

November 27, 1991

Introduced by: **PAUL BARDEN**

cdlcontracts.mw

Proposed No.: **91 - 927**

ORDINANCE NO. **10196**

AN ORDINANCE relating to construction, demolition, and land clearing (CDL) waste handling services; authorizing the King County executive to execute contracts with Regional Disposal Company and Waste Management of Washington for the provision of CDL waste handling services; finding such contracts to be in the public interest and financially sound; and finding the alternative solid waste services procurement process enabled by 36.58 RCW and resulting in such contracts to be advantageous compared to other procurement processes.

PREAMBLE:

The adopted 1989 King County Comprehensive Solid Waste Management Plan, prepared in accordance with the requirements of 70.95 RCW, called for the initiation of a procurement process for the purpose of contracting with a private vendor to handle and, ultimately, dispose of non-recycled CDL waste. King County initiated the procurement process in December, 1989 under the alternative solid waste services procurement process enabled by 36.58 RCW by advertising a request for proposals (RFP) from private vendors to handle and dispose of CDL waste. Five prospective vendors submitted responses, and three vendors, whose proposals appeared to meet the minimum requirements of the RFP, remained in the competition following the initial rating of responses, the disqualification of one proposal, and the withdrawal of another.

Acting as lead agency, the King County solid waste division issued on June 28, 1991, a final environmental impact statement (FEIS) on the selection of vendor(s) to handle CDL waste, assessing each of the three vendor proposals, as well as the no action alternative of not entering into a contract with any vendor.

By Ordinance No. 10111, passed by the King County council on September 23, 1991 and enacted into law on October 3, 1991, King County selected Regional Disposal Company and Waste Management of Washington as the companies best qualified to provide CDL waste handling services for King County and authorized the King County executive to negotiate contracts with those two companies.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County council finds the alternative solid waste services procurement process enabled by 36.58 RCW, which provided, among other things, for competitive negotiations with multiple vendors, was advantageous to the County compared to other methods of awarding contracts.

SECTION 2. The King County council further finds the attached contract for CDL waste handling services to be financially sound and to serve the public interest.

SECTION 3. The King County council hereby authorizes the King County executive to execute contracts, in a form substantially similar to the contract attached to and incorporated by reference into this ordinance, with

1 Regional Disposal Company and Waste Management of Washington to provide CDL
2 waste handling services; provided that, no contract shall be executed unless
3 site specific environmental review documents required by law, including
4 mitigation requirements if applicable, have been issued by the SEPA
5 responsible official of the lead agency for environmental review under SEPA
6 for the jurisdiction in which the vendor's proposed facility is located by no
7 later than June 1, 1993 for both of that vendor's two required CDL waste
8 receiving facilities.

9 SECTION 4. Should any section, subsection, paragraph, sentence, clause
10 or phrase of this ordinance be declared unconstitutional or invalid for any
11 reason, such decision shall not affect the validity of the remaining portion
12 of this ordinance.

13 INTRODUCED AND READ for the first time this 9th day of
14 December, 1991.

15 PASSED this 16th day of December, 1991.

16 KING COUNTY COUNCIL
17 KING COUNTY, WASHINGTON

18 Lois North
19 Chair

20 ATTEST:

21
22 Gerald A. Peterson
23 Clerk of the Council

24 APPROVED this 30th day of December, 1991.

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26 Jim Hill
27 King County Executive
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10196

CONTRACT FOR
CONSTRUCTION, DEMOLITION AND LAND CLEARING
WASTE HANDLING SERVICES

by and between
KING COUNTY, WASHINGTON
and

_____, 1991

December 9, 1991

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- Exhibit A: ISO Form No. CG 00 01
- Exhibit B: ISO Form No. CA 00 01 and Endorsement CA 0029
- Exhibit C: ISO Form No. CA 00 12
- Exhibit D: ISO Form No. CG 00 39
- Exhibit E: King County Code Ch. 12.16
- Exhibit F: King County Code Ch. 12.18

Exhibit G: King County Code Ch. 4.18

Exhibit H: King County Code Ch. 3.04

Exhibit I: Form of Guaranty

**CONTRACT FOR CONSTRUCTION, DEMOLITION & LAND
CLEARING WASTE HANDLING SERVICES**

THIS CONTRACT is entered into by and between KING COUNTY (the "County"), and _____ (the "Contractor"), with its principal place of business at _____

WHEREAS, the Contractor was one of the highest rated proposed contractors in response to the County's advertised Request for Proposal (RFP) 106-90 ANL; and

WHEREAS, the Contractor has considerable experience in solid waste management; and

WHEREAS, the Contractor has promised and is prepared to meet the County's design, construction, and operating requirements, among other things, to ensure protection of the environment; and

WHEREAS, in the opinion of the County, the public interest requires the development and operation of a comprehensive system to handle construction, demolition, and land clearing waste in the County's Jurisdiction, particularly given the recent closure of the Newcastle Landfill; and

WHEREAS, the County wishes to engage the Contractor to render certain construction, demolition and land clearing waste handling services;

NOW, THEREFORE, in consideration of the covenants and agreements hereafter set forth, the parties mutually agree as follows:

Section 1. PURPOSE AND INTENT OF CONTRACT.

The purpose of this Contract is to provide suitable locations for the receipt by the Contractor of certain construction, demolition, and land clearing (CDL) waste from generators, haulers, and other private and public customers; to provide for the Contractor's removal of recyclable materials from Mixed CDL Waste materials received by it; and to provide for the Contractor's transportation, final disposal, and other related Handling of non-recycled CDL Waste received by it.

The Contractor shall help provide for the continuous, uninterrupted disposal and related Handling of all Non-Recycled CDL Waste generated within the County's Jurisdiction in a manner that has little or no adverse environmental impacts and at competitive and

fair rates to both public and private users, including those in the construction industry.

A related purpose of this Contract is to encourage recycling of CDL Waste materials: (a) by requiring the Contractor to maintain a specified minimum processing capability at one or more of its facilities that receive loads of Mixed CDL Waste materials from generators or haulers; (b) by reserving to the County the right to at any time prohibit or limit the disposal of materials reasonably deemed by it to be recyclable; and (c) by exempting from the County's exercise of its flow control obligations Recyclable CDL Waste as provided in this Contract.

Section 2. COMMENCEMENT AND DURATION OF CONTRACT.

- A. The Contractor's obligation to commence Handling CDL Waste at Contractor Facilities shall commence on June 1, 1994 (the Service Commencement Date), subject to the other provisions of this Section 2. Except as otherwise provided in this Contract, as of the Service Commencement Date of this Contract, the Contractor shall be responsible for meeting all of its obligations herein; provided, however, that the Contractor may, with the prior written approval of the County, temporarily discharge its responsibilities under this Contract by using Back-up Contractor Facilities or Modes of Transportation if the Primary Contractor Facilities or Transportation Mode required hereunder are not operational as of that date through no fault of the Contractor.
- B. Unless terminated earlier pursuant to provisions of this Contract, this Contract shall terminate on May 31, 2004 (10 years from stated Service Commencement Date); provided, however, that this Contract may be extended for an additional period of ten (10) years, upon the mutual written consent of the parties. If either party desires to extend the Contract for the additional ten-year period, it shall give the other party no less than one (1) year's written notice of its desire to so extend; provided, further, the Contractor's obligations with respect to closure and post-closure care of Disposal Facilities, as well as all other obligations of the Contractor related to closure and post-closure care of Disposal Facilities under this Contract (including record keeping, reporting, monitoring, access and financial assurances) shall continue beyond the above-stated or an extended termination date of this Contract in the manner set forth in Section 5I, "Disposal Facility Closure/Post-Closure Requirements".

- C. In the event the Contractor fails to accept CDL Waste under this Contract beginning on the Service Commencement Date at Contractor's Primary Facilities or at Back-up Facilities to the extent authorized by the County for such use, then the following shall apply:

(1) If the delay is the result of a delay in obtaining applicable land use or construction permits or approvals and the Contractor has submitted to the Regulatory Agency(ies) with Jurisdiction all land use permit applications, together with all supporting documentation required to accompany such permit applications, by no later than September 30, 1992 and has submitted to the Regulatory Agency(ies) with Jurisdiction all construction permit applications, together with all supporting documentation required to accompany such permit applications, by no later than November 30, 1993 then the Contractor's sole liability for such a delay in commencing services shall be for per diem liquidated damages calculated pursuant to Section 18D, up to a maximum of forty-four (44) Week Days. At the conclusion of said forty-four Week Day period, if the Contractor is still unable to accept CDL Waste as required above as a result of delay in obtaining applicable land use or construction permits or approvals, this Contract shall terminate unless, prior to the expiration of the 44 Week Day period, the parties agree in writing to extend the Contract. If the Contract is terminated pursuant to this section, the Contractor has no further liability to the County other than the liquidated damages set forth above, and the County has no further obligation to the Contractor. If the parties elect to extend the Contract, they shall agree upon an extension period of no less than forty-four Week Days and up to a maximum of eighty-eight (88) Week Days (the Extension Period), during which the Contractor shall use its best efforts to obtain applicable permits. The Contractor shall be liable for additional per diem liquidated damages only during the last forty-four Week Days of the Extension Period, and only if, and for the number of Week Days that, the Contractor is still unable to accept CDL Waste as required above during the last forty-four Week Days of the Extension Period. If, at the expiration of the Extension Period, the Contractor is still unable to accept CDL Waste as required above, this Contract shall automatically terminate, and in such event, neither party shall have further liability to the other except for the liquidated damages as set forth above.

For purposes of determining if all documentation required to accompany a permit application has been submitted, a written and signed statement to such effect from the head of the applicable Regulatory Agency(ies) with Jurisdiction shall be determinative that the Contractor has complied with its permit application submission requirements under this section. In the absence of the foregoing, Contractor shall bear the sole burden of proving such permit application documentation was timely and fully submitted to the satisfaction of the applicable Regulatory Agency with Jurisdiction. Such proof shall be in the form of a statement from the head of such agency or his or her designee confirming timeliness and completeness of such documentation or, if there is a dispute between Contractor and such agency regarding timeliness or completeness of such documentation, a judgment or decision from an administrative body or court with jurisdiction.

(2) If Contractor has failed to commence acceptance of County CDL Waste as required in Section 2A, or by the end of the Extension Period if applicable pursuant to Subsection 2C(1), for reasons other than those identified in Section 2C(1), then Contractor shall be liable to the County for per diem liquidated damages, in accord with the formula for liquidated damages in Section 18D, and based on a maximum of two hundred sixty five (265) Week Days, and such damages shall be the County's sole damages under this Contract.

Section 3. TERMINATION OF CONTRACT.

- A. The County may terminate this Contract at any time, for cause, pursuant to the provisions of Section 18 of this Contract. Contractor may terminate this Contract at any time in the event of a material breach by the County of its obligations under this Contract.
- B. Either party may terminate this Contract at any time, upon giving written notice to the other party, if the duties, obligations, or services required herein become illegal; provided that, the County may not terminate this Contract pursuant to this subsection if the County enacts laws that make the Contractor's performance under this Contract illegal. Contractor may terminate this Contract in the event the County lacks the authority to flow control CDL Waste as provided in this Contract. Any termination of the Contract pursuant to this subsection shall be without penalty or assessment of damages against either party and without compensation to either party.

- C. The Contractor agrees not to violate any federal or state antitrust or corrupt practice laws. In the event the Contractor is found to be guilty of a violation of anti-trust or corrupt practice laws for acts related in any way to its performance under this Contract, the County at its election may terminate this Contract by giving the Contractor written notice of the County's intent to terminate effective on the date designated in the notice. For the purpose of this subsection, the antitrust or corrupt practice laws shall include all civil and criminal laws, both state and federal, pertaining to antitrust, fair practices, corrupt standards or corrupt practices. Further, for the purpose of this section, the Contractor shall be considered guilty of a violation if it either: (1) enters a plea of guilty to a charge; (2) enters a plea of nolo contendere; or (3) is found guilty of a criminal violation or is held liable for civil violation by the highest court or tribunal which considers the case against it.
- D. Except to the extent County remedies are limited by the liquidated damages provisions of Sections 2, 14 and 18, and except as otherwise expressly stated in other sections of this Contract, nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or by law that either party may have in the event that the obligations, terms and conditions set forth in this Contract are breached by the other party.

Section 4. DEFINITIONS.

A. Parties/Other Entities/Plan

1. City of Seattle means Seattle city government, a municipal corporation in the State of Washington.
2. Comprehensive Solid Waste Management Plan means the County's plan for Handling Solid Waste prepared pursuant to Chapter 70.95 RCW and King County Code 10.24 as in effect now or hereafter amended.
3. Contractor means _____ or its successor.
4. County means King County government, a municipal corporation in the State of Washington or its successor agency responsible for solid waste.
5. County's Jurisdiction means the geographic area for which King County government or its successor has comprehensive planning authority for solid waste

management by law and/or by interlocal agreement (currently the unincorporated area and all cities and towns except Seattle and Milton).

6. King County means the geographic area called King County, including all incorporated cities and unincorporated areas.
7. Office of Civil Rights and Compliance means the King County Office of Civil Rights and Compliance or its successor.
8. Office of Risk Management means the King County Office of Risk Management or its successor.
9. Regulatory Agency with Jurisdiction means any local, state or federal governmental entity that exercises any regulatory power over any facilities, transportation modes, operations or service provided by the Contractor, except that, for purposes of this Contract, it does not mean the Solid Waste Division. (Regulatory Agencies with Jurisdiction include but are not limited to: the King County Board of Public Health, other county or state health agencies, the Washington State Department of Ecology, the Washington State Department of Labor and Industries, the Oregon State Department of Environmental Quality, the King County Division of Building and Land Development, other county and city building and land use permitting agencies, and the federal Environmental Protection Agency.)
10. Seattle's Jurisdiction means the geographic area for which the City of Seattle has comprehensive planning authority for solid waste management by law and/or by interlocal agreement (currently the area inside the corporate limits of the City of Seattle).
11. Second Contractor means _____ and Second Contract means the Contract for Construction, Demolition and Land Clearing Waste Handling Services executed or contemplated to be executed by the County and the Second Contractor.
12. Solid Waste Division means the King County Solid Waste Division or its successor.

B. Types of Materials/Waste

1. Asbestos Waste means any material that contains more than one percent asbestos by weight and that can,

when dry, be crumbled, pulverized, or reduced to powder by manual pressure. For purposes of this Contract it includes properly contained, non-hazardous asbestos.

2. Clean Mud and Dirt means mud and dirt that meet the soil cleanup standards of the Washington Administrative Code (WAC) 173-340-740 and WAC 173-340-745 as currently enacted and as hereafter amended.
3. Construction, Demolition, and Land Clearing (CDL) Waste means any Recyclable or Non-Recyclable construction, demolition and land clearing waste that results from construction, remodeling, repair or demolition of buildings, roads or other structures, or from land clearing for development, and requires removal from the site of construction, demolition or land clearing. Except where otherwise expressly provided, "CDL Waste" or "County CDL Waste" means CDL Waste generated in the County's Jurisdiction. CDL Waste includes, but is not limited to the following listed materials:
 - a. Construction Material includes wood, concrete, drywall, masonry, roofing, siding, structural metal, wire, insulation, and other building material; and plastics, styrofoam, twine, baling and strapping materials, cans, buckets, and other packaging materials and containers. It also includes sand, rocks and dirt, that are used in construction and that do not meet the definitions of Clean Mud and Dirt or Unacceptable Waste.
 - b. Demolition Material includes concrete, asphalt, wood, masonry, roofing, siding, structural metal, wire, insulation, and other materials found in demolished building, roads, and other structures. It also includes sand, rocks and dirt, that result from demolition and that do not meet the definitions of Clean Mud and Dirt or Unacceptable Waste.
 - c. Land Clearing Material includes natural vegetation and minerals such as stumps, brush, blackberry vines, tree branches, associated dirt and sand, tree bark, sod, and rocks.

For purposes of this Contract, CDL Waste does not include Clean Mud and Dirt, Contaminated Soil, Asbestos Waste,

Unacceptable Waste as defined in this Contract, or other Solid Waste which does not meet the definition of CDL Waste.

4. Contaminated Soil is any soil that does not meet the soil cleanup standards of the Washington Administrative Code as currently enacted and as hereafter amended.
5. Mixed CDL Waste is CDL Waste containing both Recyclable and Non-Recyclable CDL Waste material that has not been separated.
6. Non-Recyclable CDL Waste means CDL Waste that cannot be kept out of or recovered from CDL Waste and reused or transformed into a reusable product. For purposes of determining Contractor's recycling obligations under this Contract, CDL Waste shall be considered non-recyclable if Contractor determines it is not feasible to separate such material from a load of mixed CDL Waste delivered to Contractor's Receiving Facilities.
7. Recyclable CDL Waste means CDL Waste material that can be kept out of or recovered from CDL Waste and reused or transformed into a reusable product. Recyclable CDL Waste may consist of a single type of recyclable material or a mixture of two or more types of recyclable material. For purposes of this Contract, CDL Waste material shall be deemed Recyclable CDL Waste material if the County prohibits, by ordinance or public rule, the disposal of such material or market such materials.
8. Residual CDL Waste means the Non-Recyclable Waste remaining after recycling processes have removed recyclable material.
9. Separated CDL Waste means a single kind of CDL Waste material that has been separated from other kinds of CDL Waste materials at the site of remodeling, repair, construction, demolition, or land clearing or at some other location before it is delivered to a Contractor Receiving Facility.
10. Solid Waste means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, land clearing wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes

all liquid, solid and semisolid materials that are not the primary products of public, private, industrial, commercial, mining, and agricultural operations. It also includes sludge from waste water treatment plants and septage from septic tanks, wood waste, dangerous waste, hazardous waste, and other problem wastes.

11. Unacceptable Waste means any material not authorized by any Regulatory Agency with Jurisdiction for transportation to or disposal at a Contractor Facility, or any material the transportation or disposal of which would constitute a violation of any governmental requirement pertaining to health, safety or the environment. Such material may include, but is not limited to, hazardous, extremely hazardous or dangerous waste as designated under Washington or Federal law, including but not limited to regulations contained in the Washington Administrative Code, now in effect or hereafter amended, or in the Code of Federal Regulations, now in effect or hereafter amended.

C. Facilities/Services

1. Contractor Facility means any real or personal property, property improvement, fixture or equipment, including CDL Waste Containers and other transportation equipment, owned, leased, operated or controlled by the Contractor or its agents and used by the Contractor or its agents in performing any of its services under this Contract.
2. Receiving Facility means any Contractor Facility located in King County that receives CDL Waste from haulers, generators, or any other customers. For purposes of this Contract, a Receiving Facility may be a Contractor Recycling Facility, a Contractor Inter-Modal Facility, or a Contractor Transfer Facility.
3. Transfer Facility means any Contractor Facility at which CDL Waste is transferred from one Container to another Container for any purpose.
4. Inter-Modal Facility means any Contractor Facility at which Containers of CDL Waste are transferred from one mode of transportation to another without removal of any CDL Waste from the Containers.

5. Recycling Facility means any properly licensed and permitted facility, regardless of whether owned or operated by the Contractor or by some other entity, at which materials are removed from mixed CDL Waste for the purpose of reuse or remanufacture. Any of the following activities shall constitute Recycling for purposes of this Contract: (a) the reuse or remanufacturing of Recyclable CDL Waste material into a new marketable product; or (b) the separation of Recyclable CDL Waste material from loads of Mixed CDL Waste for the purpose of transferring such materials to a facility where they may be reused or remanufactured.
6. Disposal Facility means any Contractor Facility at which the final disposition of Non-recyclable CDL Waste occurs.
7. Separate Cell means a separate area of a Disposal Facility which has an independent or physically separated liner and leachate collection system.
8. Handling or Handle means the management, storage, collection, transportation, treatment, utilization, processing or final disposal of any form of Solid Waste, including the recovery and recycling of materials from mixed Solid Waste, the recovery of energy resources from such materials or the conversion of the energy in such materials to more useful forms or combinations thereof.
9. Primary means any Contractor Facility, including Transportation Mode, approved for use under this Contract and by all Regulatory Agencies with Jurisdiction and used regularly and routinely to Handle CDL Waste in the performance of services under this Contract.
10. Back-up means any Contractor Facility, including Transportation Mode, approved for use under this Contract and by all Regulatory Agencies with Jurisdiction and used to Handle CDL Waste materials in the performance of services under this Contract in the event any Primary Facility or component thereof is unable to commence operating or continue operating for any reason.
11. Transportation Mode means any form of transportation used by the Contractor or its agents to transport CDL Waste from one Contractor Facility to another and may include rail, truck, or barge.

12. Container means a leak-proof Container used to hold and transport CDL Waste by rail, truck or barge to Disposal Facilities, in conformance with the specifications contained in the Plan of Operations. For purposes of this definition, "leak-proof" means that liquid from containerized waste will not be released into the environment from such Container.
13. Week Days shall mean days, Monday through Friday, but excluding the holidays set forth in Section 5D (each such day referred to as a Week Day).

Section 5. CONTRACTOR CDL WASTE HANDLING RESPONSIBILITIES.

A. Waste Acceptance Obligations/Limitations

1. The scope of the Contractor's Solid Waste Handling services under this Contract is limited to CDL Waste generated in the County's Jurisdiction. The Contractor's right to Handle other types of Solid Waste in any Contractor Facilities used in connection with this Contract is limited as set forth in this subsection.
2. The Contractor shall at all times during the term of this Contract accept CDL Waste delivered to it originating from the County's Jurisdiction up to at least the minimum monthly quantity as established in subsection 5B.
3. The Contractor shall establish rules to prohibit delivery of Unacceptable Waste and shall screen for Unacceptable Waste as provided in the Plan of Operations, and shall not knowingly accept in any Contractor Facilities any Unacceptable Waste. Nothing contained herein shall be construed to require Contractor to accept hazardous, extremely hazardous or dangerous waste. If a material currently classified as hazardous, very hazardous or dangerous is, at a later date, downgraded and no longer so classified by applicable governmental authorities, Contractor may, at its option, accept or reject such material.
4. The Contractor may, but is not obligated to, accept and Handle Solid Waste from Seattle's Jurisdiction in Contractor Facilities located in Seattle's Jurisdiction that are used to Handle the County's CDL Waste pursuant to this Contract, subject to the prohibition against Unacceptable Waste set forth in

Section 5A(3), and provided that such acceptance and Handling shall not interfere with the Contractor's obligations under this Contract.

5. The Contractor may accept and Handle CDL Waste from Seattle's Jurisdiction in Contractor Facilities located in the County's Jurisdiction that are used to Handle the County's CDL Waste pursuant to this Contract, subject to the prohibition against Unacceptable Waste set forth in Section 5A(3); provided that, such acceptance and Handling shall not interfere with the Contractor's obligations under this Contract; and provided further that, if the City of Seattle prohibits the Handling of the County's CDL Waste in facilities located in Seattle's Jurisdiction, the County may prohibit the Handling of Seattle's CDL Waste in Contractor Facilities located in the County's Jurisdiction.
6. After reasonable visual inspection of loads and inquiry of drivers, the Contractor shall not knowingly accept or Handle non-CDL Solid Waste from outside the County's Jurisdiction in the same Transfer Facilities located in the County's Jurisdiction which are used to Handle the County's CDL Waste pursuant to this Contract unless expressly allowed by King County Code Chapter 10.08, as now in effect or as hereafter amended and the County's Adopted Comprehensive Solid Waste Management Plan now or as may be hereafter amended; and provided that, such acceptance and Handling shall not interfere with the Contractor's obligations under this Contract.
7. After reasonable visual inspection of loads and inquiry of drivers, the Contractor shall not knowingly accept or Handle CDL Waste from outside the County's Jurisdiction and Seattle's Jurisdiction in Contractor Facilities located in the County's Jurisdiction used to Handle the County's CDL Waste under this Contract unless expressly allowed by King County Code Chapter 10.08, as now in effect or as hereafter amended, and the County's Adopted Comprehensive Solid Waste Management Plan, as now in effect or as hereafter amended; and provided that, such acceptance and Handling shall not interfere with the Contractor's obligations under this Contract.
8. The Contractor shall not accept or Handle at Contractor Receiving Facilities, Transfer

Facilities, Inter-Modal Facilities or Transportation Modes, any Solid Waste from any source or jurisdiction except consistent with subsection 5A.

9. Contractor Inter-Modal and Transportation operations shall not involve unloading of CDL Waste from Containers or any other processing of CDL Waste before its arrival at a Disposal Facility.
10. The Contractor may dispose of Solid Waste from other jurisdictions in Contractor Disposal Facilities used hereunder but located outside the County's Jurisdiction, provided that, such disposal shall not interfere with the Contractor's obligations under this Contract.
11. For purposes of administering the waste acceptance and prohibition provisions set forth in this subsection, the Contractor shall establish and maintain during all hours of operation during the term of this Contract a waste screening program and shall exercise due diligence in screening each load of Solid Waste accepted at its Receiving Facilities and disposed of at its Disposal Facilities. Such waste screening program shall be described in the Plan of Operations required in Section 8.

B. Minimum Quantity Handling Capacity -- Primary and Back-Up

The Contractor shall establish and continuously maintain throughout the term of this Contract the capacity to receive, accept, Handle, transport, and dispose of at least 25,000 tons of CDL Waste from the County's Jurisdiction each month, subject to the adjustments provided in this Section. Such capacity shall be exclusive of any capacity the Contractor may need to Handle any other Solid Waste accepted and allowed under Section 5A above. Such monthly capacity obligation shall be adjusted every three (3) years following the Service Commencement Date (including, if the Contract is extended, during the 10-year extension period), with each such adjustment date referred to herein as an "Adjustment Date". The adjustment shall be calculated based on Contractor and Second Contractor proportionate share of CDL Waste Handled during the three-year period prior to the applicable Adjustment Date. Contractor's adjusted monthly capacity obligation, for both primary and back-up capacity, shall each be equal to: the tonnage of County CDL Waste accepted by Contractor during the three (3) year period prior to the Adjustment Date, divided by the sum of the tonnage of County CDL Waste accepted by Contractor and Second Contractor during the same three (3) year period, with the result multiplied times 50,000 tons, provided however, while the Contractor and Second Contractor are operating, in no event shall Contractor's

capacity obligation be adjusted below 12,500 tons per month or above 37,500 tons per month. The Contractor shall demonstrate in its Plan of Operations how it will design, build, operate and maintain its capacity, as required in this subsection, to Handle CDL Waste from the County's Jurisdiction as well as any additional capacity it will design, build, operate and maintain to Handle any other Solid Waste in the same Contractor Facilities.

C. Back-up Facilities/Transportation

(1) As a minimum Back-up Disposal Facility, the Contractor shall develop or reserve capacity, as required in this subsection, at a Separate Cell on the site of the Primary Disposal Facility or, alternatively, the Contractor may develop or procure the usage of or reserve capacity, as required in this subsection, at a different disposal facility. Whether at the Primary Disposal Facility site or a different site, however, such Back-up Disposal Facility shall have sufficient capacity reserved exclusively to perform back-up disposal services pursuant to this Contract. Such Back-up Disposal Facility shall have the capacity to Handle at least the same monthly quantity of CDL Waste as required in Section 5B in addition to any capacity needed to Handle any other Solid Waste the Contractor expects or is obligated to Handle and shall be used whenever the Primary Facility is inoperative for any reason or when peak quantities of CDL Waste from the County's Jurisdiction temporarily exceed the capacity of the Primary Disposal Facility.

The Contractor shall ensure that the Back-up Disposal Facility will have all necessary permits for development of at least six months disposal capacity using the minimum monthly Handling capacity required by Section 5B, in addition to any capacity needed to Handle any other Solid Waste the Contractor expects or is obligated to Handle, and that it will be constructed and permitted by all Regulatory Agencies with Jurisdiction with at least two months disposal capacity using the minimum monthly Handling capacity required by Section 5B, in addition to any capacity needed to Handle any other Solid Waste the Contractor expects or is obligated to Handle, by no later than six (6) months following the Service Commencement Date; thereafter, the Back-up Disposal Facility must remain operational and available when needed during the term of this Contract.

The Contractor shall proceed with due diligence to seek and timely procure additional back-up disposal capacity to replace any back-up capacity used at the Back-up Facility pursuant to this Contract or used to Handle any other Solid Waste so that the minimum of two months capacity will be available for any subsequent use.

(2) The Contractor shall provide Back-up Intermodal Facilities and Transportation Modes with Handling capacity suffi-

cient to accept and Handle at a minimum the monthly quantity of County CDL Waste specified in Section 5B in addition to any capacity needed to Handle any other Solid Waste the Contractor expects or is obligated to Handle. These Back-up Contractor Intermodal Facilities and Transportation Modes must be fully permitted, lawful and capable of operating within three months of the Service Commencement Date of this Contract and must be capable of mobilization within three days of any failure of the Primary Intermodal Facilities or Transportation Mode. In the event the County authorizes truck hauling as a Back-up Transportation Mode, the Contractor shall not, under any circumstances, truck haul through the Columbia River Gorge National Scenic Area, as defined on the date this Contract is executed.

(3) Any Back-up containers, which are designed or built to less stringent standards than are required by Section 5(F) for Primary Containers, particularly with respect to leakage propensity, which have less capacity than the Primary Containers, or which are used in a different manner than the Primary Containers as described in the Plan of Operations required in Section 8, may be used by the Contractor only as an interim Backup measure and only with the prior approval of the Solid Waste Division under the following three circumstances: (a) after service has commenced and before shipping Containers are available in sufficient quantities to Handle the County's CDL Waste; (b) if the Transfer Facilities or Transportation Modes of the Contractor become inoperative for any reason so as to require interim use of alternative shipping containers, or (c) if the County's CDL Waste requiring transport to final disposal exceeds the required capacity of the Contractor's Primary Transfer Facilities or Transportation Modes. If approved and used, such alternative shipping containers containing CDL Waste must be covered with a tarp or otherwise covered before shipping and while stored before shipping.

(4) Contractor shall provide back-up transfer and receiving capability as reasonable and practicable to replace Primary Back-up Transfer and Receiving Facilities when such Facilities are not operational and shall identify how such obligation shall be met in its Plan of Operations. Such obligation shall not require Contractor to have additional Back-up Facilities or other permitted facilities.

(5) The use of Back-up Disposal Facilities, Transportation Modes, and receiving/transfer services is subject to the Solid Waste Division's prior approval, except that, in the event of an emergency the Contractor may utilize Back-up Facilities for 72 hours and notify the Solid Waste Division on the first Week Day following the commencement of such use. Any County approval of the use of Backup facilities, including alternative containers, will be limited in duration. Any failure by the Contractor to honor such time limits shall be considered a material breach of this

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Contract, and the County may either assess liquidated damages or seek actual damages pursuant to Section 18 of this Contract.

D. Receiving CDL Waste

(1) On the Service Commencement Date, Contractor's Primary Receiving Facilities, or if approved by the County, Back-up Receiving Facilities located in King County, must be operational.

(2) The Contractor shall operate at least two (2) Receiving Facilities in King County, shall have both of its Receiving Facilities open to the public to receive CDL Waste from the County's Jurisdiction each Week Day for no less than eight (8) hours per day and shall have both of its Receiving Facilities open to the public to receive CDL Waste from the County's Jurisdiction for a minimum of four (4) hours on Saturday; provided that at any Receiving Facility located within one half (1/2) mile of land zoned for predominantly residential use at the time of execution of this Contract may not be open to the public to receive CDL Waste from any jurisdiction on Sunday or any earlier than 10:00 A.M. nor any later than 4:00 P.M. on Saturday; provided further that the Contractor may close its Receiving Facilities on the following listed holidays: New Year's Day; Martin Luther King's Birthday (third Monday in January); President's Day (third Monday in February); Memorial Day (last Monday in May); Independence Day (fourth of July); Labor Day (first Monday in September); Veterans' Day (November 11); Thanksgiving (third Thursday in November and the following Friday); and Christmas (December 25). The Contractor shall publish in a newspaper of general circulation, post on signs at Contractor Facilities, and notify the Solid Waste Division of its schedule of operations and changes thereto at least 30 days before the effective date of such schedule or change, or a shorter period subject to prior approval by the Solid Waste Division. The County reserves the right to notify the public, including potential users, of the availability of the Contractor's CDL Waste Handling services.

The Contractor shall accept if delivered each month from generators, haulers, and other customers CDL Waste originating in the County's Jurisdiction and brought to the Contractor's Receiving Facilities up to an amount at least equal to the monthly capacity minimum established in Section 5B; provided, however, that the Contractor may refuse to accept any CDL Waste material the disposal of which the County has prohibited by ordinance or public rule subject to the provisions of subsection 5E below.

The Contractor shall provide sufficient on-site queuing capacity that will result in no off site queuing on public roads or rights-of-way, except under emergency conditions which may not exceed ten (10) days in a calendar year, except under conditions

where Second Contractor's receiving facilities are not operational. This does not waive any applicable permit conditions.

The Contractor shall install at each Receiving Facility, maintain in good working order, and at all times use certified weighing scales of sufficient precision to allow the levying of charges based on weight. Scales shall be inspected no less than every sixty (60) days by a Regulatory Agency with Jurisdiction or a certified scale contractor, at Contractor's election.

The Contractor shall incorporate into its Plan of Operations and conduct daily litter inspection and pick-up for CDL Waste that can be reasonably identified by visual inspection as coming from a CDL load on the primary truck routes to its Receiving Facilities as designated by Contractor in the Plan of Operations, within a one (1) mile radius of such Receiving Facilities.

In order to reduce the potential for debris falling out of trucks, Contractor shall: (a) post notice at Contractor's Receiving Facilities that incoming loads shall be covered or otherwise secured to prevent litter; (b) impose a special fee to be set by Contractor on violators in addition to the fees charged pursuant to Section 10; and (c) for repeat violators (12 violations in a 12 consecutive month period at a single Facility) prohibit such violators from use of that Facility for a period of one year.

E. Minimum Recycling

The Contractor agrees not to dispose of Recyclable CDL Waste materials the disposal of which the County has prohibited by ordinance or public rule; provided that, the Contractor may dispose of such materials when they constitute ten percent (10%) or less of the weight of a load of Mixed CDL Waste, as indicated by the Contractor's reasonable visual inspection of an incoming load before it is deposited at a Contractor Receiving Facility, and when the Contractor determines it to be economically infeasible to separate such materials for purposes of recycling.

The Contractor shall process loads of Mixed CDL Waste received at Contractor Facilities to remove, sell or otherwise Handle, to the extent the Contractor determines it to be economically feasible, and take to market or to a facility to be selected by the Contractor for further processing the end result of which will be reuse, Recyclable CDL Waste materials, which may include, as examples, but is not limited to, the following materials:

1. clean, unpainted, untreated wood;
2. clean, unpainted, untreated gypsum board;
3. corrugated cardboard;
4. ferrous and non-ferrous metals;
5. concrete;

6. asphalt;
7. whole bricks; and
8. compostable land clearing material.

The Contractor shall incorporate into and describe in its Plan of Operations the kind and quantity of labor and/or equipment it will commit to processing loads of Mixed CDL Waste.

The Contractor shall determine, at Contractor's sole discretion, but after consultation with the County, the economic feasibility of separating and marketing material from loads of Mixed CDL Waste for recycling. The County reserves the right to prohibit, by ordinance or public rule, the disposal of Recyclable CDL Waste materials. The County must give the Contractor at least 30 days' written notice of its intent to initiate a proposed ordinance or public rule to prohibit the disposal of any material.

The Contractor may refuse to receive at its Receiving Facilities any source separated or otherwise separated CDL Waste material or any load of Mixed CDL Waste that contains materials the disposal of which the County has prohibited by ordinance or public rule and when such materials constitute more than ten percent (10%) of the weight of a load of Mixed CDL Waste as indicated by the Contractor's reasonable visual inspection of an incoming load before it is deposited at a Contractor Receiving Facility. Before rejecting materials pursuant to the preceding sentence, the Contractor shall give at least 30 days' written notice to credit or contract customers and at least 30 days posted notice at all Receiving Facilities unless the County allows a shorter notice period. The Contractor's required notice period may commence when the County advertises a public hearing on its intent to adopt an ordinance or public rule prohibiting the disposal of a material.

F. Transfer/Inter-Modal Facilities and Transportation -- Minimum Design/Construction/Operating Standards

The Contractor shall meet or exceed the following requirements for design, construction, and operation of Transfer Facilities, Inter-Modal Facilities, and transportation equipment.

1. All Transfer Facilities shall be located, designed, constructed, and operated in a manner which meets or exceeds all requirements under the Washington Administrative Code, including Washington State minimum functional standards (MFS) for mixed municipal solid waste (MMSW) for non-arid conditions, in effect on January 1, 1992, and which meets or exceed all requirements of all Regulatory Agencies with Jurisdiction where the facilities are located. On or before the Service Commencement Date, the Contractor must provide the County an engineering report which thoroughly examines the

engineering, environmental, and operational aspects of each facility and certifies the design and construction meet the above-stated requirements and are in compliance with the requirements of all Regulatory Agencies with Jurisdiction. Certification shall comply with the requirements of RCW 18.43.070 and WAC 196-24-095 as now in effect and as hereafter amended.

2. All Inter-Modal Facilities shall meet the requirements of, and secure applicable permits from, all Regulatory Agencies with Jurisdiction.
3. Except as allowed under Back-up Facility provisions in Section 5C, all Containers used for transport of CDL Waste to Disposal Facilities shall be designed, constructed, and maintained to Handle CDL Waste, and to be compatible with both the Primary and Back-up Mode of Transportation. The Containers shall be cleaned externally and internally as needed to avoid public nuisance and shall be repaired promptly as needed to meet the requirements of this section. Containers will be tarped or otherwise covered in transit.
4. The Contractor shall weigh and then record weights of incoming and outgoing loads at all Transfer Facilities indicating for outgoing loads their disposal or recycling disposition as described in a Plan of Operations.
5. The Contractor shall establish and identify in its Plan of Operations all areas to be used for storage of CDL Waste and Containers. All such areas shall be screened, buffered, or otherwise sheltered to mitigate noise, dust, and visual impacts on nearby properties and road rights-of-way as required by Regulatory Agencies with Jurisdiction. The Contractor shall not store or stockpile CDL Waste materials except as described in the Plan of Operations.
6. The Contractor shall establish and maintain a covered and secure area for the temporary storage of Unacceptable Waste materials detected and removed pursuant to the Contractor's waste screening program required in Section 5A(11).
7. The Contractor shall maintain all required permits in a current status and shall upgrade permits for any expansion or change in facility usage, as required by Regulatory Agencies with Jurisdiction. The Contractor is responsible for compliance with the State Environmental Policy Act (SEPA) where applicable, as well as any applicable National Environmental Protection Act

(NEPA) requirements or environmental review requirements of any other Regulatory Agency with Jurisdiction where the facility is located.

G. Reservation of and Limitations on Backhaul Rights

The Contractor reserves the right to backhaul in its Containers any other products, commodities, or materials except food products intended for humans, and except radioactive, dangerous, hazardous or extremely hazardous products, commodities or materials as defined by any Regulatory Agency with Jurisdiction. The Contractor reserves the right to backhaul in its Containers food products intended for animals subject to the following limitations. If such animal food backhaul is regulated by a state or federal agency, the Contractor may proceed to backhaul animal food without notice to or consent by the County. If no state or federal agency regulates animal food backhaul, such backhaul shall, at the election of the County, require prior approval of the County.

H. Primary and Back-up Disposal Facilities -- Minimum Design/Operating Standards

The Contractor shall meet or exceed the following minimum requirements in the design, construction, and operation of Primary and Back-up Disposal Facilities:

1. All Contractor Facilities shall be located, designed, constructed, and operated: (a) to meet or exceed the requirements of WAC 173-304 - Washington State minimum functional standards (MFS) for mixed municipal solid waste (MMSW) for non-arid conditions in effect on January 1, 1992; (b) to reduce the risk of liner puncture associated with the unique characteristics of CDL Waste materials; and (c) to meet or exceed all the applicable regulatory and legal requirements of all Regulatory Agencies with Jurisdiction where the Contractor Facilities are located even if such requirements are more stringent than the other requirements of this Contract. On or before the Service Commencement Date, the Contractor must provide the County an engineering report which thoroughly examines the engineering, environmental, and operational aspects of each Disposal Facility and which certifies that the design and construction meet or exceed the requirements stated above and are in compliance with the requirements of all Regulatory Agencies with Jurisdiction. Certification shall comply with the requirements of RCW 18.43.070 and WAC 196-24-095 as now in effect and as hereafter amended.

2. Disposal Facilities shall utilize scales to weigh incoming and any outgoing loads and shall record weights as described in a Plan of Operations.
3. The Contractor shall establish and identify in its Plan of Operations all areas to be used for storage of CDL Waste and Containers. All such areas shall be screened, buffered, or otherwise sheltered to mitigate noise, dust, and visual impacts on nearby properties and road rights-of-way as required by Regulatory Agencies with Jurisdiction. The Contractor shall not store or stockpile CDL Waste materials except as described in the Plan of Operations.
4. The Contractor shall establish and maintain a program for monitoring landfill gas, groundwater and water quality consistent with the MFS for MMSW applicable in the geographic area of the Disposal Facility, and the Contractor shall promptly undertake corrective action if the monitoring results indicate such action is necessary.
5. As part of the requirement that all Disposal Facilities meet or exceed the MFS for MMSW landfills in non-arid areas in effect on January 1, 1992, leachate collection systems shall be installed. The Contractor, to the extent required by applicable Regulatory Agencies with Jurisdiction, must obtain from all applicable Regulatory Agencies with Jurisdiction a waste discharge permit(s) authorizing any discharge of potentially contaminated surface water or leachate.

I. Disposal Facility Closure/Post-Closure Requirements

The Contractor shall close and perform post-closure care of all Disposal Facilities operated in performance of services under this Contract at standards equal to or exceeding the requirements of Washington Administrative Code regulations, MFS for MMSW for non-arid conditions in effect on January 1, 1992, and meet or exceed all the applicable regulatory and legal requirements of all Regulatory Agencies with Jurisdiction over the Disposal Facilities even if such requirements are more stringent than the requirements of all applicable Washington Administrative Code provisions. The Contractor shall perform post-closure care for a minimum of 30 years following closure.

In order to assure that it will have adequate financial resources reserved to meet its closure and post-closure obligations, the Contractor shall meet or exceed the requirements of all applicable Washington Administrative Code provisions for facilities located in the State of Washington and meet or exceed all applicable requirements of any other Regulatory Agency with Jurisdiction

pertaining to closure and post-closure financial assurances for Disposal Facilities.

The Contractor shall, to the extent required by applicable Regulatory Agencies with Jurisdiction, select and provide to the Regulatory Agencies with Jurisdiction, for review and approval one or more of the following financial assurance instruments the purpose of which shall be to independently guarantee availability of financial resources sufficient and necessary to meet the Contractor's obligations for closure and post-closure care under this Contract and rule or law:

- a) a trust fund;
- b) a surety bond;
- c) an irrevocable letter of credit; or
- d) an insurance policy.

The financial assurance instrument shall be in a form, an amount, and issued by an institution approved by all required Regulatory Agencies with Jurisdiction. The financial assurance instrument or suitable evidence of its authenticity and compliance with all requirements shall be provided to the applicable Regulatory Agencies with Jurisdiction by the date established by such agencies.

J. Office/Telephone for Public Access and Complaints

The Contractor shall maintain, staff and operate during the same business hours as its Receiving Facilities, and for the duration of this Contract, an office and telephone to provide public information and to respond to public complaints, and shall maintain a log explaining how each complaint is addressed. The telephone shall include recorded information for non-business hours and to supplement staff during business hours. In addition, the Contractor shall operate during all non-business hours a telephone with recorded information and an explanation of how to leave a recorded complaint.

K. Standards for Cultural Artifacts

The parties intend this section to ensure that any significant Native American cultural resources encountered during performance of this Contract are identified, protected from harm, and entrusted to appropriate custodians. "Shared Principles," an agreement entered into by the Colville Confederated Tribes and the Pacific Northwest Archaeological Society, is hereby noted as an example of the cooperative determination of custody contemplated by this Agreement.

Accordingly, Contractor shall develop, operate and close all Facilities consistent with the following principles:

1. Prior to excavation at any Facility, Contractor shall assess the area for its potential to contain significant Native American cultural resources. The assessment shall be conducted by a qualified archaeologist or anthropologist.

2. If significant Native American cultural resources are encountered during excavation, the Contractor shall immediately halt work in the area involved, consult with the appropriate state agency, and proceed as required by law.

L. Environmental Mitigation

The Contractor shall perform all environmental mitigation required by any Regulatory Agency with Jurisdiction.

M. Force Majeure

The Contractor is not responsible for performance under this Contract where an event beyond its control prevents performance with either the Primary or Back-up Facilities. Such events include: riots; wars; civil disturbances; insurrections; acts of terrorism; epidemics; landslides, except those caused by the Contractor's design, construction, operation or maintenance failures; earthquakes; floods; volcanic eruptions; fires; lightning; other natural catastrophic occurrences; explosions, except those caused by the Contractor's design, construction, operation or maintenance failures; labor strikes at railroad or other subcontractor facilities; lockouts by third parties; judicial injunctions or restraining orders and federal, state and local government orders that are not subject to reasonable and timely, cure by the Contractor, except those orders resulting from the Contractor's design, construction, operation or maintenance failures; and material changes in federal, state, or local law related to Solid Waste Handling that makes performance under this Contract illegal. If the Contractor is unable to perform its obligations under this Contract as the result of the occurrence of any such event, the obligations of both the Contractor and the County shall be temporarily suspended during such event. Following such event, the Contractor shall exercise best efforts to resume performance as soon as possible; provided, however, that if the Contractor is unable to perform for a period of six (6) months, then the County, at its option, may terminate this Contract without penalty against the Contractor and without compensation of the Contractor by the County.

Section 6. MAINTENANCE OF RECORDS/INFORMATION AND REPORTING.

The Contractor shall collect, maintain, and report, in accordance with a Plan of Operations pursuant to Section 8, the records and accounts reasonably deemed necessary by the County to

ensure compliance with this Contract, as listed below. The Contractor shall maintain such records for a period of at least six (6) years after the termination of this Contract, unless permission to destroy them earlier is granted by the County and any Regulatory Agency with Jurisdiction, if such approval is required by law or rule; provided that, the Contractor shall retain records and accounts pertaining to Disposal Facility closure and post-closure responsibilities for at least six (6) years following the completion of post-closure care, or longer if required by law or by any Regulatory Agency with Jurisdiction.

A. Kind, Origin, and Disposition of Waste

The Contractor shall record, maintain, and provide to the County records of: (1) the payload weight and customer class of each load of County CDL Waste materials received at Receiving Facilities; (2) the kinds of County CDL Waste materials received in each load by weight, at minimum indicating specific separated CDL Waste material(s); (3) geographic origin, at minimum indicating whether the load originated in the area of the County's Jurisdiction, Seattle's Jurisdiction, or out-of-County; (4) the name and address of the customer delivering the load of CDL Waste to the Contractor Receiving Facility (provided that Contractor shall not be required to provide copies of lists of names and addresses of such customers; Contractor shall permit the County to review the list without making copies thereof and to record such information for its own use); (5) the disposition of all CDL Waste materials received, at minimum the portion by weight and kind of material(s) separated for recycling and the portion by weight and kinds of material(s) deposited or transported and deposited in a Disposal Facility; and (6) summaries of the gross tonnage and number of deliveries of all other solid waste at Contractor's Receiving Facilities at such frequency as provided for in the Plan of Operations. Such records shall be kept and provided to the County as established in the Plan of Operations.

B. Financial

The Contractor shall provide to the County all information needed to monitor and evaluate performance in meeting Minority and Women Owned Business Enterprise participation requirements set forth in Section 14 of this Contract.

Additionally, the Contractor shall report to the County its gross revenues by class of customers from all CDL Waste Handled at Contractor Facilities in a form and at a frequency to be described in the Plan of Operations.

C. Incidents, Complaints, and Enforcement Actions

The Contractor shall make records of and report to the County complaints, refusals of loads, enforcement actions, and other incidents in a form and at a frequency described in the Plan of Operation.

D. Other

Nothing in this section shall be read to limit the Contractor's obligations to keep records required by other sections of the Contract or by any Regulatory Agencies with Jurisdiction.

Section 7. ACCESS, AUDITS, EVALUATION.

- A. The Contractor, upon reasonable notice by the County or by any Regulatory Agency with Jurisdiction, shall make all information described in Sections 6 and 14 of this Contract available for inspection, review, or audit by the County or by any Regulatory Agency with Jurisdiction: (i) during the term of this Contract; (ii) for six (6) years following termination; and (iii) in the case of records pertaining to Disposal Facility Closure and Post-Closure obligations set forth in Section 5(I), for thirty-six (36) years following closure.
- B. The Contractor, with or without notice by the County, shall provide immediate right of access to its facilities, at all reasonable times, to the County in order to monitor and evaluate the Contractor's activities under this Contract. All County personnel entering a Contractor Facility do so at the County's risk.
- C. The Contractor agrees to cooperate with the County in any monitoring or evaluation of its activities under this Contract. The results and records of any formal evaluations shall be maintained and disclosed in accordance with RCW 42.17, if applicable, and any other applicable laws; provided that the County shall notify the Contractor prior to the release to the public of such information as may be reasonably necessary, subject to the requirements of RCW 42.17, to give Contractor sufficient time to seek injunctive relief or otherwise protect the confidentiality of the information.

Section 8. PLAN OF OPERATIONS.

A Plan of Operations for all Contractor Facilities used or to be used to perform services under this Contract has been prepared by Contractor and submitted to the County, which Plan of Operations is incorporated by reference into this Contract. The Plan of

Operations shall be updated periodically, as provided for herein. The Plan of Operations, as updated (the "Plan of Operations"), at minimum, shall:

- a) meet or exceed the requirements of the Washington Administrative Code, and meet or exceed the requirements of any Regulatory Agency with Jurisdiction;
- b) describe in detail and contain the schedule of operations of all Contractor Facilities, including a detailed description of the Solid Waste Handling capacity for all Solid Waste the Contractor is obligated or otherwise intends to Handle and a detailed description of the labor, equipment and systems for recycling processing which the Contractor intends to use to help meet its recycling obligations under this Contract; provided that, the parts of the Plan of Operations describing the County CDL Waste Handling capacity and the County CDL recycling processing set forth above are subject to the County's approval prior to implementation.
- c) contain the schedule of rates for all classes of CDL Waste customers;
- d) contain the address, phone number, schedule, and description of operations of the public information and complaint office;
- e) contain the name, address, and phone number of the Contractor's contract administrator who is the County's primary contact on matters pertaining to the Contract;
- f) contain the name, location, and description of Contractor Facilities, operations and planned operations of all Primary and Back-up Contractor Facilities and operations, including a complete inventory of equipment and staffing, Transportation Modes and routes, and expected flow of CDL Waste from the County's Jurisdiction, and any other Solid Waste the Contractor expects or is obligated to Handle, into and through the Contractor Primary and Back-up Facilities;
- g) describe all information collection and reporting systems required by this Contract and required by all Regulatory Agencies with Jurisdiction; provided that, the information collection and reporting system requirements set forth in this Contract for the County CDL Waste are subject to the County's approval prior to implementation; and

h) describe the waste screening program the requirements for which are set forth in Section 5A(11).

The Contractor is solely responsible for the preparation of and any amendments to its Plan of Operations. The Contractor is further solely responsible for ensuring the accuracy of its Plan of Operations. The Contractor is further solely responsible for ensuring its Plan of Operations complies with all the requirements of Regulatory Agencies with Jurisdictions and of this Contract. Contractor shall obtain approval of the Plan of Operations by all Regulatory Agencies with Jurisdiction, if such approval is required by such agencies, by the earlier of the Service Commencement Date or the date Contractor actually commences acceptance of County CDL Waste pursuant to this Contract.

In the design, construction, and operation of Contractor Facilities and in its performance under this Contract, the Contractor shall adhere to and not deviate from or modify in any material way the Plan of Operations without the prior approval of all Regulatory Agencies with Jurisdiction, if such approval is required by such agencies, and of the County, where such approval is required by and set forth in this section.

Although the County reserves the right to review, in its entirety, the Plan of Operations and any amendments thereto, and to approve parts of the Plan as set forth in this section, the County assumes no responsibility for the Plan of Operations, its accuracy, its compliance with the requirements of this Contract or with the requirements of Regulatory Agencies with Jurisdiction, or the Contractor's adherence to its Plan of Operations.

The parties agree to meet periodically, as needed to review the Plan of Operations.

Section 9. PLAN FOR DISPOSAL FACILITY CLOSURE/POST-CLOSURE.

On or before the Service Commencement Date and as required thereafter by Regulatory Agencies with Jurisdiction, the Contractor shall provide to all applicable Regulatory Agencies with Jurisdiction for their review and approval and to the County for its review, a plan for the closure and post-closure care of each of its Disposal Facilities used or to be used to perform services under this Contract. The Plan for Disposal Facility Closure and Post-Closure care shall, at minimum:

a) describe how the Contractor will: (i) close and perform post-closure care following closure for a minimum of thirty (30) years with respect to all Disposal Facilities operated to perform services under this Contract at standards equal to or exceeding the requirements of all applicable provisions of the Washington Administrative Code, MFS for MMSW for non-arid

conditions in effect on January 1, 1992; and (ii) meet all applicable regulatory and legal requirements of all Regulatory Agencies with Jurisdiction even if such requirements are more stringent than the requirements of all applicable provisions of the Washington Administrative Code; and

b) describe and explain the cost estimates for closure and post-closure care and the means by which the Contractor will assure that there will be adequate financial resources reserved and independently guaranteed to meet its closure and post-closure obligations set forth in Section 5(I) in a manner that meets or exceeds the requirements of all applicable provisions of the Washington Administrative Code for facilities located in the State of Washington and meets or exceeds all applicable requirements of any Regulatory Agency(ies) with Jurisdiction pertaining to closure and post-closure financial assurances for facilities regardless of whether located inside or outside the State of Washington.

Section 10. FEES.

- A. The Contractor shall, except in the case of negotiated or bid rates charged to Contractor's CDL Waste customers: (a) establish classes of customers for purposes of setting and charging fees; (b) charge the same fee for all customers within the same class; (c) base all fees on payload weight; and (d) provide to the County by letter and to the public through publication in a newspaper of general circulation in King County, 30 days' notice of the initial establishment of classes and rates and any subsequent changes thereto.
- B. Contractor agrees that its maximum fee will not exceed \$58.75 per ton (1992 dollars), adjusted annually on June 1 of each year during the term of this Contract (the Annual Adjustment Date), beginning in 1993, by adding to the then current fee the increase produced by multiplying the fee then in effect by ninety percent (90%) of the change, from the previous Annual Adjustment Date, in the Consumer Price Index for Seattle-Tacoma, published by the Bureau of Labor Statistics, United States Department of Labor (CPI).

In the event the Bureau of Labor Statistics stops publishing the CPI, then the parties shall agree upon a different price index to be used to adjust the maximum fee.

Contractor may increase its maximum fee to reflect material changes after January 1, 1992, in any federal, state or local laws (including all statutes, rules,

regulations, or ordinances) or court orders interpreting such laws, that increase Contractor's cost of Handling CDL Waste.

- C. In the event the County decides to impose a surcharge on the Contractor's fees, and upon the giving of 30 days written notice to the Contractor, the Contractor shall commence collecting the surcharge within 60 days of the receipt of such notice. The Contractor shall exercise due diligence in collecting surcharges and shall remit to the County all surcharge receipts on a monthly basis. The Contractor further shall provide the County, upon request, any information necessary for the County to verify the collection and remittance of the surcharge. Any surcharge required by the County under this Contract shall be required by the County under the Second Contract at an equal rate.
- D. The maximum fee provided in Section 10A shall not apply to CDL Waste requiring special Handling by applicable Regulatory Agencies with Jurisdictions.

Section 11. HOLD HARMLESS AND INDEMNIFICATION.

- A. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend at its own expense the County from and against any and all claims (including demands, suits, penalties, losses and judgments) related to, or arising out of, the Contractor's performance of any of its obligations hereunder.
- B. In meeting its obligations under this Contract, the Contractor, including its officers, agents and employees, is an independent contractor and not an employee of the County for any purpose. The Contractor shall be responsible for all federal, state, and local taxes, industrial insurance, and Social Security liability resulting from its activities under this Contract, and shall make no claim of career service or civil service rights, or any other rights of County employment which may accrue to a County employee under federal, state, or local law. The Contractor's obligation under this section shall include indemnification for claims made by the Contractor's own employees or agents against the County. With respect to claims against the County only, the Contractor hereby waives any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. The above waiver shall not apply for the benefit of any employee of Contractor, or any other person or entity other than the County.

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

- C. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless, and defend at its own expense the County from and against any and all claims (including demands, suits, penalties, losses, and judgments) related to or arising out of the Contractor's violation of any environmental, public health, or public safety requirements of any Regulatory Agency with Jurisdiction in the course of its design, construction, operation, closure or post-closure care of Contractor Facilities.
- D. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend at its own expense the County from and against any and all claims (including demands, suits, penalties, losses and judgments) for any environmental damage related to or arising from the Contractor's design, construction, operation, closure or post-closure care of Contractor Facilities.
- E. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend the County from and against any and all claims of any kind whatsoever (including demands, suits, penalties, losses and judgments) for environmental cleanup costs ordered by any Regulatory Agency with Jurisdiction and related to or arising from the design, construction, operation, closure or post-closure care of Contractor Facilities.
- F. To the maximum extent permitted by law, the Contractor shall indemnify, hold harmless and defend the County from and against any and all claims of any kind whatsoever (including demands, suits, penalties, losses and judgments) related to any personal injury, death, property damage, or property loss and related to or arising from the design, construction, operation, closure or post-closure care of Contractor Facilities.

- G. The Contractor shall use its best efforts to cause all its subcontractors who act on behalf of the Contractor to perform services pursuant to this Contract, including but not limited to engineering, technical, and design consultants, processors of Recyclable CDL Waste and transporters of CDL Waste, to indemnify, hold harmless and defend the County from and against any and all claims of any kind whatsoever (including demands, suits, penalties, losses and judgments) related to any personal injury, death, property damage, or property loss arising from the applicable subcontractor's negligence in performance of its obligation in connection with the design, construction, operation, closure or post-closure care of Contractor Facilities. The Contractor shall use its best efforts to obtain from its subcontractors and prospective subcontractors the same indemnification of the County that the subcontractors provide the Contractor. Notwithstanding anything to the contrary contained herein, Contractor shall not be required to cause any of its subcontractors to indemnify the County, if Contractor makes its best efforts to negotiate to obtain such indemnification from the subcontractor for the benefit of the County, but the subcontractor declines to provide such indemnity. Best efforts by Contractor shall not be deemed to require Contractor to make rate or term concessions in any of its subcontracts.
- H. Notwithstanding any other provisions of this Contract, the Contractor shall not be liable for the negligence of the County.

Section 12. INSURANCE.

A. General, Automobile, and Stop Gap or Employee Liability

By the date of execution of this Contract, the Contractor shall procure and maintain, or, by the date of execution of any subsubcontracts, cause its subcontractors to procure and maintain, for the duration of this Contract, insurance and/or provide other financial guarantee mechanisms, subject to the County's prior approval, to respond to claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of this Contract by the Contractor, its agents, representatives, employees or subcontractors. The cost of any insurance or other financial guarantee mechanisms approved by the County, shall be paid for by the Contractor or its subcontractors.

1. Scope. Coverage shall be at least as broad as:

- a) Insurance Services Office form number CG 00 01 (Ed. 11-88), covering Commercial General Liability,

attached and incorporated by reference into this Contract as Exhibit A. This form shall be provided without exclusion or restriction of any of the coverages except: (i) as customarily stated in said form; or (ii) as approved by the County, which approval shall not be unreasonably withheld. If construction or demolition work is to be done within 50 feet of any railroad property, then the restrictive wording within the definition of "insured contract" shall be removed or a separate insurance policy provided to cover this exposure.

b) Insurance Services Office form number CA 00 01 (Ed. 01-87), covering Automobile Liability symbol 1 "any auto", and Endorsement CA 00 29 (Ed. 12-88) or Insurance Services Office form number CA 00 12 (ED. 12-90) covering truckers liability symbol 41 "any auto"; attached and incorporated by reference into this Contract as Exhibit B and Exhibit C; and insurance as broad as the automobile and trucker liability coverage to cover transportation of CDL Waste by railroad.

c) Industrial Insurance as required by any State or Federal law now in effect or hereafter amended, and Stop Gap or Employers' Liability.

2. Minimum Limits of Insurance. The Contractor shall acquire and maintain or cause its subcontractors to acquire and maintain, insurance with limits no less than:

a) Commercial General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, at least a \$10,000,000 annual aggregate limit.

b) Automobile/Trucker/Railroad Liability: \$10,000,000 combined single limit per accident for bodily injury and property damage.

c) Stop Gap or Employers' Liability: \$10,000,000

3. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions in excess of \$50,000.00 must be declared to and approved by the County following the review and approval of the Contractor's or subcontractors' deductible/self-insured retention financing plan. In no event shall policy deductibles or self-insured retentions exceed \$500,000. The deductible and/or self-insured retentions of the

policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor or subcontractor.

4. Endorsements. The policies shall contain, or be endorsed to contain, the following provisions:

a) The County, its officers, officials, employees and agents shall be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of the Contractor or its subcontractors under this Contract.

b) To the extent of Contractor's or subcontractors' negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees or agents shall be in excess of the contractor's insurance and shall not contribute with it.

c) The Contractor's or subcontractors' insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

d) Coverage shall not be suspended, voided, canceled, reduced in the form or amounts of coverage or in limits, other than a reduction due to the application of aggregate limits after a loss, except after forty-five (45) days prior written notice, return receipt requested, has been given to the County.

5. Acceptability of Insurers

Insurance shall be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated by Bests', with surpluses equivalent to Bests' A:VIII rating.

6. Verification of Coverage

The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each Insurance policy shall be on forms provided or approved by the County and shall be received and approved by the County before commencement of CDL Waste Handling under this Contract. The County reserves the

right to require complete, certified copies of all required insurance policies at any time.

B. Pollution Liability - Transfer Facilities/Transportation Modes/Disposal Facilities.

By or before the date the Primary and Back-up Transfer Facilities, or Disposal Facilities are used in the performance of this Contract, the Contractor shall procure and maintain, or, by the date of execution of contracts with any subcontractors, cause its subcontractors to procure and maintain, pollution liability insurance to cover exposure resulting from such use.

1. Scope of Insurance: Coverage shall be at least as broad as ISO Form CG0039 with exclusion (f) deleted (if such deletion is available through Contractor's insurance carrier), attached and incorporated by reference into this Contract as Exhibit D.

2. Minimum Limits of Insurance: \$10,000,000 for each Disposal Facility; \$2,000,000 for each Transfer Facility.

3. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention in excess of \$50,000.00 must be declared to and approved by the County following the review and approval of the Contractor's or subcontractors' deductible/self-insured retention financing plan. In no event shall policy deductibles or self-insured retentions exceed \$500,000. The deductible and/or self-insured retentions of the policy shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor or subcontractors.

4. Endorsement. The policy shall contain, or be endorsed to contain, the following provisions:

a) the County, its officers, officials, employees and agents shall be covered as additional insureds with respect to liability arising out of activities performed by or on behalf of the Contractor or subcontractors under this Contract.

b) To the extent of Contractor's negligence or the negligence of its subcontractors, the Contractor's or its subcontractors' insurance coverage shall be primary insurance as respects the County, its officers, employees and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees or agents shall be excess of the Contractor's or subcontractors' insurance and shall not contribute with it.

c) The Contractor's insurance or its subcontractors' insurance shall apply separately to each insured against

whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

d) Coverage shall not be suspended, voided, canceled, reduced in the form or amounts of coverage or in limits, other than a reduction due to the application of aggregate, limits after a loss, except after forty-five (45) days prior written notice, return receipt requested, has been given to the County.

5. Acceptability of Insurers. Insurance shall be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated by Bests', with surpluses equivalent to Bests' A:VIII rating.

6. Verification of Coverage. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each Insurance policy: (a) shall be on forms provided or approved by the County; (b) shall be submitted to the County by the Contractor no less than 60 calendar days before the use of Contractor's Facilities to perform its obligations under this Contract begin; and (c) are subject to approval by the County. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

7. Other Provision. This insurance may be acceptable on a "claims made" form and shall provide that coverage is maintained for a minimum of 3 years beyond the termination of this Contract, either through continuing coverage for sites or by purchasing extended coverage if such extended coverage is available from Contractor's carrier, and that the retroactive date of such coverage is maintained at no later than the initial usage of a Transfer Facility or Disposal Facility. The County acknowledges that at the date of execution of this Contract, the Contractor's insurance coverage provides an extended coverage period for one year beyond the termination of this Contract, and consents thereto. Notwithstanding the foregoing, the Contractor shall not be required to obtain extended discovery period coverage if the premiums therefor exceed 200% of the then most recent annual premium or it is unable to cover sites on its then current policies.

The policy shall also extend rights to the County to exercise the extended discovery period and secure rights to the County to notify the insurance carrier directly of any claims or incidents that might lead to claims.

C. Barge Transport of Waste

In the event that barge or other marine operations are used in the transport of CDL Waste under this Contract, the Contractor shall acquire before the commencement of barge transport and maintain, or cause its subcontractors to acquire and maintain, for the duration of barge transport the following insurance policy or policies:

1. Vessel Hull and Machinery covering vessels used in the transport of refuse. (as scheduled)
2. Protection and Indemnity covering Loss of Life/Personal Injury, Damage to Property or other vessels for vessels operated in connection with this Contract. \$10,000,000
3. Water Pollution Liability:
 - a. Pollution Liability covering claims under the Federal Water Pollution Control Act as amended for Vessels operated under this Contract. Statutory
 - b. Liability to Third Parties for Pollution Damage resulting from sudden discharge upon waters for vessels operated under this Contract. \$10,000,000

D. Errors and Omissions Related to Design of Facilities

The Contractor or its agent shall acquire and maintain, or cause its subcontractors to acquire and maintain, at least the following insurance to cover loss exposures related to the design and, if applicable, construction management, of Contractor Facilities:

1. Scope, Minimum Limits and Deduction of Self-Insurance Retentions. Before the commencement of design, the Contractor, its subcontractors or agents shall acquire and maintain Professional Liability Errors and Omissions insurance to cover exposures associated with the design of: (a) its Transfer, Recycling, InterModal and Receiving Facilities with limits of no less than \$1 million; and (b) its Disposal Facilities with limits of no less than \$5 million. If the Contractor subcontracts with a design firm to manage construction projects in connection with such Contractor Facilities, the policy shall include coverage for construction management.

Any deductibles or self-insured retentions in excess of \$50,000.00 must be declared to and approved by the County following the review and approval of the Contractor's or subcontractor's deductible/self-insured retention financing plan. In no event shall policy deductibles or self-insured retentions exceed \$500,000. The deductible and/or self-insured retentions of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor or subcontractors.

2. Endorsements, Acceptability of Insurers, Verification of Coverage. Such insurance shall be placed with insurers with a Bests' rating of no less than B+:VII, or, if not rated by Bests', with surpluses equivalent to Bests' B+:VII rating. The policy(ies) shall contain or be endorsed to provide that Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after forty-five (45) days' prior written notice, return receipt requested, has been given to the County. The Contractor must provide a certificate of insurance and endorsement to the County as evidence of meeting these insurance requirements.

E. Commercial General, Automobile and Stop-Gap Related to Design and Any Designer Oversight of Construction of Facilities

The Contractor shall acquire before the commencement of design of any Contractor Facilities, and maintain for the duration of design and construction, or cause its subcontractors to acquire and maintain, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work associated with the design and any designer's oversight of constructions of Contractor Facilities.

1. Scope. Coverage shall be at least as broad as: Insurance Services Office form number CG 00 01 (Ed. 11-88) covering Commercial General Liability; Insurance Services Office form number CA 00 01 (Ed. 01-87), covering Automobile Liability symbol 1 "any auto", and Endorsement CA 00 29 (Ed. 12-88) or Insurance Services Office form number CA 00 12 (ED. 12-90) covering truckers liability symbol 41 "any 'auto'", attached and incorporated by reference into this Contract as Exhibits A, B and C, or equivalent forms and Industrial Insurance as required by any State or Federal law and Stop Gap or Employer's Liability. These forms shall be provided without exclusion or restriction of any of the coverages except: (a) as customarily stated in said form; or (b) as approved by the County, which approval shall not be unreasonably withheld.

2. Minimum Limits. Minimum limits shall be as follows:

- a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c) Stop Gap or Employer's Liability: \$1,000,000.

3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions in excess of \$50,000.00 must be declared to and approved by the County following the review and approval of the Contractor's deductible/self-insured retention financing plan. In no event shall policy deductibles or self-insured retentions exceed \$500,000. The deductible and/or self-insured retentions of the policies shall not limit the Contractor's liability to the County and shall be the sole responsibility of the Contractor or subcontractors.

4. Endorsements. Policies shall be endorsed to contain the following provisions:

- a) The County, its officers, officials, employees and agents shall be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor or its agents under this Contract.
- b) To the extent of the Contractor's, its subcontractors' or agents' negligence, the Contractor's, its subcontractors' or agents' insurance coverage shall be primary insurance as respects the County, its officers, employees and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees or agent shall be in excess of the Contractor or its subcontractors' insurance and shall not contribute with it.
- c) The Contractor's, its subcontractors' or agent's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.
- d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after forty-five (45) days' prior written notice, return receipt requested, has been given to the County.

5. Acceptability of Insurers. Insurance shall be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated by Bests', with surpluses equivalent to Bests' A:VIII rating.

6. Verification of Coverage. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each Insurance policy shall be on forms provided or approved by the County and shall be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Construction of Facilities

The Contractor or its subcontractors shall acquire before the commencement of construction of any Contractor Facilities, and maintain for the duration of such construction through final close out, insurance against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of work associated with the construction of Contractor Facilities.

1. Scope. Coverage shall be at least as broad as:

a) Insurance Services Office form number CG 00 01 (Ed. 11-88), covering Commercial General Liability, attached and incorporated by reference into this Contract as Exhibit A. This form shall be provided without exclusion or restriction of any of the coverages except: (a) as customarily stated in said form; or (b) as approved by the County, which approval shall not be unreasonably withheld. If construction or demolition work is to be done within 50 feet of any railroad property, then the restrictive wording within the definition of "insured contract" shall be removed or a separate insurance policy provided to cover this exposure.

b) Insurance Services Office form number CA 00 01 (Ed. 01-87), covering Automobile Liability symbol 1 "any auto", and Endorsement CA 00 29 (Ed. 12-88) or Insurance Services Office form number CA 00 12 (ED. 12-90) covering truckers liability symbol 1 "any auto"; attached and incorporated by reference into this Contract as Exhibit B and Exhibit C.

c) Industrial Insurance as required by any State or Federal law now in effect or hereafter amended, and Stop Gap or Employers' Liability.

2. Minimum Limits. Minimum limits shall be as follows:

a) Commercial General Liability:

i) For construction of Transfer, Recycling, Inter-Modal, and Receiving Facilities, \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage; and

ii) For construction of Disposal Facilities, \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

b) Automobile Liability: For each Contractor Facility constructed, \$2,000,000 combined single limit per accident for bodily injury and property damage.

c) Stop Gap or Employer's Liability: For each Contractor Facility constructed, \$2,000,000.

3. Deductibles and Self - Insured Retentions. Any deductibles or self-insured retentions in excess of \$50,000.00 must be declared to and approved by the County following the review and approval of the Contractor's or subcontractors' deductible/self-insured retention financing plan. In no event shall policy deductibles or self-insured retentions exceed \$500,000. The deductible and/or self-insured retentions of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor or subcontractors.

4. Endorsements. Policies shall be endorsed to contain the following provisions:

a) The County, its officers, officials, employees and agents shall be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor, its subcontractors or agents under this Contract.

b) To the extent of the Contractor's, its subcontractors' or agents' negligence, the Contractor's or its subcontractors' or agents' insurance coverage shall be primary insurance as respects the County,

its officers, employees and agents. Any insurance or self-insurance maintained by the County, its officers, officials, employees or agents shall be excess of the Contractor's, its subcontractors' or agents' insurance and shall not contribute with it.

c) The Contractor's, its subcontractors' or agents' insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after forty-five (45) days' prior written notice, return receipt requested, has been given to the County.

5. Acceptability of Insurers. Insurance shall be placed with insurers with a Bests', rating of no less than A:VIII, or if not rated by Bests' with surpluses equivalent to Bests' A:VIII rating.

6. Verification of Coverage. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy shall be on forms provided or approved by the County and shall be submitted by the Contractor and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

G. Other Insurance Requirements

1. Occurrence Based Coverage. Each insurance policy shall be written on an "occurrence" form, except for Contractor's commercial general liability insurance for landfill operations and for pollution liability and design errors and omissions as provided in this Contract, or such other coverage where occurrence based coverage is not available in the market.

2. Changes in Law. The Contractor immediately shall increase or cause its subcontractors to increase the amounts or types of insurance required to reflect any changes in Washington State, Federal or other applicable law.

3. Subcontractor Insurance. The Contractor is responsible for reviewing and approving the adequacy of insurance coverage for its subcontractors or agents. If any subcontractor's or agent's insurance does not meet the minimum insurance policy requirements regarding coverage, limits, acceptability of insureds or deductible levels contained herein, the Contractor shall receive County approval of such exceptions. Nothing herein shall relieve the Contractor from responsibilities resulting from the hold harmless and indemnification provisions of this Contract.

Where Contractor subcontracts a portion of this Contract to a subcontractor, the insurance requirements of this Contract shall be deemed satisfied if either Contractor or the applicable subcontractor obtains the requisite insurance for the subcontracted work as provided in this Section 12, and this Section 12 shall not be deemed to require both Contractor and subcontractor to carry such insurance for the subcontracted work.

H. Disposal Facility Closure/Post-Closure

Nothing in this section limits the Contractor's responsibilities for financial assurances to cover the Contractor's obligations for Disposal Facility closure and post-closure care which are set forth in Section 5.I. and Section 9 of this Contract.

I. Scope of Employment

Officers, officials, employees and agents of the County are covered by the insurance provisions of this Contract only to the extent they are acting in the scope of employment or agency with or for the County.

Section 13. NONDISCRIMINATION.

A. During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.

The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are

not limited to, Chapter 49.60 of the Revised Code of Washington, and Titles VI and VII of the Civil Rights Act of 1964.

B. If the Contractor fails to comply with King County Code Chapter 12.16, incorporated herein by reference as Exhibit E, such failure shall be deemed a violation of this Chapter and a material breach of this Contract. Such breach shall be grounds for cancellation, termination or suspension of this Contract, in whole or in part.

C. During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices as defined by King County Code, Chapter 12.18, incorporated herein by reference as Exhibit F. It is an unfair employment practice for any:

- (1) employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
- (2) employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
- (3) employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefor, which indicates any discrimination unless based upon a bona fide occupation qualification;
- (4) employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
- (5) employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by King County Code, Chapters 12.16 and 12.18, or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provision of King County Code, Chapter 12.18;
- (6) publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to

print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of K.C.C. 12.18.030 C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification;

(7) employer to prohibit any person from speaking in a language other than English in the work place unless:

1. the employer can show that requiring that employees speak English at certain times is justified by business necessity, and
2. the employer informs employees of the requirement and the consequences of violating the rule.

If the Contractor fails to comply with the King County Code, Chapter 12.18, the Contractor shall be subject to the procedures and penalties set forth therein.

Section 14. MINORITY AND WOMEN OWNED BUSINESS PARTICIPATION.

King County Code Chapter 4.18 is incorporated herein by reference as Exhibit G, and the Contractor fully agrees to the conditions of said Chapter, as implemented by this Section 14. Failure by the Contractor to comply with any requirements of this Chapter, as implemented by this Section 14, shall be a material breach of this contract.

A. During the term of this Contract, the Contractor shall:

1. Request approval for any proposed substitution of minority/women's business enterprises (M/WB's).

The King County Office of Civil Rights and Compliance (OCRC) will approve the substitution of a certified M/WB when:

- a. The M/WB cannot perform the necessary tasks;
or
- b. The M/WB is unwilling to perform the necessary tasks.

2. Contractor shall set aside a portion of the services to be performed or goods to be provided under the Contract to M/WB's equal to three percent (3%) of Contractor's annual gross revenues received under this Contract.
3. Contractor shall, in addition to the requirements of subsection 14A(2), make affirmative efforts to spend an amount equal to three percent (3%) of its annual gross revenues received under this Contract on goods and services provided by M/WB's. For purposes of this Contract, "affirmative efforts" shall mean vigorous, documented attempts in good faith to contact and contract with minority-owned and women-owned businesses certified as such by the State Office of Minority and Women's Business Enterprises.
4. Report quarterly to the OCRC, Compliance Section, regarding such efforts. The reports shall include:
 - a. Gross revenues (exclusive of any state or local sales tax, or federal, state or local solid waste surcharges or fees);
 - b. Names of each firm, including certified M/WBs, solicited to do business;
 - c. Type of product or service solicited;
 - d. Price quote or bid of each firm solicited;
 - e. Name of M/WB selected to provide the particular good or service;
 - f. Dollar amount of goods/services to be provided; and
 - g. If no M/WB was selected, reasons why such selection did not occur.

These reports shall be submitted quarterly during the term of the Contract. The first report submitted by the Contractor after commencement of operations shall include a report of the M/WB provided goods/services performed for purposes of this Contract prior to the commencement of operations. OCRC shall review the requirements for achieving the M/WB utilization goals, the actual utilization achieved, and the reporting requirements annually. OCRC shall negotiate with the Contractor any changes it

deems necessary consistent with the intent and purpose of King County Code, Chapter 4.18.

B. M/WB Liquidated Damages:

1. The County in general, and the M/WB program in particular, are damaged when the portion of this Contract to be performed by a M/WB is not actually performed by an M/WB in compliance with King County Code Chapter 4.18, as implemented by this Section 14. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the dollar value of the M/WB utilization contemplated in this Contract to the extent actually lost to the County due to the violation, not to exceed six percent (6%) of the Contractor's gross revenues for the year during which the breach occurred, shall be the amount required to compensate the County for all damages resulting from Contractor's failure to carry out the purpose of the program, including the costs of meeting utilization goals through additional contracts, the administrative costs of investigation and enforcement and other damages and costs caused by the violation.
2. The Contractor shall be liable to the County for such liquidated damages in the event a subcontractor fails to perform a commercially useful function and/or operates, with the Contractor's knowledge, as a broker, front, conduit, or pass-through, as defined in King County Code, Chapter 4.18.
3. In lieu of liquidated damages, the Contractor and OCRC may, by mutual agreement, negotiate another remedy.

C. Determination of Compliance:

1. For purposes of determining whether the Contractor has met its M/WB obligations or is subject to the liquidated damages provided for in subsection 14B for the three percent (3%) set aside requirement of subsection 14A(2), OCRC shall make its determination of compliance every two (2) years, beginning with the date on which Contractor actually commences acceptance of County CDL Waste hereunder (not necessarily the Service Commencement Date) (each such two-year period is an "M/WB Accounting Period"), by combining Contractor's gross revenue for each year of such M/WB Accounting Period, and

determining whether three percent (3%) of such amount was expended on goods and services provided by M/WB's ("M/WB Goods and Services") during such period.

2. If OCRC determines that Contractor failed to spend at least three percent (3%) of its gross revenue on M/WB Goods and Services during any M/WB Accounting Period, then, in order to avoid the payment of liquidated damages, Contractor may include amounts spent on M/WB Goods and Services in the year following the M/WB Accounting Period (the "Make-up Year") within the calculation of such three percent (3%) requirement for the prior M/WB Accounting Period, provided however, that any such expenditure, once counted toward the prior M/WB Accounting Period, may not also be counted toward the next such period. Payment of liquidated damages, or another negotiated remedy, if any, shall be formalized by the end of the Make-up Year.
3. If OCRC determines that Contractor spent more than three percent (3%) of its gross revenue on M/WB Goods and Services during any M/WB Accounting Period, then the excess expenditures from such period may be carried over and counted toward Contractor's requirement during the subsequent M/WB Accounting Period. There shall be no limit on the length of time during which Contractor may carry over any such excess amounts spent on M/WB Goods and Services.
4. Any amount spent by Contractor for M/WB Goods and Services prior to commencing acceptance of County CDL Waste, including but not limited to the period prior to execution of this Contract, for work in preparation for services under this Contract, shall be counted toward Contractor's expenditures during the first M/WB Accounting Period and may be carried forward if not applied to meet Contractor's three percent (3%) requirement during such period.
5. Amounts spent by subcontractors or joint venturers of Contractor for M/WB Goods and Services in connection with this Contract shall be counted as if spent directly by Contractor for purposes of determining Contractor's expenditures for M/WB Goods and Services.
6. Upon expiration or termination of this Contract, the period from the end of the last M/WB Accounting

Period until the expiration or termination date (even if shorter than two (2) years), shall be the final M/WB Accounting Period hereunder.

- D. In addition to the reports required pursuant to section 14A(4), within sixty (60) days following the end of each M/WB Accounting Period, Contractor shall provide OCRC with a report of (1) its gross revenue and (2) amounts spent by Contractor for M/WB Goods and Services, during such period.

Section 15. ACCESSIBILITY TO HANDICAPPED PERSONS.

The Contractor shall complete and submit to OCRC an Affidavit of Assurance stating that it intends to comply with the requirements of the United States Code, Section 504. The Contractor also shall complete and keep on file a self-evaluation questionnaire to be reviewed periodically by the OCRC 504 specialist.

Section 16. CONFLICT OF INTEREST.

- A. The Contractor promises that, to the best of its knowledge, no officer, employee, or agent of the County who exercises any responsibilities or performs any functions in connection with the planning or implementation of the services covered by this Contract, or any other person who presently exercises any responsibilities or performs any functions on behalf of the County in connection with the planning or implementation of the services covered by this Contract shall have any personal financial interest, direct or indirect, in this Contract. The Contractor shall take all necessary actions to ensure its compliance with this provision.
- B. The Contractor shall comply with the requirements of King County Code (KCC) Chapter 3.04, attached and incorporated by reference into this contract as Exhibit H. The Contractor's violations of Section 15A above or violation of any of the applicable provisions of KCC 3.04 regarding disclosure shall constitute a material breach of this Contract and will be grounds for termination of the Contract for cause as well grounds for any other right or remedy provided by this Contract or by law.

Section 17. RECYCLED PRODUCT PROCUREMENT

The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If this is not practicable, the County's Contract representative may waive this requirement.

The Contractor is encouraged to use other recycled/recyclable products wherever practicable and to contact the County's Recycled Product Procurement Coordinator at 296-4210 with questions on recycled product availability or suggestions on means by which the County can increase its use of recycled materials in this and future contracts.

Section 18. BOND/FAILURE OF PERFORMANCE BY CONTRACTOR/ DAMAGES.

A. Delay, Performance and Payment Bond

The Contractor shall, within forty-five (45) days after execution of this Contract, acquire and maintain at all times a valid Contractor's Delay, Performance and Payment Bond, or other functionally equivalent security reasonably acceptable to and approved by the County (hereafter "Bond") in an amount equal to the required monthly tonnage quantity specified in, and as adjusted in accordance with, Sections 5B and 20, multiplied times twelve (12) and the result multiplied times 10% of the per ton basic fee at County transfer stations for mixed municipal solid waste charged by the County at the time of initial issuance. The amount of the Bond shall be adjusted annually on the anniversary date of the Bond, to reflect any subsequent changes in minimum Handling capacity obligations and the County's basic fee. (For example, if the County's basic fee at County transfer stations were \$66/ton at the time of initial issuance of the Bond or at the time of an annual adjustment, the computation would be as follows: $25,000 \times 12 \times .10 \times \$66 = 1,980,000$.) The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the County of its bond renewability, at least 60 calendar days before the Bond then in effect expires.

The Bond shall be for the use and benefit of the County, with a surety company authorized to do business in the State of Washington and acceptable to the County. The Bond shall cover the Contractor's failure to faithfully perform all of the provisions of this Contract and to pay all laborers, mechanics, subcontractors, materialmen and all persons who shall supply such Contractor or its subcontractors with provisions and supplies for the performance of this Contract. The Bond shall cover any liquidated damages required under this Contract, including, without limitation, payment of liquidated damages as provided in Section 2 and Section 18. The Bond shall contain appropriate recitations that it is issued pursuant to this Contract and that it be construed to meet all requirements specified in this section of the Contract. This Bond shall give the surety the right to undertake, or cause to be undertaken all work required to be performed pursuant to this Contract in the event of default by Contractor and expiration of applicable cure periods or, alternatively, at the option of the surety, to pay the Bond to the County. In the event

Contractor in good faith disputes a claim of default by the County and pursues its dispute resolution rights permitted in accord with this Contract, payment by the surety shall be deferred pending final determination of such dispute. Such Bond shall be submitted to and subject to approval of the County (which approval shall not be unreasonably withheld), within forty-five (45) days after execution of this Contract and prior to each renewal thereafter, for the duration of this Contract.

Failure of the Contractor to furnish and maintain such Bond shall be considered a material breach of this Contract and grounds for an immediate declaration of default and an immediate termination of the Contract by the County at its option.

Any notices provided by the County to the surety pursuant to this Contract shall be given to Contractor simultaneously with the notice given to the surety.

B. Default of Contractor/Interruption of Services

(1) **Default and Termination:** The following events shall, subject to the exceptions otherwise provided for in this Contract and subject to the cure provisions contained herein, be events of Contractor default:

(a) Contractor fails to accept CDL Waste by the Service Commencement Date (or as otherwise provided in Section 2), or

(b) Contractor uses Back-up Facilities or Back-up Transportation Modes beyond the date authorized by the County for such use, or

(c) Contractor fails to perform any other material Contractor obligation under this Contract, or otherwise fails to comply with any of the material terms hereof.

If the County intends to claim a Contractor default (other than a failure to accept CDL Waste by the Service Commencement Date, which shall be governed by Section 2, the County shall give Contractor and its surety written notice of the alleged default, specifying the factual circumstances giving rise to such alleged default (a "Default Notice"). The Contractor and its surety shall have ten (10) Week Days from the date of receipt of the Default Notice, to respond to the Default Notice by contesting the existence of a default, or by indicating an intent to cure the default and the time required to cure ("Contractor's Response Notice"). Except as provided below with respect to Interruptions of Service, Contractor shall have fifteen (15) Week Days from the date of Contractor's Response Notice to cure or to take reasonable steps to commence cure actions to remedy the alleged default(s) (the

"Cure Period"). If the Contractor or its surety fails to cure or commence cure actions within said Cure Period to the satisfaction of the County, the County may, subject to the surety's rights under the Bond, declare the Contractor in default by sending a written declaration of default to the Contractor and Surety (the "Declaration of Default"). The Declaration of Default shall be sent within fifteen (15) Week Days after expiration of the Cure Period, shall specifically identify the alleged default, shall specify whether the County elects to receive liquidated damages for such default pursuant to Section 18D, and shall specify whether the County seeks to terminate the Contract for such default.

If the Contractor or the Contractor's surety contests the Declaration of Default, the contestant and the County shall seek resolution of the dispute through a declaratory judgment or other action, on an expedited basis, in a state or federal court of competent jurisdiction. The Contractor or the Contractor's surety may, prior to the filing of any judicial action, request a show cause hearing before the Manager of the Solid Waste Division. The contestant shall provide written notice of its intent to contest the Declaration of Default within fifteen (15) Week Days of receiving the Declaration of Default.

The County may terminate this Contract if Contractor fails to cure or dispute a default in accord with the procedures of this section 18B(1). If the Contract is terminated by the County pursuant to this section, the Contractor shall be liable for all damages of every kind whatsoever, subject to the limitations of section 18D if the County elects to receive or is otherwise entitled to liquidated damages, as more fully described in section 18.

This subsection shall be subject to the force majeure provisions of Section 5 N.

(2) Interruption of Services: After Contractor commences acceptance of County CDL Waste, and after enactment of the County's Flow Control Ordinance directing CDL Waste to Contractor, if Contractor's acceptance of CDL Waste is interrupted for three (3) consecutive Week Days (an "Interruption of Service"), Contractor shall provide written notice to the County within fifteen (15) Week Days explaining the cause for such interruption, whether such interruption is temporary or permanent, and how long Contractor anticipates such interruption to continue if the interruption is temporary. In such event, the County shall be entitled to per diem liquidated damages as calculated pursuant to Section 18D, which shall be the County's sole remedy during such interruption.

The County may not seek to terminate this Contract during an Interruption of Service if Contractor has given notice that such interruption is temporary, and that Contractor intends to recommence acceptance of CDL Waste within 180 calendar days after the commencement of the interruption and actually commences services within such 180 days. If, within 180 calendar days after commencement of the temporary interruption, the Contractor does not recommence acceptance of CDL Waste, then the County may terminate the Contract pursuant to this section. In such event, liquidated damages paid by Contractor under this subsection shall be applied to payments due for liquidated damages under section 18D.

C. Insolvency, Bankruptcy and Receivership

1. The parties acknowledge that the services provided under this Contract by the Contractor are vital and critical to the County, and that the failure of the Contractor to provide the services may create substantial and serious public health risks. Therefore, if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver appointed for the benefit of its creditors, the County shall be entitled to request a written statement from the Contractor or its Surety describing in reasonable detail the arrangements that have or will be made to continue operations pursuant to the terms and conditions of this Contract. In the event the written statement is not provided by Contractor or its surety in compliance with the County's request within 10 Week Days of receipt of the request, the County may seek a declaration of default under the same procedures as provided for default declared under section 18B.

2. If the Contractor files a petition under any bankruptcy statute, or is the debtor in any involuntary bankruptcy case that is not dismissed within 60 calendar days after the petition commencing that case is filed, Contractor and the County agree, to the extent permitted by applicable law, to the entry of a Stipulated Order in Contractor's bankruptcy case granting Contractor ten (10) calendar days from the date of the order to assume or reject this Contract. Said assumption or rejection shall comply with 11 U.S.C. § 365.

D. Breach/Liquidated Damages

The County, in lieu of its rights to make a claim for actual damages under subsection 18 B above, may elect to assess liquidated damages for performance failures described in Sections 18D(1) and (2); provided, however, that if the County elects to seek liquidated damages pursuant to this section, it may not seek any other damages for such performance failures; provided further, that if the County elects to seek liquidated damages pursuant to this section, it must exercise such election in writing as part of its Declaration of Default as provided in Section 18B, and a failure

to make such election in and at the time of said Declaration of Default shall be deemed a waiver by the County of the right to obtain liquidated damages for the events giving rise to the default(s) alleged by the County in said Declaration; provided further, that nothing in this subsection shall limit the County's right to assess liquidated damages and to, at the same time, initiate a Declaration of Default solely for the purpose of terminating this Contract in accordance with, and subject to the notice and cure provisions of, subsection 18B.

Subject to the provisions of Section 2A, Section 2C and Section 5C of this Contract and subject to the limitations on the amount of liquidated damages stated below, the Contractor shall pay the County liquidated damages in the amount of 10% of the County's per ton basic fee for mixed municipal solid waste at County transfer stations in effect at the time of the breach multiplied times the required monthly tonnage receiving quantity specified in Section 5B, as adjusted, divided by 22 for each day that:

(1) the Contractor fails to accept CDL Waste under this Contract by the Service Commencement Date or ceases to accept CDL Waste after the Service Commencement Date, for any reason except (a) failure by the County to enact its flow control ordinance to the extent required under Section 19, or (b) for any force majeure event as provided in Section 5N of this Contract;

(2) the Contractor uses Back-up Facilities, Back-up Transportation Modes or Backup receiving transfer service capabilities beyond the date authorized by the County for such use for any reason except force majeure as provided in Section 5N of this Contract.

(For example, if the County's basic fee were \$66/ton at the time of the breach, the computation each day the breach continued would be as follows: $.10 \times \$66 \times (25,000 \text{ divided by } 22) = \$7,500.$) In the event per diem liquidated damages are incurred in a given month, Contractor shall pay to the County such liquidated damages by the fifth day of the following month.

For the events described in subsections 18D(1) and (2), including performance failures that are components of, result in or result from the events described in subsections 18D(1) and 18D(2), the per diem liquidated damages provided herein shall be the County's sole damages against the Contractor when the County has elected for liquidated damages or the Contract otherwise provides for liquidated damages. In the case of a failure by Contractor to accept CDL Waste by the Service Commencement Date, the total amount of damages to be paid by the Contractor pursuant to this section shall be limited as set forth in Section 2C of this Contract. After the Contractor has commenced services under this

Contract and then interrupts such services, the per diem liquidated damages provided for herein shall be the County's sole remedy against the Contractor, and the total amount of liquidated damages to be paid by the Contractor pursuant to this section shall be limited to the lesser of such per diem liquidated damages calculated based on:

(a) the number of Week Days until Contractor recommences accepting CDL Waste at Contractor's Facilities in conformance with its obligations under this Contract if the interruption in acceptance of Waste by Contractor was a temporary interruption of services; or

(b) a maximum of two hundred sixty five (265) Week Days.

The Contractor's payment of liquidated damages pursuant to this section does not release the Contractor from or limit the County's right to (i) liquidated damages (to the extent permitted by this Contract), actual damages or other remedies available for a breach by Contractor occurring after Contractor recommences acceptance of CDL Waste in the event Contractor has previously ceased acceptance of CDL Waste, and (ii) actual damages or other remedies available for Contractor's breach of its obligations under Section 5I.

The County and the Contractor expressly agree that the amounts of liquidated damages resulting from this subsection are not considered by the parties as penalties but, rather, because of the difficulties of proof of loss, the parties agree the means of computation of damages expressed herein are a reasonable approximation of actual damages incurred.

Nothing in this section limits the Contractor's obligations to pay liquidated damages for breach of minority and women owned business enterprise participation required by Section 14 of this Contract.

Section 19. COUNTY FLOW CONTROL.

A. On or before the Service Commencement Date, or as otherwise provided in Section 20, the County shall enact an ordinance that directs all Non-Recyclable CDL Waste, including all Residual CDL Waste, be taken only to the Contractor's Facilities or to the facilities of the Second Contractor; provided that, the provisions of the ordinance directing Non-Recyclable CDL Waste to the Contractor or the Second Contractor shall provide that it will be effective only for such contractor which has commenced performance of services as provided in Section 2A or 20 of this Contract. The ordinance shall include substantial penalties for violation of CDL Waste stream control rules, shall allow enforcement actions as necessary against waste generators or haulers who violate those

rules, and shall empower the County and Contractor or either one of them acting alone, to bring such enforcement actions. In the event such direct right of enforcement by Contractor is held to be invalid for any reason, then the County, on written request by the Contractor, shall proceed in good faith to bring enforcement actions with respect to such violations, and shall use its best efforts to curtail such violations. The penalties shall be graduated in relation to the frequency of the violations and the weight of the CDL Waste that is deposited or accepted at a location in violation of the ordinance and, additionally, shall cover reasonable enforcement costs of the County and the Contractor, and shall permit recovery of reasonable attorneys' fees. The ordinance shall permit, but not require, the County to promulgate rules to enforce and administer flow control provisions of this Contract.

B. If the City of Seattle prohibits the Handling of the County's CDL Waste in facilities located in Seattle's Jurisdiction, the County may amend its flow control ordinance to prohibit the Handling of Seattle's CDL Waste in Contractor Facilities located in the County's Jurisdiction.

C. Under the flow control ordinance, a single Recyclable CDL Waste material, whether separated at the source of generation or later at a processing facility, may be transported to any Recycling Facility or to a recycling market within or outside of King County provided it contains no more than incidental amounts of Non-Recyclable CDL Waste. Incidental amounts of Non-Recyclable CDL Waste are amounts not to exceed 10% of total weight for a load. Under the flow control ordinance, the County will reserve the right to prohibit, by ordinance, the disposal of certain materials and require that they be recycled.

D. Under the flow control ordinance, the County may continue to accept at its Solid Waste Handling facilities, CDL Waste in small quantities as permitted by County ordinance or public rule, limited to materials transported by private vehicles with gross weights not to exceed 8,000 pounds and to incidental amounts of CDL Waste contained in loads of mixed municipal solid waste, not to exceed 10% of the load by weight.

E. Under the flow control ordinance or public rule, Mixed CDL Waste may be taken only to: (1) the Contractor's Facilities in King County; (2) to the facilities of the Second Contractor; or (3) Recycling Facilities located in King County to the extent permitted by applicable law; provided that, if taken to such facilities, the Residual CDL Waste must be taken to the Contractor's or Second Contractor's facilities.

F. Under the flow control ordinance, the County will not guarantee any minimum volume of Non-Recyclable CDL Waste. The County intends and expressly reserves the right to encourage

reductions in the waste stream through recycling. The County also will not guarantee the distribution of the Non-Recycled CDL Waste between the Contractor and the Second Contractor, but rather will allow competition to determine distribution.

G. The County shall create and fill, within six months of the Contractor's commencement of services under this contract, two (2) full time equivalent positions to assist in investigations and enforcement actions against suspected violators of the flow control ordinance. The County further shall maintain the above stated level of effort, at minimum, for the duration of the Contract and shall proceed with diligence to refill the above-described positions whenever they become vacant.

H. It is the intent of the parties that all residuals from the recycling and/or processing of loads of Mixed CDL Waste be delivered to either the Contractor's Facilities or Second Contractor's facilities. If, for any reason it is determined that the County's Flow Control authority does not extend to the residuals resulting from the processing, for purposes of recycling in the City of Seattle, of Mixed CDL Waste generated in the County's Jurisdiction, than the County shall act as promptly as possible to amend its Flow Control ordinance, to direct loads of Mixed CDL Waste to Contractor's facilities or to Second Contractor's facilities, as the case may be.

I. The parties agree to cooperate as necessary to facilitate any interlocal agreements or other measures needed to make flow control effective.

Section 20. RELATIONSHIP TO SECOND CONTRACTOR

A. Second Contractor

(1) The parties understand and agree that the County intends to enter or has entered into the Second Contract for CDL Waste Handling services with the Second Contractor. Contractor agrees not to unlawfully interfere with the performance of the Second Contractor under the Second Contract. The County covenants and agrees that the Second Contract shall be identical to this Contract (except for the identification of the Contractor and the Second Contractor), and that, both prior to and following execution of the Second Contract, the Second Contract will not be modified or amended, or any provision waived without the express written consent of the Contractor, which consent the Contractor may deny at its sole discretion. The County understands and acknowledges that Contractor executes, and shall be bound by, this Contract, in reliance on the County's assurances set forth in this Section 20.

(2) The County agrees that it will not sign the Second Contract until the Second Contractor has provided the County with

copies of the issued site specific environmental review documents, including mitigation requirements, if any, signed and dated by the SEPA responsible official for the Second Contractor's two (2) required Primary Receiving Facilities (as defined in the Second Contract) with an aggregate minimum Handling capacity of 25,000 tons per month. If such conditions have not been satisfied by the Second Contractor by June 1, 1993 (the "Contract Execution Deadline"), the County agrees that the Second Contractor shall not have any further rights to enter into the Second Contract and that Contractor shall, pursuant to this Contract, be the sole contractor to receive CDL Waste from the County's Jurisdiction.

B. Operations Prior to Service Commencement Date

(1) The Contractor or the Second Contractor, or both, may commence operations prior to the Service Commencement Date utilizing Receiving Facilities in King County. If only the Contractor elects to commence operations prior to the Service Commencement Date, it must accept 100% of the Non-Recyclable CDL Waste from the County's Jurisdiction, and the County shall, on six (6) months' advance notice, flow control such CDL Waste exclusively to the Contractor, provided, however, that the Contractor shall, (a) acquire and maintain a Bond, pursuant to Section 18A, calculated based upon a capacity of 50,000 tons of CDL Waste per month, and (b) agree that liquidated damages under Section 18D will be calculated based upon a capacity of 50,000 tons of CDL Waste per month.

(2) Either the Contractor or the Second Contractor may begin providing services after the other contractor has begun to provide services and prior to the Service Commencement Date, utilizing Receiving Facilities in King County, provided the second of the two contractors to commence service has signed and delivered its contract with the County to the County, and in such event the County shall flow control CDL Waste to the Contractor and the Second Contractor, provided the second contractor to commence service shall give the County four (4) months advance written notice of its intent to commence service. In such event, the Contractor's obligations under sections 18 A and D, as increased in Paragraph (1) above for the period prior to the Service Commencement Date, shall be reduced to the levels set forth in sections 18 A and D, and the Second Contractor's obligations shall be as set forth in sections 18 A and D of the Second Contract (which sections will be identical to sections 18 A and D of this Contract).

C. Operations After the Service Commencement Date

Regardless of the operations and capacities of either contractor prior to the Service Commencement Date, on and following the Service Commencement Date, the Second Contractor's obligation

with respect to its capacity to receive CDL Waste, as well as its obligations to maintain a Bond and to pay liquidated damages, shall be identical to Contractor's obligations as set forth in sections 5B, 18A and 18D, respectively, subject to the adjustments in the cited sections.

D. Failure of Execution, or Termination of, Second Contract

(1) If the Second Contract is not executed by the Contract Execution Deadline, or if the Second Contract is terminated for any reason (whether before or after the Service Commencement Date), this Contract shall remain in full force and effect, and, subject to Paragraph (2) below, the County shall flow control Non-Recyclable CDL Waste from the County's Jurisdiction exclusively to the Contractor, and otherwise in accord with Section 19, for the term of the Contract. In such event, the Contractor's Bond and liquidated damages obligations shall be increased based on a minimum monthly Handling capacity of 50,000 tons.

(2) Upon the Contractor's receipt of notice from the County that the Second Contract was not executed by the Contract Execution Deadline, or that the Second Contract has been terminated, there shall be a twelve-month period during which: (a) the County, pursuant to an amendment to its flow control ordinance, may flow control CDL Waste, in addition to Contractor's Facilities, to a County-operated facility or to another facility (not operated by the Second Contractor), and (b) the Contractor may maintain its then-current level of CDL Waste capacity, its then-current Bond level and the then-current liquidated damages obligations. At the conclusion of such twelve-month period, or such earlier time as Contractor notifies County that it is prepared to accept 50,000 tons of County CDL Waste per month, the County shall flow control to Contractor, and the Contractor shall accept from the County, all Non-Recyclable CDL Waste from the County's Jurisdiction, as set forth in Paragraph (1) above.

(3) In the event Contractor becomes the sole contractor for acceptance of CDL Waste from the County's Jurisdiction, Contractor shall develop and execute a plan, subject to reasonable approval by the County, to ensure that minimum receiving services are provided, if needed, in areas within the County's Jurisdiction which are geographically remote from Contractor's Facilities. Such a plan shall provide, if needed, for implementation of temporary receiving services within thirty (30) days and permanent receiving services, if needed, within two (2) years. Although it is recognized that such space is limited, where it can be reasonably accommodated, the County will cooperate with the Contractor on possible use of County solid waste transfer facilities or other sites if needed.

E. Terms of this Section 20 Prevail

In the event there is any discrepancy or inconsistency between the provision of this section 20 and any other provision in the Contract, the provisions of this section 20 shall govern and shall be effective.

Section 21. ANCILLARY PROVISIONS.

A. Contractor Responsibility for All Means of Performing Services

The Contractor is responsible for: furnishing all skill, labor, equipment, materials, supplies, real property, improvements to real property, and utility services necessary to perform all of its responsibilities under this Contract; supplying all records and information required by this Contract; securing, maintaining and upgrading all permits, licenses, and approvals as required by all Regulatory Agencies with Jurisdiction, including any regulatory agencies of the County; for paying all applicable taxes and fees; and being aware of and complying with all local, state, and federal laws and regulations applicable to its responsibilities under this Contract.

B. Ownership/Control of Means of Performance

The Contractor shall own or otherwise control the means of performance under this Contract by written and duly executed instruments that are subject to subsection 21C below.

C. Assignment, Subcontracting, Delegation of Duties

In the event the Contractor assigns, subcontracts, or otherwise delegates any of its duties or obligations under this Contract, the Contractor shall remain responsible for performance under this Contract and the Contractor shall ensure that any written, executed instrument assigning, subcontracting, or otherwise delegating such duties or obligations makes the assignee, subcontractor or delegee jointly responsible to the County for performance of its obligations under the subcontract. The Contractor shall provide to the County for its inspection, upon request and reasonable notice, all written, executed instruments assigning, subcontracting, or otherwise delegating the Contractor's duties or obligations under this Contract; provided that, the Contractor may withhold any portions of such instruments that may be reasonably deemed proprietary or confidential in nature, including but not limited to financial information. Failure by the Contractor to meet the requirements of this subsection shall be deemed a material breach of this Contract. Notwithstanding the foregoing, Contractor may assign its rights under this Contract for security purposes to lending institutions.

D. Guaranty/Security for Damages

Contractor shall provide and maintain during the term of this Contract one of the following:

(1) If the Contractor is owned or otherwise controlled by another corporation, partnership or other business entity(ies), a guaranty by such corporation, partnership, or other business entity(ies). Such Guaranty shall guarantee the Contractor's obligations for money damages which may be due under this Contract to the County, if any, and shall be in the form of Exhibit I attached to and incorporated by reference into this Contract. The guarantor's maximum obligation under the guaranty shall be an amount equal to four times the principal amount of the delay, performance and payment Bond required by Section 18A; or

(2) A payment bond, letter of credit or other functionally equivalent security for the benefit of the County and in a form reasonably acceptable to and approved by the County, in an amount equal to four times the principal amount of the delay, performance and payment Bond required by Section 18A. This security shall be in addition to the Bond required in Section 18A.

E. County Consent

In each instance under this Contract when County consent or approval is expressly required, such consent or approval by the County shall not be unreasonably withheld.

Section 22. CONTRACT REPRESENTATIVES, ADMINISTRATION, INFORMAL DISPUTE RESOLUTION, MEDIATION AND ARBITRATION.

A. Contract Representatives/Notices/Registered Agent

1. Representatives/Notices

The County hereby designates _____ as the County's representative for all matters pertaining to this Contract. All correspondence from the Contractor to the County pertaining to this Contract and all notices from the Contractor to the County required herein shall be addressed to:

Ms./Mr. _____
King County Solid Waste Division
Yesler Building
400 Yesler Way, #600
Seattle, Washington 98104-2637

The Contractor hereby designates _____
as the Contractor's representative for all matters
pertaining to this Contract. All correspondence from the
County to the Contractor pertaining to this Contract and
all notices from the County to the Contractor required
herein shall be addressed to:

Ms./Mr. _____

The parties agree to give ten (10) days prior written
notice of any change of contract representative or
address.

2. Registered Agent

The Contractor agrees, by the date of execution and for
the duration of this Contract, to name and continuously
maintain in the State of Washington a registered agent
pursuant to the applicable provisions of RCW 23B. Such
agent shall be an agent of the Contractor upon whom any
process, notice, or demand required or permitted by law
to be served upon the Contractor may be served. The
Contractor shall give the County written notice of its
registered agent's name, street address, and telephone
number by the date of execution of this Contract and
shall give the County immediate written notice of any
change of registered agent, address or telephone number.

B. Informal Contract Dispute Resolution

The parties agree their Contract representatives will meet as
needed to discuss and resolve issues of mutual concern. The
Parties agree that any material contract dispute that cannot be
resolved informally may, by mutual agreement of the Parties on a
case by case basis, be set for mediation or arbitration.

Section 23. ENTIRE CONTRACT/WAIVER OF DEFAULT.

This Contract is the complete expression of the agreement of
the parties hereto, and any oral representations or understandings
not incorporated herein are excluded. The parties recognize that
time is of the essence in the performance of this Contract. Waiver
of any default shall not be deemed to be a waiver of any subsequent
default. Waiver or breach of any provision of the Contract shall
not be deemed to be waiver of any other or subsequent breach and
shall not be construed to be a modification of the terms of the

Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

COUNTY:

CONTRACTOR:

Signature

Signature

Tim Hill

Name

Name

King County Executive

Title

Title

Date

Date

ATTEST:

Approved as to Form:
Norm Maleng
King County Prosecuting Attorney

Director,
Department of Executive
Administration

Deputy Prosecuting Attorney