines or materials, other cause, whether of the kind enumerated or otherwise, which is not reasonably within the control of the party claiming the suspension.

F. **"Hazardous Waste"** shall mean:

1. any dangerous or extremely hazardous waste as defined in Chapter 70.105 RCW or designated by rule adopted thereunder; or

2. waste 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 Model Toxics Control Act, Chapter 70.105CRW, as amended, and the regulations promulgated thereunder; or

3. contains polychlorinated biphenyls or any other substance the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. § 2601-2654, as amended, and the regulations promulgated thereunder; or

4. contains a radioactive material the storage, transportation or disposal of which is subject to state or federal regulation.

G. **"Property"** is the real property owned by the County and indicated in Exhibit "A" and Exhibit "B" attached hereto.

H. **"Solid Waste"** shall be as defined by Chapter 70.95 or regulations promulgated thereunder.

I. **"Suspicious Waste"** is waste which the Company reasonably suspects may be or contains "Unacceptable Waste."

J. **"Unacceptable Waste"** means any and all waste that is either:

1. Waste which is prohibited from receipt at the Disposal Sites by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition; or

2. Hazardous waste as defined above.

III. AGREEMENT

A. **Drop Box/Container and Recycling Site.**

1. The County hereby agrees to provide to the Company, access to and control of the County property (the "Property") described on Exhibit "B" attached hereto and made a part hereof, for the purpose of the Company operating and maintaining a drop box/container facility for the receipt of recyclable materials and acceptable solid waste as set forth herein (the "Facility") for the convenience of the residents of Whatcom County.

boundary and a grant of access over County land through and to the Property, all as shown in Exhibits "A" and "B".

B. Representations/Warranties.

1. The County represents and warrants that it has the right, title and interest in the Property and other properties necessary to grant the Company the right to the access, use and occupancy described under the terms of this Agreement.

2. The County represents and warrants that Property is permitted outright, under the County's zoning code, for the operation of the Facility as described in this Agreement and that no additional land use permit is required (although other permits are likely to be required), provided that access and use of the Facility is provided only to members of the public and not existing franchised solid waste or recycling collection companies. The County further agrees to issue the Company an occupancy permit upon approval of this Agreement.

C. Acceptance of Property

The Company acknowledges that it is familiar with the property and the improvements thereon, that no representations have been made by the County as to said property and improvements except for those representations made in writing contained in this Agreement and Company hereby accepts said premises and improvements as they are now situated.

D. Rent and Term

1. The Company shall pay the County for the access easements and the use and occupancy of the Property the sum of fifty dollars (\$50) per month payable in arrears on the 15th day of each month during the period of this Agreement.

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2. This Agreement shall be for a period of five (5) years commencing November 1, 2003 and ending October 31, 2008, in exercise of the renewal option contained in the contract executed on June 2, 1999, by the County. The agreement of the County shall be manifested by the signature of the County Executive.

E. Scope of Operation

The Company shall maintain and operate a solid waste and recycling drop box/container facility (the "Facility") upon the Property. The Facility shall be for the use of the general public and businesses. The Company agrees to maintain and operate the Facility by providing drop box/containers for the separation of recyclables, putrescible garbage and other materials that may be agreed upon between the Company and the County.

NOT BEING DONE

In performing such functions, the Company shall provide sufficient personnel, equipment and utilities for operation of the Facility in accordance with this Agreement. Notwithstanding the foregoing:

1. The Company shall make the Facility open and available to the public a minimum of 2 (two) days per week, between the months of May through September and 1 (one) day per week, between the months of October through April during the hours 12:00 p.m. to 4:00

p.m. This schedule may be altered by mutual written agreement if the volume so dictates.

2. In the operation of the solid waste drop box/container, the Company shall not be required to receive, accept or dispose of any suspicious or hazardous waste which would violate local, state or federal environmental laws or regulations. The Company reserves the right to inspect any and all waste and other material delivered to the Facility and may reject any such material which the Company believes, or the local area health district or State Department of Ecology advises the Company would upon disposal present a significant risk to human health or the environment or create or expose the County, facility users, or the Company to significant potential liability. The Company shall be responsible for acquisition of, cost of and renewal of all applicable permits relating to solid waste handling at the Facility.

3. In the operation of the recycling center, the Company shall accept, at a minimum, newspaper, mixed paper, cardboard, aluminum, glass (clear, brown, and green), scrap metal, tin cans and plastic bottles. So long as it is legally permitted to do so, the Company is allowed to accept batteries, used oil and antifreeze, and may chip woody debris on site. The Company shall be entitled to salvage any materials remaining in Solid Waste received for disposal at the Facility.

4. The Company may refuse the right of access to the Facility to anyone who has violated the rules and regulations prescribed by public law or is delinquent on account of any money due the Company for acceptance of solid waste or recyclable materials. The Company may, with the approval of the County, also assess to users of the Facility a reasonable additional fee or charge as a penalty for failure to comply with the rules and regulations prescribed by the health district or Ecology for solid waste handling.

F. Disposal and Operation Fees.

1. The Company, upon mutual agreement with the County, shall have authority to establish rates at the Facility for recycling and solid waste disposal and all revenues collected shall be for the benefit of the Company. The Fees charged shall be mutually agreed upon, reviewed annually and listed in the Whatcom County Unified Fee Schedule. The Company shall prominently post all user fees at the Facility and shall be solely responsible for the collection of such fees.

2. The Company, by mutual agreement with the County, may reject, or make reasonable additional charges for or fix new or additional rates for the disposal of solid waste, which would result in unusual operating or disposal cost, expense or liability, or require special environmental handling or disposal.

G. Independent Contractor.

In the performance of this Agreement, the Company shall act independently and not as an employee, agent or representative of the County. The County shall have no control or supervision of any kind over the employees of the Company, nor shall any of the employees of the Company be deemed to be employees of the County.

H. Maintenance of Facilities/Commit No Waste.

1. Maintenance of the Facility and the Property shall be the responsibility

of the Company. The County shall provide snow removal following notification by the Company. The Company shall be otherwise responsible for routine cleaning maintenance (i.e. removal of obstructions, dust control and spill clean-up) to insure a safe ingress and egress for the public. Further, by mutual agreement and shared cost, the County shall be responsible for installation and maintenance of any future water line, utilities or perimeter fence as required.

2. The Company covenants not to commit waste nor permit anyone else to commit waste on the Property during the term of the contract and to keep the Property in a neat and orderly condition, provided that this shall not prevent the Company from engaging in the open burning, by mutual agreement, of certain waste materials in compliance with all applicable laws, rules and regulations.

3. The Company further agrees that the gates and facilities will be secured in the absence of an attendant. In accordance with this Agreement the Company agrees to maintain, in good condition, the Attendant House and the concrete retaining walls utilized at the Facility.

I. County's Right-of-Entry.

The Company shall permit County and the agents and employees of the County to enter into and upon the Property at reasonable times for the purposes of inspecting the same and for all other lawful purposes, including operation of the portion of the landfill site on the Property and for the purpose of disposing of debris and other solid waste materials if it is determined to be in the best interest of the County and necessary for the health and preservation by the Director of Public Works.

J. Notices.

All notices, demands or other writing in this Agreement provided to be given, or sent, or which may be given, made or sent, by either party hereto to the other, shall be deemed to have been fully given, made or sent when mailed to the following address and party:

COUNTY Whatcom County Public Works Department
322 N. Commercial St., Suite 220
Bellingham, WA 98225

COMPANY Points Recycling and Refuse, L.L.C.
PMB 1542, 145 Tye Drive
Point Roberts, WA 98281

K. Utilities.

All costs and charges for utilities furnished during the term of this Agreement shall be paid by the Company. Property taxes, if any, shall be the responsibility of the County.

L. Liens.

The Company shall keep the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by the Company. In the event the

Company becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Company, then the County may cancel this Agreement at the County's option.

M. Sublease and Assignment.

The Company agrees not to let or sublet the whole or any part of the Property or assign this Agreement or any interest therein without the written consent of the County, which consent shall not be unreasonably withheld.

N. Right of Company to Make Improvements.

The Company may improve or alter the Property with prior written consent of the County. The Company shall, before making any improvements or alterations, submit plans and designs to the County for approval. The Company agrees to maintain the existing facilities in good condition at all times, including but not limited to fenced storage area, scale house, structures, and other improvements which exist on the Property as of the date of this Agreement, provided that the Company shall have the right to remove, alter or improve any facility which may be placed upon the Property by the Company during the period of this Agreement; provided further that the Company may remove any improvements that it may install upon the Property during the period of this Agreement within 30 days of the termination of this Agreement. If such improvements are not removed they shall become the property of the County.

O. Reduction or Termination of Service.

If there are other reasons that may cause a reduction in the volume of waste so that it is no longer feasible to operate, the Company may terminate the agreement upon 30 days written notice to the County.

P. Indemnification and Hold Harmless.

1. The Company agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof (hereinafter referred to as "Whatcom County"), against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the Company, its subcontractors and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence, recklessness, or intentional wrongdoing of The County. In case any suit or cause shall be brought against The Company on account of any act, action, neglect, omission or default on the part of the Lessee, his agents, subcontractors, and/or employees, the Company hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against Whatcom County.

2. Whatcom County agrees and covenants to indemnify, defend and save harmless the Company and its officers and directors, against and from any loss, damage, costs, charge, expense, liability, claims, demand or judgments, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on

the part of the County, its subcontractors and/or employees, except to the extent such Injury or damage shall have been caused by or resulted from the negligence, recklessness, or intentional wrongdoing of the Company. In case any suit or cause shall be brought against the Company on account of any act, action, neglect, omission or default on the part of the Lessor, its agents, subcontractors, and/or employees, the Company hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney fees and other expenses and any and all judgments that may be incurred or obtained against the Company.

3. Whatcom County shall indemnify and hold the Company, its officers, directors and shareholders, employees, agents and subcontractors free and harmless from liability from claims, demands, losses, or expenses, including attorneys' fees and costs, with respect to claims by third parties for personal injury, property damage or other loss which arises wholly or partially out of the County's past or current operation, closure or post-closure of the Point Roberts Facility, including but not limited to liability or claims arising out of pollution, contamination or release of chemicals or landfill gas. Such indemnity shall not include claims arising as a result of any negligent, reckless, or intentional actions or omissions of the Company, its agents, employees, officers or directors.

4. In the event of any suit against any party indemnified under this Agreement, the indemnifying party shall appear and defend such suit provided that the indemnifying party is notified in a timely manner of the suit. The indemnified party shall have the right to approve counsel chosen by the indemnifying party to litigate such suit which approval shall not be unreasonably withheld.

Q. Insurance.

1. The Company shall maintain in effect throughout the term of this Agreement, or any renewal thereof, personal injury liability insurance covering the Property and its appurtenances in the amount of \$1,000,000.00 for injury or death of any one person and \$1,000,000.00 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$500,000.

2. The Company shall file proof of such insurance with the County prior to occupancy of the Property.

R. Laws and Regulations.

SECOND COMPANY OPERATING FROM PREMISES
The Company agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with the use of the Property and the construction of improvements and operation of the Company's business thereon and not to permit said Property to be used in violation of any lawful rule, code, law, regulation or other authority. Further, the Company shall obtain all necessary permits and licenses for the use and occupancy of the Property.

S. Mediation.

Notice of the demand for mediation shall be filed in writing with the other party to this agreement. The demand for mediation shall be made within a reasonable time after the claim. The act of mediation between the Company and the County shall be between one designee provided by the Company and one designee provided by the County and one neutral mediator agreed upon by both parties. The decision of the mediators shall be binding upon both parties.

T. Force Majeure.

Neither the Company nor the County will be liable for failure to perform its part of the Agreement when the failure is due to fire, flood, road closures, strikes or other industrial disturbances, inevitable accident, war, riot, insurrection, acts of God or for any other cause beyond the reasonable control and without the fault or negligence of either the County or the Company. But, in any case, the party claiming the benefit of this provision shall use due diligence to remove any such causes and to resume performance under the agreement as soon as is feasible.

U. Interpretation and Venue.

This Agreement shall be at all times interpreted under and in accordance with the laws of the State of Washington, and venue and jurisdiction of any suit brought to enforce any of the terms shall be in Whatcom County, Washington.

V. Integration and Modification.

This written lease agreement represents the full and complete agreement of the parties hereto, and the parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this lease agreement. No change or addition to it shall be valid or binding upon either party unless such change or addition be in writing, and executed by both parties.

W. Waiver.

Waiver by Lessor of any default in performance by lessee of any of the terms, covenants, or conditions contained here, shall not be deemed a continuing waiver of that default or any subsequent default.

X. Severability.

It is understood and agreed by the parties hereto that if any part of this lease agreement is determined to be illegal, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed as if the lease agreement did not contain the particular illegal part.

