

## **AGREEMENT FOR THE REMOVAL AND RECYCLING OF METAL FROM THE KITTITAS COUNTY TRANSFER STATION**

**THIS AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2010, by and between **Kittitas County**, a municipal corporation of the State of Washington, hereinafter called "**County**", and the business **BRC Inc.**, whose address is: 16601 SE 384 St., Auburn, WA 98092, hereinafter referred to as the "**Contractor**".

**PROJECT NAME: Removal and Recycling of Metal from the Kittitas County Transfer Station.**

**WHEREAS**, the County has no sufficient resources to provide removal of metal within a reasonable time and the County deems it advisable and is desirous of recycling the material for the project, and

**WHEREAS**, the Contractor has represented and by entering into this Agreement now represents, that the Contractor is in full compliance with the statutes of the State of Washington for hauling scrap metal.

**WHEREAS**, the Contractor has indicated that the Contractor desires the material described in the Agreement upon the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

### **I. OBJECTIVES AND SCOPE OF WORK**

The objective of this Agreement is to obtain hauling and recycling of scrap metal and appliances collected at the Kittitas County Transfer Stations.

At the Kittitas County Transfer Stations, metal is diverted from the waste stream and collected throughout the year. The County will have had all chlorofluorocarbon and compressors removed prior to the collection project.

The work under this Agreement shall consist of the removal of collected scrap metal that now exists and a minimum of quarterly pickups of scrap metal throughout the year at the Transfer Stations. The County requests the Contractor separate ferrous from non-ferrous metals and to be paid accordingly. The Contractor agrees to assume responsibility and ownership after material is loaded onto Contractor's equipment. Other materials that do not meet ferrous or non-ferrous metals shall be placed aside by the Contractor for proper disposal by the County. Other materials not expected to be hauled by the Contractor include pressurized tanks, gas cylinders, fire extinguisher, and non-metal items.

Kittitas County will hold a junk vehicle collection event in July of odd numbered years. The contractor will be required to dispose of the collected vehicles after each event. These vehicles will be allowed no more than 4 tires which will need to be removed and set aside for disposal. The contractor will be responsible for the removal and containment of all fluids from the vehicles. The county will provide final disposal of all fluids.

*Outline of County Responsibilities:*

Kittitas County & Waste Management staff screen loads for ferrous and non-ferrous metals as the loads come through the scales. The County will take all measures to ensure that any persons entering the area where metals are being loaded will abide by specific rules of safety and only unload materials in specified areas. The County will get a tare weight and a gross weight from Contractor's vehicles used for hauling metals. The County will also help Contractor with the disposal of non-metal items.

*Outline of Contractor Responsibilities:*

The Contractor will secure the loading operation from non-designated personnel while allowing an area, already approved by the County, for the public to unload permissible material. The Contractor is expected to haul material off site, assume ownership of the materials, clean site to the satisfaction of the County, and arrange for the recycling of all materials collected. The Contractor shall have clear and safe access for public ingress and egress to and from the loading area. The facility must be accessible for the public to bring in materials when the Transfer Station is open to the public. All activities will be in compliance with state and federal regulations.

## **II. TIME OF BEGINNING, COMPLETION & TERM OF AGREEMENT**

- A. The Contractor shall be responsible to maintain the metal collection area in a manner that will not inhibit further access. The site will be cleared within 15 days of notification. After initial clearing of scrap metal, additional pickups per Kittitas County Solid Waste Department request will need to be completed within 15 days of notification. Delays in this agreement may be attributable to an act of God or other conditions beyond the control of the Contractor or the County.
- B. The term of this Agreement shall be for the period commencing (February 1, 2010) through (February 1, 2011).  
This Contract will automatically renew for successive 1 year terms unless either party gives 30 days written notice of termination of said Agreement.

## **III. PAYMENT**

It is understood by both the Contractor and the County that the agreement shall include a total payment of **\$25.00 per ton for Ferrous Metals/ \$25.00 per ton for Non-Ferrous Metals** paid to the County from the Contractor for services rendered. The Contractor shall keep and submit all weight and receipt tickets that are manifested at the final destination of the recycled metals. Payment shall be made to the County within fifteen (15) days after completion of the project.

#### **IV. EMPLOYMENT**

Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall be considered employees of the Contractor only and not of the County. Any and all employees of the County, while engaged in the performance of any work or services required by the County under this Agreement, shall be considered employees of the County only and not of the Contractor.

The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

#### **V. TERMINATION OF AGREEMENT**

- A. Contractor or County may terminate this Agreement upon giving the other party thirty (30) days written notice.
- B. In the event of the death of a member of the Contractor, or any of its supervisory personnel assigned to the project, the surviving members of the Contractor hereby agree to complete the work under terms of this Agreement, if requested to do so by the County. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Contractor and the County, if the County so chooses.

#### **VI. INDEMNIFICATION**

The Contractor agrees to indemnify, hold harmless and defend County, its officers, agents and employees from and against any and all claims, losses, or liability, for injuries, sickness, death or damage arising out of any willful misconduct or negligent act, error or omission of Contractor, its agents, employees or officers, in connection with the services required by this Agreement, provided however that the Contractor's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole

negligence of the County, its agents, officers, or employees, and the Contractor's obligation to indemnify, defend, and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Parties shall apply only to the extent of the negligence or willful misconduct of the Contractor, its officers, agents, and employees.

## **VII. INSURANCE**

The Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The amount of insurance shall not be less than \$1,000,000 and shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by the County. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The Contractor shall secure and maintain in effect at all times during performance of the Work such insurance as will protect Contractor, its Support and the Additional Insured's from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the work or this Agreement, whether such performance is by Contractor or any of its Support.

The Contractor shall provide proof of insurance for Commercial (comprehensive) General Liability insurance with coverage limits not less than \$1,000,000 combined single limit per occurrence and annual aggregates. Employer's Liability insurance shall be maintained with at least \$1,000,000 coverage. Proof of a policy of Commercial Automobile Liability Insurance, including coverage for owned, non-owned, leased, or hired vehicles written on an insurance industry standard form or equivalent, with limits of liability not less than \$1,000,000. Upon the request of the County, Contractor shall furnish the County a certificate of insurance (with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. The type of insurance required by this Agreement is marked below.

☐ 1) Commercial General Liability Insurance

Certificate Holder – Kittitas County

The Certificate must name the County as additional insured as defined in the Agreement

Thirty (30) days written notice to the County of cancellation of the insurance policy.

- ☐ 2) Employers Liability.  
Thirty (30) days written notice to the County of cancellation of the insurance policy.
- ☐ 3) Commercial Automobile Liability Insurance.  
Thirty (30) days written notice to the County of cancellation of the insurance policy.

NOTE: No Agreement shall form until and unless a copy of the Certificate of Insurance, properly completed and in the amount required, is attached hereto.

### **VIII. WORKERS' COMPENSATION COVERAGE**

- a. Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Agreement. Except as prohibited by law, Contractor waives all rights of subornation against the County for recovery of damages to the extent they are covered by workers compensation, employers liability, or commercial liability.
- b. If Contractor, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and the County incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Contractor shall indemnify the County. Indemnity shall include all fines, payments of benefits to Contractor or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

### **IX. COMPLETE AGREEMENT**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. Later amendments will be in writing and executed by authorized agents of the parties and will become part of this agreement. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise, or agreement not set forth herein. This Agreement only affects this project described within, and does not conflict or have precedence over other contracts arranged.

### **X. NO GUARANTEE OF EMPLOYMENT**

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

#### **XI. RIGHT TO REVIEW**

This Agreement is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

#### **XII. VENUE AND CHOICE OF LAW**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington and to any other provisions set forth herein or in the attached exhibits.

#### **XIII. FUTURE NON-ALLOCATION OF FUNDS**

If sufficient funds are not appropriated or allocated for payment for the services provided under this Agreement for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

#### **XIV. NOTICE**

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered, and to the Kittitas County Commissioners, 205 W 5<sup>th</sup> Ave, Suite 108, Ellensburg, WA 98926. Notice to the Contractor for all purposes under this Agreement shall be

given to the address reflected on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

## **XV. TAXES**

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

## **XVI. CONFIDENTIALITY**

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Kittitas County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

## **XVII. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

## **XVIII. MISCELLANEOUS**

- A. The County's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.
- B. Differences between the Contractor and the County, arising under and by virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Kittitas County Commissioners shall be final and conclusive.
- C. The rights and remedies of the County set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to the County by any other provisions of this Agreement, by any of Contractor's Support or by law.
- D. Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
- E. The headings and paragraph titles of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

## **XIX. NONDISCRIMINATION**

### **A. Nondiscrimination in Employment**

In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with



local, state and federal laws prohibiting discrimination in employment.

B. Nondiscrimination in Services

The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Nondiscrimination in Assignment

If any assignment and/or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

**XX. EXECUTION AND ACCEPTANCE**

This Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Contractor does hereby ratify and adopt all statements, representations, warranties, covenants, and does hereby accept the agreement and agrees to all of the terms and conditions thereof.

Contractor shall not assign any rights or obligations under or arising from this Agreement without prior written consent from the County.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2010.

**Buckley Recycling Center Inc.**

**KITTITAS COUNTY**

\_\_\_\_\_  
Signature of Signatory  
(Date \_\_\_\_\_)

\_\_\_\_\_  
Mark D. McClain, Chairman

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Paul Jewell, Vice-Chairman

**Fed. ID Number: 91-1715879**

\_\_\_\_\_  
Alan A. Crankovich, Commissioner

Attest:

\_\_\_\_\_  
Clerk of the Board

Approved as to Form:

By:\_\_\_\_\_  
Deputy Prosecuting Attorney