

CITY OF RICHLAND, WASHINGTON CONTRACT NO. 46-13
SOLID WASTE HANDLING FRANCHISE AGREEMENT

This SOLID WASTE HANDLING FRANCHISE AGREEMENT (the "Agreement") is dated for reference purposes the 1st day of MAY, 2013. The Parties agree as follows:

1. Parties. The Parties to this Agreement are:
 - a. The City of Richland, Washington ("City"); and
 - b. Basin Disposal, Inc. ("BDI")
 - c. Ed's Disposal, Inc. ("Ed's")

2. Purpose. The Parties enter into this Agreement to settle all claims, counterclaims and controversies among them arising out of the City's annexations prior to the date of this Agreement, such annexations being listed in Exhibit A. This Agreement also grants to BDI and Ed's a franchise to operate within the City, as set forth herein.

3. Mutual General Releases. BDI and Ed's hereby release the City and the Additional Released Parties described below from all Released Claims.
 - a. "Released Claims" means any and all claims, demands, causes of action, actions, rights liabilities, contract obligations, damages, attorney fees, costs, torts, suits, debts, sums of money, accountings, reckonings, bills, covenants, controversies, agreements, promises, variances, trespasses, extents and executions whatsoever, at law or in equity or otherwise, whether direct or indirect, known or unknown, which the releasing party now owns or holds, or has at any time heretofore owned or held, or may in the future own or hold, against the persons and entities it is releasing or any of them, in any capacity, which relate in any way to the City's annexations prior to the date of this Agreement and the termination of BDI and Ed's authority to operate under Washington Utilities and Transportation Commission certificates in areas annexed by the City prior to the date of this Agreement.
 - b. "Released Claims" includes, without limitation, all rights of action, claims and counterclaims alleged or that could have been alleged (including without limitation any claims to or measurable damages under RCW 35A.14.900, RCW 35.02.160 or RCW 35.13.280; claims under chapter 81.77 RCW; and, claims related to the termination and/or reduction of BDI and Ed's business in the City).
 - c. These releases shall not extend to any claims that arise out of this Agreement or out of any of the other documents executed or delivered pursuant to this Agreement.
 - d. These releases extend to and inure to the benefit of the Parties hereto and the following Additional Released Parties: all of the parties' past and present shareholders, officers, directors, agents, employees, representatives, attorneys, parents, subsidiaries, affiliates, predecessors, successors, transferees, assigns and related entities thereof, and all past and present shareholders,

officers, directors, agents, employees, representatives and attorneys of any of said persons and entities.

e. Each of the Parties represent and warrant that it has full right, power and authority to enter into these releases, that it owns or has the right to release each and all of the Released Claims that it purport to release, and that the Party has not transferred any interest in any Released Claims to any third party.

f. The Parties represent, warrant and agree: (i) that they understand they are releasing potentially unknown claims; (ii) that these releases are fairly and knowingly made; (iii) that they are aware that they have limited knowledge with respect to certain of the Released Claims; and (iv) that EACH PARTY HAS ASSUMED THE RISK OF ANY MISTAKES OF FACT OR LAW IT HAS MADE IN ENTERING INTO THIS AGREEMENT AND HAS WAIVED ANY FUTURE CLAIMS THAT IT OPERATED UNDER ANY MISTAKE OF FACT OR LAW IN ENTERING INTO THIS AGREEMENT.

4. Acknowledgements and Recitals. The parties acknowledge the following:

- a. The City's annexations, listed in Exhibit A, have reduced BDI's and Ed's service area identified in operating certificates G-118 and G-110 as issued by the Washington State Utilities and Transportation Commission (Certificates).
- b. The City did not make notifications under RCW 35.13.280 for some of its annexations.
- c. The City did not initiate actions to resolve the impact of its annexation on the Certificates as provided by RCW 35.13.280.
- d. The City took no action following annexation to prevent BDI and Ed's from continuing existing services or from operating under its Certificate.
- e. BDI and Ed's took no action to assert its Certificates within the areas annexed by the City.
- f. The total number of active services in all of the annexations listed in Exhibit A at the time of annexation was less than ten (10) single family residential services. Land development activity made feasible by City annexation subsequently added services in some annexation areas. City Annexation Ordinance No. 09-07A resulted in relocation of commercial services from properties outside the City to the annexed area.
- g. The City's municipal code asserts exclusive authority over solid waste handling services, including requiring mandatory service, rate setting, and service levels. BDI and Ed's continued authority to operate within the City is pursuant to this Agreement.

5. The "Transition Period". The Parties agree that the "Transition Period" shall commence on the Effective Date and shall terminate no sooner than one hundred twenty months from the effective date of ordinances identified in no. 6 below. For the area annexed by Ordinance 19-06, the Transition Period shall terminate on Saturday, July 2, 2016. For the area annexed by Ordinance 25-09, the Transition Period shall terminate on Saturday, August 31, 2019. For the area annexed by Ordinance 41-10, the Transition Period shall terminate on Saturday, January 2, 2021.

The transition period for each area may be extended by written agreement of the Parties. The Parties agree and acknowledge that the Transition Period is longer than the seven-year franchise period required under RCW 35.13.280 in order to compensate BDI and Ed's for any and all measurable damages BDI and Ed's have incurred as a result of the annexation and cancellation of their Municipal Solid Waste (MSW) collection business within the Annexed Territory.

6. Grant of Exclusive Franchise. This Agreement grants BDI and Ed's a City franchise ("Franchise") to operate solid waste handling services in the areas annexed to the City under Annexation Ordinances 19-06, 25-09, and 41-10 ("Annexed Territory"). Except with respect to Waste Management (WMW) (as discussed in Section 7 below), the City hereby grants to BDI and Ed's 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 itself provide Collection Services within the Annexed Territory.

- a. Properties annexed through ordinances listed in Appendix A, but not included in the Annexed Territory described above, are hereby removed from BDI and Ed's Certificates. The City will continue exclusive service to these areas.

7. Non-Exclusivity re Basin Disposal, Inc. and 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 WMW, under RCW 35.13.280, to provide Collection Services within the Annexed Territory.

8. Rates and Compensation. BDI and Ed's shall be compensated for the Collection Services hereunder by charging their residential, commercial and industrial customers within the Annexed Territory the same rates and charges authorized under the tariffs approved by the WUTC for BDI and Ed's customers located within BDI and Ed's Certificates G-118 and G-110 service territory in Benton County (the "WUTC Tariffs"), subject to the following adjustments, which shall be independent of WUTC tariff jurisdiction:

- a. BDI and Ed's shall increase the rates and charges to include any taxes, fees, or charges applicable to BDI and Ed's Collection Services within the Annexed Territory that are not otherwise included within the WUTC Tariffs; and
- b. BDI and Ed's shall decrease the rates and charges to exclude any taxes, fees, or charges that are included in the WUTC Tariffs, but are not applicable to BDI and Ed's Collection Services within the Annexed Territory.

9. 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 BDI and Ed's Collection Services within the Annexed Territory, the City shall notify BDI and Ed's within a minimum of THIRTY (30) days before the taking effect of such taxes, fees, or other charges.

10. Revisions to WUTC Tariffs. Nothing in this Agreement is intended to restrict or prohibit BDI and Ed's from seeking approval from the WUTC for new and/or revised WUTC Tariffs applicable to MSW collection within their Certificate No.'s. G-118 and G-110 territory in Benton

County. In the event that the WUTC approves revisions to BDI and Ed's WUTC Tariffs, BDI and Ed's shall similarly adjust the rates and charges applicable to the Collection Services within the Annexed Territory.

11. 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 BDI and Ed's in writing of the additional services requested, and BDI and Ed's shall have the right to provide such additional services during the Transition Period. If BDI and Ed's elect to provide such additional services, BDI and Ed's shall notify the City in writing within THIRTY (30) days of receipt of the City's notice and shall offer such services either

- a. consistent with the rates under its WUTC Tariff; or
- b. if BDI and Ed's do not offer similar services under their WUTC Tariffs, pursuant to written agreement between the Parties.

If BDI and Ed's either (a) notify 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 Additional Services or provide those services itself within the Annexed Territory

12. Billing. BDI and Ed's shall be responsible for billing their residential, commercial and industrial customers within the Annexed Territory for the Collection Services. BDI and Ed's shall invoice their customers generally consistent with the WUTC procedures in WAC 480-70-396 through WAC 480-70-416.

13. Delinquent Accounts and Refusal of Service. BDI and Ed's 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). BDI and Ed's 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).

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

15. Transition of BDI and Ed's Collection Services to City. After the end of the Transition Period as defined in no. 5 above:

- a. 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 providing MSW collection itself;
- b. unless otherwise agreed to in writing by the Parties, BDI and Ed's shall have no further obligation or right under this Agreement to provide the Collection Services within the Annexed Territory;
- c. BDI and Ed's acknowledge that by entering into this franchise, they intend to waive all claims under RCW 35.13.280, including those for measurable damages which waiver shall be fully effective immediately after the expiration of the transition period.

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. BDI and Ed's 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 BDI and Ed's 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.

16. Required Notices to WUTC. The City shall be responsible for submitting any and all notices to the WUTC of its decision to annex an area pursuant to RCW 81.77.020, and commence services as described in no. 5 above. As required by WAC 480-70-141 (3), BDI and Ed's shall be responsible for notifying the WUTC that BDI and Ed's and the City have entered into this Agreement, including submission of this executed Agreement to the WUTC.

17. Cooperation in Execution of Documents. The Parties agree to 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.

18. Force Majeure. If any 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.

19. Successors and Assigns. No Party shall assign this Agreement without the prior written consent of the other Party, except that BDI and Ed's may assign this Agreement to any subsidiary, parent, sister 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.

20. 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 BDI and Ed's:

Basin Disposal, Inc.
P.O. Box 3850
Pasco, WA 99302-3850

Attention: Darrick Dietrich, President

If to City:

City of Richland
505 Swift Boulevard, MS-26
Richland, WA 99352
Pete Rogalsky, Public Works

Attention: Director

21. 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.

22. Advice of Counsel/Full Understanding. 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. Moreover, the parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have been fully advised by their independent legal counsel, accountants and other advisors with respect thereto.

23. 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.

24. 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 Pasco or 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.

25. 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.

26. 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.

27. Authority. The Parties each represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement. All persons executing this Agreement in representative capacities represent and warrant that they have full power and authority to bind their respective corporation.

28. No Admission of Liability. This Agreement does not constitute and shall not be construed as an admission of liability, fault or responsibility on the part of any of the Parties.

29. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective officers, employees and agents, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

30. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or in violation of any statute, rule, regulation or common law such provision shall be considered null and void, with the remaining provisions remaining viable and in effect. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement, and the releases provided for above, are each necessary to this Agreement; without any of these, the Parties would not enter this Agreement.

31. Headings Not Controlling. The paragraph headings included herein are for reference only and are not parts of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.


32. Equal Participation in Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language.

33. Waiver. Any of the terms or conditions of this Agreement may be waived, but only by a written notice signed by the Party waiving such terms or conditions. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights to enforce compliance thereafter with each and every term and condition of this Agreement.


34. Agreement Not Legal Precedent. The Parties acknowledge and agree that this Agreement is not intended to constitute legal precedent in any future dispute or litigation regarding any unrelated matter involving the Parties or any other municipality, government entity or third party related to any damages that may result from the annexation of territories for which a solid waste collection company has previously been granted operating authority by the Washington Utilities and Transportation Commission.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date first above mentioned.

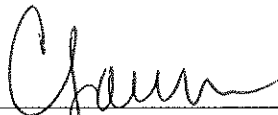
Basin Disposal, Inc.

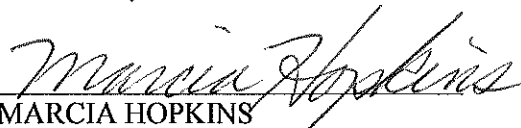
By: 
Name: Darrick Dietrich
Title: President
Date: April 26th, 2013

Ed's Disposal, Inc.


By: 
Name: Darrick Dietrich
Title: President
Date: April 26th, 2013

City of Richland

By: 
Name: CYNTHIA D. JOHNSON
Title: City Manager

Attest: 
Name: MARCIA HOPKINS
Title: City Clerk

Approved As to Form:

By: 
Name: THOMAS O. LAMPSON
Title: City Attorney

Appendix A

Ord #	Annexation	Date
2010		
41-10	Ordinance Approving the Annexation of Badger Mountain South Area (Passage) (KING)	12/7/10
2009		
25-09	Request for Annexation of 3.2 Acres of Property at 135-139 Meadow Hills Dr. (Simon-KING)	8/4/09
2007		
09-07	Ordinance Approving Department of Energy Annexation	3/20/07
09-07A	Ordinance Correcting Department of Energy Annexation (eff. 5/31/07)	5/1/07
2006		
19-06	Ordinance Approving Sterling Annexation	6/20/06
25-06	Ordinance Approving Colley Annexation	8/1/06
2005		
31-05	Ordinance Annexing Westcliffe Park Site	9-20-05
2004		
01-04	Ordinance Approving Shockley Road Area Annexation	1/13/04
15-04	Ordinance Approving Penttila/Katzaroff Annexation	6/1/04
42-04	Ordinance Approving Crosby/Ward Annexation	11/16/04
2003		
02-03	Ordinance Approving Bauder Annexation	1/7/03
09-03	Ordinance Approving Gulley Annexation	3/18/03
24-03	Ordinance Approving Ford Annexation	6/17/03
2000		
5-00	Powers Annexation	1-18-00
16-00	Watts Annexation Approval	5-16-00
22-00	Bauder Annexation	7-11-00
23-00	Ellison Annexation	7-11-00
1999		
4-99	Approve Annexation of Hanford 1100 Area	1-19-99
13-99	Zoning Designation for Hanford 1100 Area Annexation	3-16-99
41-99	Zoning and Annexing Bauder Property	8-3-99
1995		
15-95	Annexation of land near Kennedy Road	3-20-95
21-95	Annexation of Comprehensive Plan Designations & Zoning Westermeyer et al	6-5-95
39-95	Stallings Annexation	11-6-95
49-95	Hills Mobile Home Park Annexation	12-18-95
1994		
7-94	Zone Amendment to C-1 (Donna Bauder	3-7-94
8-94	Annexation - Westcliffe	3-7-94
9-94	Annexation - Meadow Hills No. 2	3-7-94
28-94	Annexation re: Etter-Gulley	6-20-94