

**SHORT FORM CONTRACT
FOR MATERIAL RECYCLING**

By this agreement, HOLNAM, INC., a Washington corporation ("Holnam" herein) agrees to accept material at the rate of \$35.00 per ton from the CITY OF DES MOINES, Washington subject to the conditions expressed herein. Holnam has the capacity to use material meeting the criteria set forth in Condition 1 as an alternative to raw material or fuel in the manufacture of Portland cement. Acceptance of the material is dependent upon the following terms and conditions:

1. Holnam will only accept material that meets the following criteria:

a. Petroleum Contaminated Soils:

Heat content: Not to exceed 90,000 ppm diesel fuel or 10,000 ppm gasoline

Silica: Within the range of 45% - 65% by weight

Alumina: Within the range of 10% - 18% by weight

Alkalies: Less than 6% by weight

Neither hazardous nor dangerous waste as regulated by WAC 173-303.

b. Used Oil:

Subject to "Used Oil Burned for Energy Recovery" Regulations (WAC 73-303-515);

No extremely hazardous waste as regulated by WAC 173-303; and

No material mixed with a listed dangerous waste (WAC 173-303).

In order to demonstrate that the material meets the above criteria, Des Moines must complete the attached certification form. The certification form must be completed and returned to the plant manager or his/her designee before Holnam will consider accepting the material.

2. Holnam will review the certification form and determine whether it will accept the material for recycling. If Holnam will accept the material, it will return to Des Moines a materials approval form signed by the plant manager or his/her designee. Des Moines should: (a) sign the materials approval form; (b) return the original to Holnam; (c) retain two copies; and (d) deliver one copy with each shipment of material.

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3. The certification form and materials approval form have a contract number that must be used on all correspondence and/or documents relating to the shipment of materials.

4. Des Moines must schedule a date and time for delivery of materials with the plant manager or his/her designee. Trucks entering the plant site must be tarped and sealed. After the material is delivered to the plant, tires, trailer hitches, and truck beds must be conditioned to prevent any residual material from spreading throughout the plant.

5. Holnam has the right to test the material at the City's expense, provided that Holnam obtains the City's approval prior to testing.

6. Holnam may reject or delay delivery of material within 24 hours of its delivery to Holnam's facility if: (a) Holnam's facility is not in operation; (b) Holnam does not have further storage capacity for the material; (c) Holnam determines in its sole discretion that the quality of its product lines, its equipment or the health or safety of its employees is compromised by the use of the City's material; or (d) the material does not meet any of the criteria described in Condition 1. Holnam is not responsible for any costs associated with any such rejection or delay.

7. If Holnam rejects or delays delivery as described in Condition 6, Holnam will notify Des Moines to arrange for immediate removal of the material. If Des Moines has not removed the material within three (3) days after rejection, Holnam reserves the right to return the material to a City and charge Des Moines for all associated costs and damages. If the material is a dangerous waste and Des Moines has not arranged for appropriate disposal within three (3) days, Holnam will sign the manifest for the sole purpose of transporting the material off site.

8. Title to material passes to Holnam 24 hours after its delivery to Holnam's facility.

9. Holnam will send Des Moines a notice of destruction after the material has been used.

10. **Compensation.** All payments are due in full thirty (30) days from receipt of Holnam's invoice. A late fee of 1-1/2% per month will be charged on late payments and a collection fee of 5% will be charged on all payments not made within sixty (60) days of the due date.

11. **Indemnification.** Holnam shall release, defend, indemnify and hold harmless the City and its employees, agents and contractors from and against any and

all damages, claims, judgments, costs and fees of any kind, including all environmental costs and liabilities, relating in any way to Holnam's handling, recycling or disposal of material subject to this contract, except for claims resulting from the sole negligence of the City. Holnam's release, and the duty to defend and indemnify, shall apply even if Holnam is not culpable, negligent or in violation of any law.

12. **Term.** The term of this Agreement shall be one year from the date of its execution.

13. **Mediation and Arbitration.** If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

14. **Venue, Applicable Law and Personal Jurisdiction.** All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

15. **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

16. **Concurrent Originals.** This Agreement may be signed in counterpart originals.

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