

RESOLUTION NO. 2006 - 23

RESOLUTION APPROVING CONTRACT WITH BARKER BROTHERS WASTE, INC. TO PROVIDE COUNTY-WIDE SOLID WASTE COLLECTION AND DISPOSAL FOR WEAKLEY COUNTY

WHEREAS, Section 68-211-851(a), Tenn. Code Ann., The Tennessee Solid Waste Disposal Act, requires the County to provide county-wide solid waste collection and disposal to all County residents not otherwise having access to governmentally-provided or assured solid waste collections services by contract or through a solid waste authority; and

WHEREAS, the County has provided such county-wide solid waste collection and disposal by a contract with Barker Brothers Waste, Inc., which contract has expired by its terms; and

WHEREAS, Barker Brothers Waste, Inc. desires to continue providing county-wide solid waste collection and disposal under the same terms and conditions as the previous contract; and

WHEREAS, a copy of the proposed contract with Barker Brothers Waste, Inc. is attached to this Resolution and incorporated herein by reference; and

WHEREAS, the Public Works Committee of the Weakley County Board of Commissioners has reviewed, approved and recommended said proposed contract in its entirety.

NOW, THEREFORE, BE IT RESOLVED by the County legislative body of Weakley County, Tennessee, duly assembled in regular session on November 21, 2005 in Dresden, Tennessee, that the attached contract between the County and Barker Brothers Waste, Inc. for county-wide solid waste collection and disposal be, and same hereby is, approved and ratified as a contract of the County.

BE IT FURTHER RESOLVED that, the Mayor of Weakley County, Tennessee be, and hereby is, authorized to sign and execute said contract on behalf of the County as soon as practical after this Resolution becomes effective.

BE IT FURTHER RESOLVED, that this Resolution take effect from and after its passage, the public welfare requiring it. This Resolution shall be spread upon the minutes of the Board of County Commissioners.

Pursuant To The Rules Of The Commission, This Resolution Is Sponsored By The Following Members Of The Weakley County Board Of County Commissioners:

SPONSORED BY:

[Handwritten signature of Alan Sinclair]

SPONSORED BY:

[Handwritten signature of Tommy Hunt]

ACKNOWLEDGED AND APPROVED:

[Handwritten signature of David Posh, Chairman, Public Works Committee]

ACKNOWLEDGED AND APPROVED:

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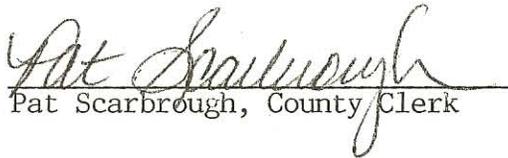
Motion was made by Commissioner Rook that the foregoing and hereto attached resolution be adopted.

Motion seconded by Commissioner Hunt.

Upon being put to a roll call vote, Motion carried by a vote of:

Yeas 17 Nays 0 Pass 0 Absent 1

ATTESTED:

  
Pat Scarbrough, County Clerk

APPROVED:

  
Richard Phebus, Chairman

APPROVED:

  
Ron Gifford County Mayor

THIS THE 21ST DAY OF NOVEMBER, 2005

## CONTRACT FOR SOLID WASTE COLLECTION

This agreement entered into between BARKER BROTHERS WASTE, INC. ( herein after "Contractor") and WEAKLEY COUNTY, TENNESSEE (herein after "County").

WHEREAS, County is required by the Solid Waste Management Act of 1991 (TCA 68-211-851 (a)) to enter into contract whereby county-wide solid waste collection is assured to the residents of the County not otherwise having access to governmentally-provided or assured solid waste collections services; and,

WHEREAS, the Contractor is willing to provide such services on the terms set forth herein.

NOW THEREFORE, in consideration of the mutual covenants made below, and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. SCOPE OF WORK; TERM: The scope of work to be done consists of furnishing all labor, tools, equipment and materials, supplies, and services necessary to satisfactorily provide mailbox collection once per week of up to seven 40-gallon bags or one 90-gallon cart of solid waste from residences and small commercial customers within the service area. Contractor shall transport said solid waste to the designated disposal location and perform all work and services incident to this Contract in strict accordance with the laws and regulations of the State of Tennessee and in accord with the provisions of this Contract. This Contract is for a term of five years beginning \_\_\_\_\_ and ending \_\_\_\_\_. Additionally, the parties may by mutual consent in writing extend the terms of this agreement for an additional five year period thereafter provided said writing is executed at least one hundred eighty (180) days prior to the expiration of the initial term of this agreement.

2. DEFINITIONS: The following terms shall have these definitions in this Contract:

CUSTOMER: Each resident unit with a separate electric service meter.

MAILBOX COLLECTION: Collection of up to seven 40-gallon bags or one 90-gallon cart residential/small commercial solid waste customers placed within ten feet of the edge of the public roadway.

SERVICE AREA: Weakley County, Tennessee, excluding the corporate limits of any municipality providing solid waste collection services either directly or by private contractual agreement.

**SMALL COMMERCIAL CUSTOMERS:** An establishment generating solid waste in quantities not to exceed seven 40-gallon bags or one 90-gallon cart each week.

**SOLID WASTE:** Waste which has characteristics such as those of the material ordinarily collected and disposed of as part of ordinary municipal garbage collection, including paper, cardboard, plastics, food refuse, and household trash, and specifically excluding ash, sludge, tires, bulk waste, construction and demolition waste, industrial waste, radioactive waste, liquid waste, infectious medical waste, or applicable state, federal or local law or regulation, or waste which are otherwise prohibited by any applicable regulations or policies of federal state, or local entities.

**EQUIPMENT:** All machinery, equipment, supplies, materials and containers used by the Contractor.

**3. INITIAL RATE; RATE ADJUSTMENTS; COLLECTION:**

A. **INITIAL RATE:** The initial rate for service described in this Contract shall be \$ 12.61 plus cost of cart per month for residential and small business customers as herein defined. This rate shall be subject to change in the event of changes in cost of living as described in subparagraph B of this article or as adjusted for changes in volume usage as defined in subparagraph C of this article.

B. **RATE ADJUSTMENT:** The rates which may be charged by Contractor for the second and subsequent years of this Contract, including any renewal or extension hereof, shall be adjusted upward annually to reflect changes in the cost of living as reflected by changes in the Consumer Price Index determined by the Bureau of Labor Statistics. Upon each anniversary date of this Contract, adjustments will be made upward for 100% of the past year's change in the Consumer Price Index compared to the preceding year. In the event that the Bureau of Labor Statistics shall cease to maintain such index during the term of the Contract or any extension hereof, the parties agree to base such adjustment upon the governmentally-produced measurement of changes in the cost of living most nearly approximating the measurements presently made by the Consumer Price Index.

C. **VOLUME USAGE ADJUSTMENTS:** Each three-month period the rates charged pursuant to this Contract shall be assessed for potential changes due to changes in volume usage. The initial charge shall be \$12.61 per month as above stated. This charge shall be reassessed based upon volume usage every three month period and for subsequent periods; rates may be adjusted annually based on the increased volume usage.

The current monthly rate, as it may be adjusted from time to time due to increases in volume usage, shall like wise be subject to annual rate adjustment for changes in cost of living.

- D. COLLECTIONS: Contractor shall bill its customers directly according to its usual practices. The parties understand that the County in no way is a guarantor of the payment of these individual accounts.
- E. Prices can be adjusted to offset changes in federal and state regulations regarding transfer and disposal of non-hazardous solid waste.
- F. The Generators rates will be adjusted to pay for its pro-rata share of actual cost of improvements necessary to comply with changes in federal and state regulations other than existing Subtitle D regulations in effect in the state of Tennessee as of January 19, 1994.
- G. The 0.85 per ton fee imposed by the State is not included in the prices set forth. The Generator will accept only a charge based on tonnage. The price quoted is for Class I material only.
- H. Any surcharge or solid waste tax by a county or the State is not included in the price per ton and shall be treated as a pass through cost to Generator. Additional environmental and fuel fees may also be passed through to the customer.
- I. Contractor reserves the right to cancel or withhold service from any customer who fails to make timely payments.

4. GUARANTEE OF PERFORMANCE: In the event of a breach of this Contract, by Contractor, County shall have every remedy against Contractor that it has by the express provisions hereof against the Contractor.

5. DELAYS AND DAMAGES: If Contractor fails or refuses to perform this Contract for any reason whatsoever and such failure or refusal shall continue for seven (7) days after written notice is give to the Contractor and the surety, the County may terminate this Contract at its elections by written notice delivered to Contractor at P.O. Box 317, Troy, Tn 38260. Provided, however, that Contractor shall have the right to refuse service to any customer who fails to make timely payment for services rendered otherwise fails to follow the reasonable procedures implemented by Contractor.

6. INSURANCE: The Contractor shall carry insurance in the coverage and amounts set forth below at all times during the terms of this contract, plus renewals. County shall be entitled to reasonable proof from time to time of the existence and continuation in full force of the various coverage's. These coverage's are:

Worker's Compensation	Statutory
Employer's Liability	\$ 500,000

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Bodily Injury Liability Except Automobile	\$ 500,000 each occurrence \$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$ 500,000 each occurrence \$ 500,000 each occurrence
Automobile Bodily Injury Liability	\$ 500,000 each occurrence \$1,000,00 each occurrence
Automobile Property Damage Liability	\$ 500,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

7. **CONDUCT OF OPERATION:** The Contractor shall conduct its operation so as to interfere as little as possible with the public use of roads, walks, and entrances to structures, and shall do everything reasonably possible to make sure that at least one (1) lane of traffic is left open. All operations of the Contractor upon the premises of the County shall be confined to areas authorized by the County. No unauthorized or unwarranted entry, passage through or storage or disposal of materials shall be made upon public or privately owned premises. The Contractor shall hold and save the County free and harmless from liability of any nature or kind arising from any use, trespass or damage caused by its operations on premises of third persons. In the event the County finds it necessary to defend itself in Court from claims brought alleging and negligence, intentional acts, or nonperformance of the Contractor, its employees or agents, the Contractor shall reimburse the Generator for all reasonable attorney's fees, deposition cost court cost travel, lodging, meals and other out of pocket expenses incurred as a result of having to defend such suits. Contractor neither shall nor be liable for any suits, actions, legal proceeding, claims, demands, damages, costs, expenses, and attorney fees arising out of the award of this Contract or a willful or negligent act or omissions of the County or its agents, servants or employees.
8. **INDEMNIFICATION BY CONTRACTOR:** The Contractor hereby agrees to protect, indemnify and save harmless the County from and against any and all loss, expenses, damage, charges, and cost (including court cost and reasonable attorney fees of defense) for injury to or death of persons and injury to or any negligence or intentional act on the part of the Contractor, its agents, servants or employees or any person who is engaged in the performance of the work in carrying out this Contract.
9. **LATE COLLECTIONS; PENALTIES; HANDICAPPED AND ELDERLY ACCOUNTS:** It is agreed and recognized by the parties that the prompt and

efficient collection of solid waste is of the essence under the Contract, and to this Contract, and to this end it is further agreed that a missed pickup (not picked up on day scheduled) reported to the Contractor before 3:00pm will be picked up before 7:00pm that same day and that missed pickups reported after 3:00pm will be picked up by 10:00 am the next succeeding day. It is further agreed that in the event the Contractor fails to carry out these provisions concerning missed pickups, the Contractor will pay a penalty of \$2.50 for each missed pick up by means of crediting the account of the customer in question. No such penalties will be assessed for the first sixty (60) days of the initial term of this contract. Handicapped or elderly customers unable to carry there garbage to the road will have it picked up by the Contractor at the front door of any such residence at no extra charge.

10. **SUBCONTRACTING AND ASSIGNMENT:** The Contractor shall not enter into any subcontracts, agreements, or assignments of this Contract, in whole or in part without the County's approval, which shall not be unreasonably withheld. In the event the County shall consent to any such subcontractor, agreement, or assignment, the ultimate liability of Contractor shall not be removed thereby.
11. **INDUSTRIAL AND LARGER COMMERCIAL CUSTOMERS:** Industrial and commercial customers, other than those defined about small commercial customers, are not cover by this Contract. Contractor may, within its discretion, choose to service or not have service any such industrial and larger commercial accounts, which matters shall be purely a matter of private negotiation between Contractor and such potential customers. By the same token, Contractor is not granted any exclusive right to service such accounts, nor does Contractor guarantee that it will provide such service.
12. **EXCLUSIVITY; ENFORCEMENT; FAILURE OF PURPOSE:** In consideration of the covenants made herin by the Contractor, County does hereby grant to Contractor, for the term of this agreement and any renewals thereof and according to the conditions hereof, the exclusive right to provide solid waste collection services to residential and small business accounts within the service area, except as modified in the remainder of this article. The parties intend that Contractor shall have the right and ability at its option; to sue in its own name to enforce the provisions of this grant of exclusivity as against all third partied. Notwithstanding Contractors discretion in that regard if called upon to do so, County will take all reasonable legal steps necessary at its sole expense, to enforce the exclusive rights herin, to such extent and for so long as such remedy may be pursued in good faith. Notwithstanding the foregoing, however, if a court of competent jurisdiction shall render a final judgment declaring that grant of exclusivity here given to be unenforceable by County or Contractor against third partied, then this Contract shall fail of its essential purpose and be of no further effect. In that event, provided the County shall have in good faith prosecuted a civil remedy to enforce this grant of exclusivity, the County shall be held unenforceable. Further, if those person and agencies charged with the enforcement of the Tennessee Solid Waste

Management Act of 1991, as it may be amended, shall at any time determine that this Contract is not contract constituting compliance by the County with the terms of said Act, then the County may, at its option, within sixty (60) days following such determination, give notice to the Contractor of such determination and declare this Contract to be of no further force and effect, without further liability of the County to the Contractor. In such events, the parties each promise to the other that they will use their best efforts in good faith to negotiate a substitute arrangement which will be deemed as compliance by the appropriate regulatory agency.

13. AMENDMENT AND MODIFICATION: This agreement may not be amended or modified except by written instruments signed by both parties.

IN WITNESS WHEREOF, the parties have set their signatures on the dates indicated.

Weakley County, Tennessee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Ron Gifford, County Executive

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bryan Barker, General Manager

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE Page 1 of 2

DATE  
09/30/2005

PRODUCER  
877-945-7378  
Willis North America, Inc. - Regional Cert Center  
26 Century Blvd.  
P. O. Box 305191  
Nashville, TN 372305191

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED  
Barker Brothers Waste, Inc.  
P.O. Box 317  
Troy, TN 38260

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A ACE American Insurance Company	22667-007
INSURER B American Alternative Insurance Corporatio	19720-001
INSURER C Indemnity Insurance Company of North Amer	43575-001
INSURER D:	
INSURER E:	

**COVERAGES**  
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/>	HD0G21707818	11/1/2004	11/1/2005	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 3,000,000 MFD EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	ISAH0784296A	11/1/2004	11/1/2005	COMBINED SINGLE LIMIT (Ea accident) \$ 3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ GARAGE LIABILITY <input type="checkbox"/> ANY AUTO AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		<b>EXCESS LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$	01A2UM000022006	11/1/2004	11/1/2005	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$
C		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WLRC44170942 SCFC44171077	11/1/2004 11/1/2004	11/1/2005 11/1/2005	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E L EACH ACCIDENT \$ 3,000,000 F I DISFAS# - FA FMPLOYFF \$ 3,000,000 F I DISFAS# - POLICY LIMIT \$ 3,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

**CERTIFICATE HOLDER**  
Weakley County Tennessee  
Dresden, TN 38225

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
AUTHORIZED REPRESENTATIVE  
*Susan C. Brewer*

## IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.