CONTRACT FOR THE REMOVAL OF WASTE OIL AND ANTIFREEZE FROM THE KITTITAS COUNTY TRANSFER STATION

THIS Contract is entered into between the County of Kittitas, a municipal corporation, whose address is 925 Industrial Way, Ellensburg, WA 98926, hereinafter referred to as "County", and Emerald Services Inc. , whose address is 7343 E. Marginal Way, Seattle Washington. 98108 hereinafter referred to as the "Contractor".

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I
SCOPE OF WORK

Contractor shall perform the work and/or deliver to the County oil and antifreeze, described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and in accordance with the scope of work.

ARTICLE II
TERM OF CONTRACT

The term of this contract shall be for the period commencing (February 7, 2011) through (February7, 2012).
Starting Date
End Date

This contract will automatically renew for successive 1 year terms unless either party gives 30 days written notice of termination of said Contract.

ARTICLE III
CONTRACT SUM AND TERMS OF PAYMENT

County shall compensate the Contractor for work performed and/or goods supplied as described in Attachment A. County shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

ARTICLE IV
LIABILITY AND INDEMNITY

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract. 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 Contract.

ARTICLE V
TERMINATION

Contractor or County may terminate this Contract upon giving the other party thirty (30) days' written notice. In the event of termination, Contractors shall be entitled to payment for work performed to the date of termination; County shall not be liable for indirect or consequential damages. Termination by Contractor or County will not waive any claim or remedies one may have against the other.

Termination for Public Convenience:

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County. If sufficient funds are not appropriated or allocated for payment under this contract 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.

Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

ARTICLE VI
INSURANCE

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 subcontractors 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 Contract, whether such performance is by Contractor or any of its Support.

All insurance 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 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 $2,000,000 annual aggregates. Employer's Liability insurance shall be maintained with at least $1,000,000 coverage. Pollution Liability insurance shall be maintained with at least $2,000,000 each loss, $5,000,000 annual aggregate. 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. Worker's Compensation shall be in the amount required by law. 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. 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 Contract are in full force and effect. Contractor hereby waives all rights of recourse, including any right to which another may be subrogated, against Kittitas County for personal injury, including death, and property damage. Contractor's insurance policies required for this Contract shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.
The type of insurance required by this Contract 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 Contract.
  Thirty (30) days written notice to the County of cancellation of the insurance policy.
- □ 2) Workers' Compensation.
  Workers' Compensation in amounts required by law.
- □ 3) Employers Liability.
  Thirty (30) days written notice to the County of cancellation of the insurance policy.
- □ 4) Commercial Automobile Liability Insurance.
  Thirty (30) days written notice to the County of cancellation of the insurance policy.
- □ 5) Pollution Liability Insurance.
  Thirty (30) days written notice to the County of cancellation of the insurance policy.

  The Contractor shall provide a Pollution Liability policy, providing coverage for claims involving bodily injury, property damage (including loss of use of

tangible property that has not been physically injured), cleanup costs, remediation, disposal or other handling of pollutants, including costs and expenses incurred in the investigation, defense, or settlement of claims arising out of:

- Contractor's operations related to this project; and/or
- Remediation, abatement, repair, maintenance or other work with lead-based paint or materials containing asbestos; and/or
- Transportation of hazardous materials away from any site related to this project

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

ARTICLE VII
QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality.

All workers and subcontractors shall be skilled in their trades. Contractor guarantees that all work performed will be done adherence to the scope of work as outlined in Attachment A.

ARTICLE VIII
SUBCONTRACTORS

No assignments or subcontracts will be allowed unless prior written approval is obtained from the County.

County reserves the right to reasonably reject any subcontractor or supplies and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of the agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article I. Contractor shall comply with all state and federal laws pertaining to handling of oil, hauling, safety, employee benefits, etc.

Contractor is solely responsible for paying Contractor's subcontractors. Nothing in this contract shall create any contractual relationship between any subcontractor and County.

ARTICLE IX
RIGHT TO WITHHOLD PAYMENTS

County shall have the right, upon written notice, to withhold from payments due to the Contractor such sums as necessary, in County's sole opinion, to protect County against any loss, damage or claim which may result from Contractor's performance or failure to perform under this Contract or the failure of Contractor to make proper payment to any suppliers or subcontractors. Such withholding of payments shall be without penalty to the County.

ARTICLE X
SAFETY

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state, and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XI
INDEPENDENT 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 Contract by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Contract is specified in Attachment B and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

ARTICLE XII
NO GUARANTEE OF EMPLOYMENT

The performance of all or part of this Contract 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.

ARTICLE XIII
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 Contract. 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 Contract.

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.

ARTICLE XIV
REGULATIONS

Contractor warrants that it has and will maintain all necessary permits for the storing, transfer, processing, etc., of waste oil & waste anti-freeze. Further that it will observe all state, federal, and local laws in performing its duties under this contract's Attachment A "Scope of Work".

ARTICLE XV
RIGHT TO REVIEW

This contract 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 Contract and its performance, and any and all communications with or evaluation by service recipients under this Contract. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Contract for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

ARTICLE XVI
MODIFICATIONS

Either party may request changes in the Contract. Any and all agreed modifications shall be in writing, signed by each of the parties.

ARTICLE XVII
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 Contract, 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 Contract shall be governed by the law of the State of Washington.

ARTICLE XVIII
FUTURE NON-ALLOCATION OF FUNDS

If sufficient funds are not appropriated or allocated for payment for the services provided under this Contract 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.

ARTICLE XIX
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 Contract, 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.

ARTICLE XX
NOTICE

Except as set forth elsewhere in the Contract, for all purposes under this Contract, 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 5th Ave, Suite 108, Ellensburg, WA 98926. Notice to the Contractor for all purposes under this Contract shall be given to the address reflected in the opening paragraph of this Contract. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

ARTICLE XXI
SEVERABILITY

If any term or condition of this Contract 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 Contract are declared severable.

ARTICLE XXII
MISCELLANEOUS

A. The County's failure or delay to insist upon strict performance of any of the provisions of this Contractor to exercise any rights or remedies under this Contract 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. The rights and remedies of the County set forth in any provision of this Contract are in addition to and do not in any way limit any other rights of remedies afforded to the County by any other provisions of this Contract or by law.
C. The headings and paragraph titles of this Contract are not a part of this Contract and shall have no effect upon the construction or interpretation of any part hereof.

ARTICLE XXIII
WAIVER

Waiver of any breach or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

ARTICLE XXIV

INTEGRATION OF CONTRACT DOCUMENTS

This Contract represents the entire and integrated agreement between the County and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The law of the state of Washington shall govern the construction and interpretation of this Contract.

ARTICLE XV
ASSIGNMENT

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

ARTICLE XVI
NON-DISCRIMINATION

A. Nondiscrimination in Employment
In this performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment on the grounds or 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 or 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 Contract 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 Contract 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.

ARTICLE XVII
CONTRACTOR COMMITMENTS, WARRANTIES, AND REPRESENTATIONS

The Contractor represents and warrants to the County as follows:

A. The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.

B. The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the Contractor under this Contract in accordance with its terms.

C. This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.

D. The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.

E. The Contractor is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the State of Washington, or its ability to perform its obligations under this Contract.

F. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

IN WITNESS WHEREOF, the parties have executed this Contract this 15th day of

March, 2011.

KITTITAS COUNTY BOARD OF COMMISSIONERS

Signature of Signatory
(Date 3/3/2011)

Paul Jewell, Chairman

Don Hunt
Print Name of Signatory

Alan Crankovich, Vice-Chairman

Fed. ID Number:_____

Obie O'Brien, Commissioner



Attest:

Clerk of the Board

Approved as to Form:

By:_____
Deputy Prosecuting Attorney

ATTACHMENT A
SCOPE OF WORK

1. Contractor shall properly receive, transport, recycle or dispose of all used waste oil & waste antifreeze generated from households and Small Quantity Generators residing within Kittitas County. This used waste oil will be received at the following locations:

LOCATION	ADDRESSS	APPROXIMATE YEARLY AMOUNT
Cle Elum Transfer Station	Hwy. 903, Cle Elum, WA	3,500 gallons
Solid Waste Office Parking Lot	925 Industrial Way Ellensburg, WA	3,500 gallons
	Ellensburg, WA	
Cle Elum Hardware & Rental	811 W. Davis St. Cle Elum, WA	1,500 gallons
Oil Collection Event each fall	Ellensburg, WA	3,000 gallons

2. Contractor shall transport, recycle and/or dispose of the used waste oil & waste antifreeze in accordance with local, sate and Federal laws and regulations, including, but not limited to 39 CFR 72.504, WAC 173-303.

3. The Contractor shall furnish the following information to the County Solid Waste Programs Office, along with the invoice for payment:
   Name of facility serviced.
   Amount in gallons pumped (oil & antifreeze).
   Date of service.

4. The Contractor shall respond to service to the County owned oil & antifreeze tanks in weekly rounds and upon being contacted by the County Solid Waste Programs Department.

5. The Contractor shall furnish to the County, information in writing on the end destination of oil & antifreeze removed, processed or transferred by the Contractor.

6. Under no circumstances shall any of the oil or antifreeze removed from the Kittitas County Solid Waste Disposal Sites be disposed of unlawfully by the Contractor.

ATTACHMENT B

CONTRACT SUM AND TERMS OF PAYMENT

1. County shall compensate/or be compensated by the Contractor for evacuation, recycling and disposal of used oil & antifreeze received by the County at the County owned transfer station in Cle Elum, the 350 gallon used oil tanks located at the Ellensburg, Washington , the Ellensburg Solid Waste Office Parking Lot, Cle Elum, Washington, Cle Elum Hardware & Rental,, and the Kittitas County sponsored oil collection program as follows:

   a. A per gallon cost of _____$ 0.00__ for oil collected at each of the waste oil tanks. Or a payment of **$.50 per gallon** for oil collection and recycling at each of the waste oil tanks.

   b. A per gallon cost of ___**$0.40 per gallon**___ for antifreeze collected at each of the waste antifreeze tanks. Or a payment of **$ 0.00 per gallon** for antifreeze collection and recycling at each of the waste oil tanks.

   c. A flat fee of **No Charge** dollars (**$ 0.00**) for the yearly collection event held in Ellensburg.

2. Contractor shall submit to the County a monthly invoice which details services the above locations, including a breakdown of the number of gallons of oil & antifreeze removed, the location of the tanks from which the oil was removed, or location of the oil collection site, date and total cost of the removal.

Attention: **Reno Allphin**
Kittitas County Solid Waste
925 Industrial Way
Ellensburg, WA 98926
(509)962-7577 or fax
(509)962-7087

3. County shall pay Contractor within thirty (30) days from receipt of Contractor's invoice.