AGREEMENT FOR THE REMOVAL AND RECYCLING OF LEAD BATTERIES 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 IBS of Apple Valley whose address is 1202 E. Mead Ave, Union Gap, WA 98903 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 the goods 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, 2012) through (February 7, 2013).
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

Contractor shall compensate the County for recycling and or disposal of batteries 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, County shall be entitled to payment for work performed by the Contractor, as described in Attachment A, 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, 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 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 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 additional insured's, 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 subcontractors.

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. 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.

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 Contract. 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 Lead Batteries, 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
SAFETY

If services of any nature are to be performed pursuant to this Contract, 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 X
ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE XI
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 or 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 XII
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 XIII
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 XIV
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 XV
REGULATIONS

Contractor warrants that it has and will maintain all necessary permits for the storing, transfer, processing, etc., of Lead Batteries. 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 XVI
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 XVII
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 XVIII
FUTURE NON-ALLOCATION OF FUNDS

If sufficient funds are not appropriated or allocated 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
MISCELLANEOUS

A. The County's failure or delay to insist upon strict performance of any of the provisions of this Contract or 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 XXII
SEVERABILITY

If any term or condition of this contract or the application thereof to any person(s) or circumstance(s) 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 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. This Contract may be amended only by written instrument signed by both County and Contractor. The law of the state of Washington shall govern the construction and interpretation of this Contract.

ARTICLE XXV
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 the performance of this Contract, 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 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 ___ day of

_____, _____.

KITTITAS COUNTY BOARD OF COMMISSIONERS

_____
Signature of Signatory
(Date _____)

_____
Print Name of Signatory

Fed. ID Number:_____

_____
Paul Jewell, Chairman

_____
Alan A. Crankovich, Vice-Chairman

_____
Obie O'Brien, Commissioner

Approved as to form

_____
Prosecuting Attorney

Attest:_____
Clerk of the Board

ATTACHMENT A

SCOPE OF WORK

1. Contractor shall pick up and dispose of lead batteries received by the County.

2. Contractor shall provide a truck within 48 hours of notification by the County that pick-up services are needed.

3. Contractor will remove lead batteries from either of the county designated collection locations in Cle Elum, and Ellensburg, Washington.

4. Contractor shall recycle or properly dispose of all lead batteries received from the County in accordance with all federal and state laws.

5. Under no circumstances shall any of the lead batteries hauled from a County Solid Waste facility be disposed of unlawfully by the Contractor.

ATTACHMENT B

CONTRACT SUM AND TERMS OF PAYMENT

1. Contractor shall compensate County for disposal of lead batteries as follows:
   .141 per Pound.

2. Contractor shall submit to the County a monthly invoice which details services to the two collection sites, weight received and disposed of by Contractor. Invoices shall be sent to the County:

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

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