

November 5, 1991

Introduced by: PAUL BARDEN

DM:mw/ctyopmot

Proposed No.: 91-825

MOTION NO. **8455**

A MOTION authorizing the King County Executive to enter into an agreement between King County and selected suburban cities for receipt of King County funds to implement City Optional Programs as described in the Comprehensive Solid Waste Management Plan.

WHEREAS, the 1989 King County Comprehensive Solid Waste Management Plan establishes the responsibilities of the county and the cities in implementing waste reduction and recycling services, and

WHEREAS, the Comprehensive Solid Waste Management Plan gives the county responsibility for providing regional waste reduction and recycling (WR/R) services including nonresidential technical assistance, backyard composting, and Master Recycler/Composter programs, and

WHEREAS, cities have the option of receiving these services from the county or receiving funding to implement their own programs, and

WHEREAS, funding for the City Optional Programs is based on the total amount of King County funds budgeted for each program and is proportional to the city's population or employment levels, depending on the program;

NOW THEREFORE, BE IT MOVED by the Council of King County:

The King County executive is hereby authorized to enter into an agreement consistent with the attached model agreement with the cities choosing to implement City Optional Programs, provided that each agreement references the grant amount and work products for which the city will be reimbursed at the end of each payment period. Subsequent funding shall be consistent with adopted county WR/R policy and budgets and shall be referenced by addenda to these agreements specifying the work products or tasks to be accomplished.

PASSED this 12th day of November, 1991.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chairman

ATTEST:

Gerald G. Peterson
Clerk of the Council

CITY OPTIONAL PROGRAMS
AGREEMENT BETWEEN KING COUNTY AND BELLEVUE

This agreement is made and entered into between King County, a political subdivision of the State of Washington and the City of Bellevue, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. This agreement has been authorized by the legislative body of each jurisdiction pursuant to formal action as designated below:

King County: Motion No. _____
City: _____

I. DEFINITIONS

For purposes of this agreement, the following definitions shall apply:

"Recycling" means transforming or remanufacturing waste materials into reusable or marketable materials for use other than landfill disposal or incineration. (RCW 70.95.030)

"Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials. (RCW 70.95.030)

"Nonresidential" means sectors other than single-family and multi-family dwellings and schools.

"Nonresidential technical assistance" means anything the City or County can do to help businesses reduce waste and establish collection programs for recyclables. This assistance includes but is not limited to waste consultations, workshops, promotional materials, and collection assistance.

II. PURPOSE

This agreement is entered into for the purpose of providing County funds to the City to implement a nonresidential waste reduction and recycling (WR/R) program. This agreement establishes the respective responsibilities of the parties.

III. DURATION

This agreement shall become effective upon its signature by the County and the City and shall be retroactively effective to the date of County approved work preauthorizations (July 1, 1991). This agreement shall remain in effect until December 31, 1992.

IV. GENERAL OBLIGATIONS OF PARTIES

4.1 King County

- A. Funding. The County shall provide funding for the city optional nonresidential program for 1991 in the amount of \$49,372. Funding is based on the total amount of King County funds budgeted for nonresidential programs and is proportional to the City's employment levels. Funds approved for 1991, if not fully expended by the end of the year, may be carried over and expended in 1992.

The level of funding is determined annually by the King County Council. The Solid Waste Division will request the same level of funding for programs in 1992 as was allocated in 1991. However, this level of funding cannot be guaranteed.

The City Optional Programs will be re-evaluated as part of the 1992 update of the King County Comprehensive Solid Waste Management Plan. The future of the City Optional Programs beyond 1992 will be decided through this process.

- B. Disbursement of Funds. Grant funds shall be paid out on the basis of reimbursement for completed work as described in Exhibit A. The City shall provide documentation as specified by the County of costs and project progress. All equipment, supplies and services purchased with city optional program funds must be used solely for the purpose of implementing a nonresidential waste reduction and recycling program. The disbursement schedule shall be quarterly.
- C. Program Services. The County will not provide nonresidential technical assistance services within the corporate limits of Bellevue. If the City wishes to participate in a County sponsored program, the City shall pay the County for participation according to its proportional share of the cost of the program based on the City's employment levels. The City shall be eligible for any regional nonresidential services offered by the County that are outside the category of technical assistance.

4.2 City

- A. Program Implementation. The City shall provide a nonresidential waste reduction and recycling program within its corporate limits. The scope of work for 1991 shall be described in an addendum to this agreement.
- B. Reports. The City shall submit quarterly reports describing the activities accomplished. Reports shall be due 15 days after the end of each quarter. A final report shall be submitted one month after completion of the project period.
- C. Services for 1992. Provided that the King County Council approves funding for 1992 city optional programs, the City shall submit a scope

of work for 1992 by October 1, 1991. The approved scope of work shall be incorporated into this agreement by amendment. Funds approved for 1992 must be expended by December 31, 1992 when this agreement expires.

- D. Minority and Women's Business Utilization. Due to the apparent lack of minority and or woman-owned firms to provide waste consultations, the County requirements for M/WB utilization shall be waived in contracting for this service. For any further contracting activities under this agreement, relevant sections of King County Code, Chapter 4.18 shall apply.

V. AUDITS AND EVALUATION

- A. The records and documents with respect to all matters covered by this agreement shall be subject at all times to inspection, review, or audit by the County and/or federal/state officials so authorized by law during the performance of this agreement and six (6) years after termination hereof.
- B. The City shall provide right of access to its facilities, including those of any contractor or subcontractor, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this agreement.
- C. The City agrees to cooperate with the County or its agent in the evaluation of the City's performance under this agreement and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17.

VI. CORRECTIVE ACTION

If the County determines that a breach of this agreement has occurred; that the City has failed to comply with any terms or conditions or this agreement, or has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

1. The County will notify the City in writing of the nature of the breach;
2. The City shall respond in writing within three (3) days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the contract into compliance, which date shall not be more than ten (10) days from the date of the City's response;
3. The County will notify the City in writing of the County's determination as to the sufficiency of the City's corrective action

plan. The determination of the sufficiency of the City's corrective action plan shall be at the sole discretion of the County;

4. In the event that the City does not respond within the appropriate time with a corrective action plan; or the City's corrective action plan is determined by the County to be insufficient, the County may commence termination of this contract in whole or in part pursuant to Section XII.A.;
5. In addition, the County may withhold any payment owed the City or prohibit the City from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed.

VII. HOLD HARMLESS AND INDEMNIFICATION

- A. In providing services under this agreement, the City is an independent entity, not an employee of the County for any purpose. The City shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes to, or on behalf of, the City, its employees or others by reason of this agreement. The City shall protect, indemnify, and hold harmless the County, its officers, agents and employees from and against any and all claims, costs and losses whatsoever occurring or resulting from 1) the City's failure to pay any such compensation, wages, benefits or taxes; and 2) the supplying to the City of work, services, materials, or supplies by agency employees or others in connection with the performance of this agreement.

- B. The City further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional acts or failure for any reason to comply with the terms of this agreement by the City, its officers, employees, agents or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the agreement pursuant to Section XII.
- C. The City shall protect, defend, and indemnify and save harmless the County, their officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents. The City agrees that its obligations under this subparagraph extend to any claim, demand or cause of action brought by or on behalf of any employee of the City, against the

County, its officers, agents or employees, and includes any judgement, award, and cost arising therefrom including attorney fees.

Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in unfair trade practice.

- D. The County shall protect, defend, and indemnify and save harmless the City, their officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the County, its officers, employees or agents.

VIII. FORCE MAJEURE

The parties are not liable for failure to perform pursuant to the terms of this agreement when failure to perform was due to an unforeseeable event beyond the control of any party to this agreement.

IX. WAIVER

No waiver by either party of any term or condition of the agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach whether of the same or a different provision of this agreement.

X. THIRD PARTY BENEFICIARY

This agreement is not entered into with the intent that it shall benefit any other entity or person except those expressly described herein, and no other such person or entity shall be entitled to be treated as a third party beneficiary of the agreement.

XI. SEVERABILITY

If any of the provisions contained in this agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

XII. TERMINATION OF AGREEMENT

- A. The County may terminate this agreement, in whole or in part, upon five (5) days written notice in the event: 1) the City materially breaches any duty, obligation, or service required pursuant to this agreement, or 2) the duties, obligations, or services required herein become impossible, illegal, or not feasible.

If the agreement is terminated by the County pursuant to this Subsection XII.A.1., the City shall be liable for damages, including

any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of the City, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the City shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the City by the County.

- B. The City may terminate this agreement upon thirty (30) days' written notice to the County, without cause and without further obligation by either party. Upon termination of this agreement by the City, the City shall not regain eligibility for regional nonresidential technical assistance services provided by the County for the period of time this agreement would have remained in effect.
- C. The obligations of the parties pursuant to this agreement are expressly contingent upon the appropriation and availability of sufficient funds by the King County Council. The County may terminate this agreement in whole or in part if expected or actual funding is not appropriated, or is withdrawn, reduced or limited in any way prior to the termination date set forth above in Section III.

XIII. CONFLICT OF INTEREST

- A. The City covenants that no officer, employee, or agency of the County who exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the program funded herein shall have any personal financial interest, direct or indirect, in this agreement. The City shall take appropriate steps to assure compliance with this provision.
- B. If the City violates the provisions of Subsection XIII.A. or does not disclose other interests, required to be disclosed pursuant to King County Ordinance No. 2294, as amended, the County shall not be liable for payment for services rendered pursuant to this agreement. Violation of this section shall constitute a substantial breach of this agreement and grounds for termination pursuant to Section XII.A.1. above as well as any other right or remedy provided by this agreement or law.

XIV. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services provided directly or indirectly under this agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

XV. CHANGES

Either party may request changes to this agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this agreement. Should the funding structure described in 4.1.A. above be substantially changed, this agreement may be amended to reflect such changes, or be superseded by a new agreement.

XVI. ALL WRITINGS CONTAINED HEREIN

This agreement, appendices, and attachments contain the entire understanding between the parties, and there are no other agreements, understandings, or representations set forth or incorporated by reference herein. No subsequent modification (s) or amendment (s) of this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the City and County and made a part of this original agreement.

XVII. NOTICE

IN WITNESS WHEREOF this agreement has been executed by each party on the date set forth below:

CITY

KING COUNTY

Mayor

King County Executive

Date

Date

Pursuant to

Pursuant to Motion No.

Clerk - Attest

Clerk - Attest

Approved as to form

Approved as to form

City Attorney

King County
Prosecuting Attorney

Date

Date