

14987

ATTACHMENT B

CONTRACT FOR

2004-383

Revised 8/23/04

**CONSTRUCTION, DEMOLITION AND LAND-CLEARING
WASTE HANDLING SERVICES**

By and Between

KING COUNTY, WASHINGTON

and

WASTE MANAGEMENT OF WASHINGTON, INC.

_____, 2004

CONTRACT # D18990D

TABLE OF CONTENTS

14987

	Page
Section 1. Purpose and Intent of Contract	1
Section 2. Commencement and Duration of Contract	2
Section 3. Termination of Contract	3
Section 4. Definitions	5
A. Parties/Other Entities/Plan	5
B. Types of Materials/Waste	6
C. Facilities/Services	9
Section 5. Contractor CDL Waste Handling Responsibilities	10
A. Waste Acceptance Obligations/Limitations	10
B. Minimum Quantity Handling Capacity – Primary and Back-Up	17
C. Back-Up Facilities/Transportation	17
D. Receiving CDL Waste	19
E. Minimum Recycling	20
F. Transfer/Intermodal Facilities and Transportation – Minimum Design/Construction/Operating Standards	22
G. Reservation of and Limitations on Backhaul Rights	23
H. Primary and Back-Up Disposal Facilities – Minimum Design/Operating Standards	23
I. Disposal Facility Closure/Post-Closure Requirements	24
J. Office/Telephone for Public Access and Complaints	25
K. Standards for Cultural Artifacts	25
L. Environmental Mitigation	26
M. Force Majeure	26

TABLE OF CONTENTS

	Page
Section 6. Maintenance of Records/Information and Reporting	27
A. Kind, Origin, and Disposition of Waste	27
B. Incidents, Complaints, and Enforcement Actions	27
C. Other	27
Section 7. Access, Audits, Evaluation	27
Section 8. Plan of Operations	28
Section 9. Plan for Disposal Facility Closure/Post-Closure	29
Section 10. Fees	30
Section 11. Hold Harmless and Indemnification	36
Section 12. Insurance	37
A. - F. General Liability, Automobile Liability, Worker's Compensation, Stop Gap, Longshoremens, Builder's Risk/Installation	38
G. - I. Professional Liability, Pollution Liability – Transfer Facilities/Transportation Modes/ Disposal Facilities, Marine Liabilities	39
Deductibles/Self Insured Retentions, Other Insurance Provisions	40
Acceptability of Insurers, Verification of Coverage, Cancellation	41
Changes in Law, Subcontractor Insurance	42
K. - L. Disposal Facility Closure/Post Closure, Scope of Employment	42
Section 13. Nondiscrimination	42
Section 14. Minority and Women-Owned Business Participation	45
Section 15. Accessibility to People with Disabilities	46
Section 16. Conflict of Interest	46
Section 17. Recycled Product Procurement	46

TABLE OF CONTENTS

14987

Page

Section 18.	Bond/Failure of Performance by Contractor/Damages	47
	A. Delay, Performance and Payment Bond	47
	B. Default of Contractor/Interruption of Services	47
	C. Insolvency, Bankruptcy, and Receivership	49
	D. Breach/Liquidated Damages	50
Section 19.	County Flow Control	52
Section 20.	Relationship to Second Contractor	53
Section 21.	Ancillary Provisions	54
	A. Contractor Responsibility for All Means of Performing Services	54
	B. Ownership/Control of Means of Performance	54
	C. Assignment, Subcontracting, Delegation of Duties	55
	D. Guaranty/Security for Damages	55
	E. County Consent	55
Section 22.	Contract Representatives, Administration, Information Dispute Resolution, Mediation and Arbitration	56
	A. Contract Representatives/Notices/Registered Agent	56
	1. Representatives/Notices	56
	2. Registered Agent	57
	B. Informal Contract Dispute Resolution	57
Section 23.	Entire Contract/Waiver of Default	57

Index of Exhibits

14987

- Exhibit A: ISO Form No. CG 00 01
- Exhibit B: ISO Form No. CA 00 01
- Exhibit C: ISO Form No. CA 00 12
- Exhibit D: ISO Form No. CG 00 39
- Exhibit E: King County Code Chapter 12.16
- Exhibit F: King County Code Chapter 12.18
- Exhibit G: King County Code Chapter 4.18
- Exhibit H: King County Code Chapter 3.04
- Exhibit I: Form of Guaranty

14987

**EXTENDED CONTRACT
FOR
CONSTRUCTION, DEMOLITION, AND LAND CLEARING HANDLING SERVICES**

THIS EXTENDED CONTRACT (hereafter referred to as either "the Contract," "this Contract" or "this Extended Contract") is entered into by and between KING COUNTY (the "County") and WASTE MANAGEMENT INC., acting through its subsidiary WASTE MANAGEMENT OF WASHINGTON, INC. (the "Contractor"), with its principal place of business at 801 Second Avenue, Suite 614 in Seattle, Washington 98104.

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; and

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

WHEREAS, the initial term of this Contract expired on May 31, 2004 and the parties have agreed to an initial extension of this Contract to September 1, 2004 and a second extension of this contract o September 30, 2004;

WHEREAS, the parties have agreed to an additional 10 year extension under the terms and conditions set forth herein;

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

This Contract extends the term of and amends that Contract for Construction, Demolition and Land Clearing Waste Handling Services # D18990D between the County and Contractor and dated June 1, 1993 ("1993 Contract"). The terms of this Extended Contract govern the relationship of the parties from and after the Service Commencement Date hereunder; provided, however, the entry of this Contract does not waive or release Contractor from any breach of the terms of the 1993 Contract.

The purpose of this Contract is to provide suitable locations for the receipt by the

14987

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 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 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 encouraging the Contractor to maintain a specified minimum processing capability at one or more Contractor Facilities that receive loads of Mixed CDL Waste from generators or haulers; (b) by creating incentives for Contractor to maximize the recycling of Mixed CDL Waste; (c) 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, if and to the extent provided in this Contract; and (d) by exempting Pure Loads of Recyclable CDL Waste from the County's obligation to cause CDL Waste to be directed to certain designated facilities, including Contractor Facilities authorized to receive CDL Waste under this Contract.

By this Contract the County recognizes that, unlike other potential recyclers of CDL Waste, the Contractor is providing a valuable service to the County by agreeing to accept all CDL Waste delivered to its Receiving Facilities (except as set forth herein), and that many of these loads of CDL Waste, by their nature (for example, because they contain primarily Non-Recyclable CDL), would not be acceptable at other CDL Recycling Facilities. This may cause the Contractor to have a lower recycling rate compared to other recyclers, who may refuse Non-Recyclable CDL Waste and thereby maintain a higher overall facility recycling rate.

Section 2. COMMENCEMENT AND DURATION OF CONTRACT

- A. The Contractor's obligations under this Contract shall commence upon approval of this Contract by the Metropolitan King County Council and execution by both parties (the date upon which both such conditions are satisfied being referred to hereafter as the "Service Commencement Date"). 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 Transportation Modes 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 or extended by

the mutual written agreement of the parties, this Contract shall terminate ten (10) years from the Service Commencement Date; provided, however, the Contractor's obligations with respect to indemnification, environmental liability, 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".

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, including Contractor failure to comply with the provisions of Section 5.A.1(a)(1) or (2). The County additionally may terminate this Contract at any time if, as a consequence of a final decision by a court with jurisdiction that KCC 10.08.020 is invalid or unenforceable with respect to any of the Mixed Municipal Solid Waste collected by Contractor within the County's Jurisdiction, Contractor ceases to dispose of any such Mixed Municipal Solid Waste in accordance with KCC 10.08.020. 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. Contractor may terminate this Contract on 60 days written notice in the event that:
- (a) either
- (1) a third party not affiliated with Contractor brings a legal challenge and there is a resulting final decision by any court with jurisdiction declaring paragraph (C) and/or paragraph (D) of KCC 10.30.020 (or any substantially similar provision of the King County Code with respect to CDL Waste) unconstitutional or otherwise invalid or unenforceable, or
 - (2) the County repeals paragraph (C) and/or paragraph (D) of KCC 10.30.020 or amends or limits the applicability of or adopts exceptions to either of them so as to increase the amount of Non-Recyclable CDL Waste generated within the County's Jurisdiction that may be transported to facilities other than those designated by the County pursuant to KCC 10.30.020 and operated by the Contractor or by other persons who are now, or who hereafter become, parties to contracts with the County substantially identical to this Contract, or
 - (3) the County fails to maintain an ordinance that directs all Non-Recyclable CDL Waste and all Mixed CDL Waste (or the Residual CDL Waste therefrom if the load is first taken to a non-Contractor

Recycling Facility) be taken only to the Contractor's Facilities or the Facilities of the Second Contractor; and

(b) Contractor's continued performance under this Contract would place Contractor at a competitive disadvantage in the marketplace or the Contractor will suffer actual economic harm by its continued performance under this Contract. County also shall have the right to simultaneously terminate this Contract and the Second Contract if the circumstance specified in Clause (a)(1) of the immediately preceding sentence occurs. Neither Contractor nor any of its affiliates shall bring, fund, or otherwise encourage or support a legal challenge to KCC 10.30.020 or any other existing provision of the King County Code directing that Non-Recyclable CDL Waste generated within the County's Jurisdiction be taken only to facilities designated pursuant to KCC 10.30.020 and operated by Contractor and/or others who now or hereafter are parties to contracts with the County substantially identical to the Contract. In the event a third party brings a successful legal challenge to KCC 10.30.020 and there is a final decision that paragraph (C) and/or paragraph (D) of KCC 10.30.020 is unconstitutional or otherwise invalid or unenforceable, the parties agree to meet in good faith and discuss amendments to this Contract and other means by which to avoid a termination of the Agreement, so as to continue the services provided by Contractor hereunder, without placing Contractor at a competitive disadvantage in the marketplace while also satisfying the interests of the County. Any termination of this Contract pursuant to this subsection shall be without penalty or assessment of damages against either party. Notwithstanding the foregoing, the delivery and disposal of CDL Waste in accordance with an existing or future collection contract with a city having control over the collection of CDL Waste within its jurisdiction shall not constitute a breach by Contractor of this section.

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 antitrust 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 Section 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 Waste Management of Washington, Inc, its parent(s), affiliates, subsidiaries and its successors.
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, other than Vashon Island, for which the 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 Department of Development and

Environmental Services, 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 Regional Disposal Company 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-Containing Waste Material means any waste that contains or is contaminated with friable asbestos-containing material. Asbestos-Containing Waste Material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters.
2. Beneficial Use means the beneficial use of CDL Waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products in a manner that does not constitute Recycling and in a manner consistent with all applicable laws. Avoidance of processing or disposal cost alone does not constitute Beneficial Use. Beneficial Use includes but is not limited to use as hog fuel and alternate daily cover.
3. 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.
4. Construction, Demolition, and Land Clearing Waste or 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:

14987

- a. Construction Waste 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 cannot reasonably be separated from other Construction Waste and do not meet the definition of Unacceptable Waste. In no event shall Construction Waste include dangerous or extremely hazardous waste of any kind, garbage, sewerage waste, animal carcasses, or friable asbestos.
- b. Demolition Waste 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 cannot reasonably be separated from the other Demolition Waste and that do not meet the definitions of Unacceptable Waste. In no event shall Construction Waste include dangerous or extremely hazardous waste of any kind, garbage, sewerage waste, animal carcasses, or friable asbestos.
- c. Land Clearing Waste 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 that can be reasonably separated from other CDL Waste, Contaminated Soil resulting from a site cleanup or remediation, friable Asbestos-Containing Waste Material containing more than one percent asbestos by weight, Unacceptable Waste as defined in this Contract, or other Solid Waste which does not meet the definition of CDL Waste.

5. Contaminated Soil is any soil that does not 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.
6. Divert, Diverted and Diversion mean the Recycling or putting to Beneficial Use of CDL Waste. Diversion does not include disposal in a landfill as waste even if such disposal results in the creation or production of landfill gas that is put to use. CDL Waste shall be considered to have been Diverted by a Receiving Facility when it is transported from the Receiving Facility in order to be Recycled or put to a Beneficial Use.
7. Inbound Tons Appropriate for Processing means the total tons of CDL Waste entering a Receiving Facility as loads of Recyclable CDL Waste or

14987

Mixed CDL Waste.

8. Mixed CDL Waste is CDL Waste containing both Recyclable and Non-Recyclable CDL Waste materials that have not been separated. For the purposes of this Contract, a load or other given quantity of CDL Waste is considered to be Mixed CDL Waste if it contains more than 10% but less than 90% Recyclable CDL Waste by volume.
9. Mixed Municipal Solid Waste, or MMSW, means Solid Waste generated by residences, stores, offices, and other generators of Wastes that is not industrial, agricultural, or CDL wastes.
10. Non-Recyclable CDL Waste means CDL Waste that is not appropriate for Diversion because the Contractor reasonably determines that the processing of such CDL Waste will damage its equipment. CDL Waste received at a Receiving Facility also may be considered Non-Recyclable CDL Waste if there is no viable market for such CDL Waste, or it is not physically or economically feasible to process and Divert such CDL Waste at that Receiving Facility. Non-Recyclable CDL Waste includes all Residual CDL Waste.
11. Pure Loads of Recyclable CDL Waste means loads of single or mixed types of Recyclable CDL Waste that contain at least 90% Recyclable CDL Waste materials by volume.
12. Recyclable CDL Waste means CDL Waste that can be Diverted from CDL Waste and reused, recovered or re-manufactured into a reusable product or put to a Beneficial Use. Recyclable CDL Waste may consist of a single type of recyclable material or a mixture of two or more types of recyclable material.
13. Recycle, Recycling or Recycled means reusing, recovering or remanufacturing waste materials into usable or marketable materials for purposes other than landfilling, incineration, alternative daily cover, or alternative fuel generation.
14. Residual CDL Waste means any CDL Waste requiring disposal that remains after Diversion of Recyclable CDL Waste has occurred.
15. Solid Waste or Wastes means all putrescible and non-putrescible solid and semi-solid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material and recyclable materials.
16. Source Separated CDL Waste means a single kind of Recyclable CDL

Waste material that has been separated from other CDL Waste materials at the site of remodeling, repair, construction, demolition, or land clearing before it is transported to a Receiving Facility.

17. Total Inbound Tons means the total tons of Recyclable CDL Waste, Mixed CDL Waste and Non-Recyclable CDL Waste entering a Receiving Facility.
18. 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.

C. Facilities/Services

1. 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 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.
2. 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.
3. Contractor Facility means any real or personal property, property improvement, fixture or equipment, including CDL Waste Containers and transportation equipment, owned, leased, operated or controlled by the Contractor or its agents or affiliates and used by the Contractor or its agents or affiliates in performing any of Contractor's services under this Contract.
4. Disposal Facility means any Contractor Facility at which the final disposal of Non-Recyclable CDL Waste generated within the County's Jurisdiction occurs.
5. 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 Municipal 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.

6. Includes or including means “includes but is not limited to” and “including but not limited to” unless otherwise specified.
7. Intermodal Facility means any Contractor Facility at which containers of CDL Waste are transferred from one Transportation Mode to another without removal of any CDL Waste from the containers.
8. 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.
9. Receiving Facility means any Contractor Facility that receives CDL Waste generated within the County’s Jurisdiction from haulers, generators, or any other customers. For purposes of this Contract, a Receiving Facility may be a Recycling Facility, an Intermodal Facility, or a Transfer Facility. The Facility can comprise one property, adjoining properties, or properties located within a two mile radius of one another, provided all such properties are owned or leased by the Contractor, properly permitted, and operated by the Contractor in an integrated fashion.
10. 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 CDL Waste is Recycled or converted to a Beneficial Use. This includes: (a) the reuse or remanufacturing of Recyclable CDL Waste into a new marketable product at the Recycling Facility itself; or (b) the separation of Recyclable CDL Waste from loads of Mixed CDL Waste for the purpose of transferring such materials to a facility where they may be Recycled, or converted to some other Beneficial Use.
11. Separate Cell means a separate area of a Disposal Facility which has an independent or physically separated liner and leachate collection system.
12. Transfer Facility means any Contractor Facility at which CDL Waste generated within the County’s Jurisdiction is transferred from one Container to another Container for any purpose.
13. Transportation Mode means any form of transportation used by the Contractor or its agents or affiliates to transport CDL Waste from one Contractor Facility to another and may include rail, truck, or barge.
14. 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. (a) General Obligation. The scope of the Contractor's Solid Waste Handling Services under this Contract is limited to CDL waste generated within the County's Jurisdiction. In consideration for the rights and privileges set forth in this Contract, the Contractor agrees that for so long as this Contract remains in effect:

(1) Contractor will dispose of Mixed Municipal Solid Waste collected by Contractor or any of its affiliates within the County's Jurisdiction only at a disposal site or disposal sites designated by the County pursuant to KCC 10.08.020; and

(2) Contractor shall not bring, fund, or otherwise encourage or support a legal challenge to KCC 10.08.020 that was not already specifically set forth as a cause of action in an original complaint filed with the court as of June 1, 2004, and shall not seek to have KCC 10.08.020 declared to be invalid or unenforceable in any such proceeding on any basis other than those causes of action which already had been asserted in a complaint filed in the proceeding as of June 1, 2004;

Provided, however, that the obligations of Section (a) of this Section may be terminated by Contractor pursuant to subsection (b) of this Section if any of the following occurs:

- (i) Both (A) a final decision is entered by any court with jurisdiction declaring KCC 10.08.020 (or any substantially similar provision of the King County Code with respect to Mixed Municipal Solid Waste) unconstitutional or otherwise invalid or unenforceable, unless such decision results from a breach of paragraph 5.A.1(a)(2) above, and (B) it can be objectively demonstrated either that a Solid Waste handling competitor is disposing of Mixed Municipal Solid Waste generated within the County's Jurisdiction outside of the County's system, creating a competitive disadvantage for the Contractor, or that the Washington Utilities and Transportation Commission will not apply RCW 81.77.160 to disposal fees applicable to Mixed Municipal Solid Waste affected by the decision. For the purposes of this paragraph and Section 3.A, a decision shall be deemed "final" when it is no longer subject to review by a higher court;
- (ii) a decision is entered by either the Division One of the Washington State Court of Appeals, the Supreme Court of the State of Washington, the Ninth Circuit Court of Appeals

or the United States Supreme Court in which *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 261 F.3d 245 (2nd Cir. 2001) is rejected or overruled, and *C. & A. Carbone & Sons, Inc. v. Clarkstown*, 511 U.S. 383, 114 S.Ct. 1677 (1994) is held to be applicable public solid waste handling facilities. The condition specified by this paragraph (ii) shall be deemed to exist only if, as a consequence of such a decision, the King County Superior Court or in the United States District Court would be required under principles of *stare decisis* to hold that KCC 10.08.020 discriminates on its face against interstate commerce were there to be a challenge to the constitutionality of KCC 10.08.020 in either such court (whether or not such a challenge is actually asserted by anyone);

- (iii) the County fails to take reasonable steps to prevent continued material violations of KCC 10.08.020 by anyone engaged in the business of collecting Mixed Municipal Solid Waste within the County's Jurisdiction, after such violations have been brought to the County's attention;
- (iv) circumstances occur that would give Contractor the right to terminate this Agreement pursuant to Section 3.B;
- (v) the County following the Service Commencement Date imposes upon Contractor or any of Contractor's affiliates any new fee payable to the County for Mixed Municipal Solid Waste disposal or increases the Regional Direct service fee above the amount that the County currently may permissibly charge as its Regional Direct service fee, and such new fee or future increase in the Regional Direct service fee cannot be fully defrayed by inclusion in the base for collection rates charged by with respect to Mixed Municipal Solid Waste collected within the County's Jurisdiction because the Washington Utilities and Transportation Commission will not allow the full amount of it to be defrayed by inclusion in the collection rate base despite the Contractor's best efforts to get such approval pursuant to RCW 81.77.160. This paragraph shall not apply to any increase in the per-ton Regional Direct fee if such increase is accompanied by an increase of at least the same dollar amount in the per-ton fees charged for Mixed Municipal Solid Waste at transfer facilities in King County operated by or under the auspices of the County. For purposes of this subparagraph, "the amount that the County

currently may permissibly charge as its Regional Direct service fee” shall mean \$69.50/ton if the County’s prior increase of such service fee from \$59.50/ton to \$69.50 is not invalidated, in whole or in part, by a final decision, or such other amount as may be determined in a final decision;

- (vi) the County by ordinance, rules, plan amendments, or contract authorizes Mixed Municipal Solid Waste collected within the County’s Jurisdiction to be disposed of at any disposal site other than the Cedar Hills Regional Landfill, unless the County affords Contractor and its affiliates the opportunity to compete for award of a contract for disposal sites services for such Waste; or
- (vii) the County by contract, ordinance or otherwise exempts any person or entity from the application of KCC 10.08.020 (the parties each acknowledging, however, that the disposal of certain Wastes at County facilities may be impermissible or undesirable, and that the County’s authorization of disposal of such Wastes elsewhere shall not be deemed or treated as an “exemption” from the application of KCC 10.08.020);
- (viii) the Second Contractor’s corresponding obligations under this same provision of the Second Contract terminates.

Notwithstanding the foregoing, the disposal of Mixed Municipal Solid Waste in accordance with an existing or future collection contract with a city having control over the collection of Mixed Municipal Solid Waste within its jurisdiction shall not constitute a breach by Contractor of this Section.

(b) Termination Procedure. If the Contractor asserts a right to terminate the Contractor’s obligations under the immediately preceding paragraph (a), the Contractor shall give the County written notice of Contractor’s intent to terminate (an “MMSW Notice”), which shall specify with reasonable particularity the basis upon which the Contractor asserts a right to terminate. If the County disputes the Contractor’s asserted existence of circumstances giving the Contractor a right to terminate under paragraph (a), the County within thirty (30) days following the County’s receipt of the Contractor’s notice shall give written notice to the Contractor of such dispute (a “Dispute Notice”), which shall specify with reasonable particularity the basis therefore. If the County fails to give a Dispute Notice within that thirty (30) day period, then the Contractor’s obligations under paragraph (a) automatically shall terminate upon the expiration of that thirty (30) day period. However, if the County does give a Dispute Notice within that thirty (30) day period, then;

(1) The parties shall seek to resolve the dispute by mediation in accordance with the following procedure:

(i) The parties shall appoint a single mediator. If the parties are unable to agree upon a mediator within five (5) days after the County Dispute Notice is given, Judicial Dispute Resolution, LLC of Seattle, Washington shall appoint one of its staff of professional mediators to act as the mediator;

(ii) The mediator shall hold a mediation within the earlier of thirty (30) days following the Dispute Notice, or forty-five (45) days following the MMSW Notice, for the purpose of seeking to resolve the dispute. It is the parties' intention that the mediation be conducted as expeditiously and economically as reasonably practicable, and the parties shall each cooperate with each other to assure that the mediation is conducted within the period of time specified in this paragraph (B); and

(iii) The parties shall each be responsible for one-half (1/2) of any fees or charges of the mediator; and

(2) Any right that the Contractor may have to terminate the Contractor's obligations under the immediately preceding paragraph (a) shall be effective upon the earlier of the conclusion of the mediation or the expiration of forty-five (45) days following the MMSW Notice.

Notwithstanding the foregoing, either party may seek temporary or preliminary injunctive or equitable relief from any court of competent jurisdiction, pending the resolution of the parties' dispute by means of the mediation procedure specified above.

Termination of the Contractor's contractual obligation pursuant to this section shall not constitute a release, waiver or termination of the Contractor's obligation to comply with applicable laws regarding disposal of Mixed Municipal Solid Waste, including KCC 10.08.020, except to the extent such laws have been invalidated by a court with jurisdiction.

(c) Reinstatement Right. If a termination of the Contractor's obligations under this Section 5.A.1(a)(1) with respect to MMSW collected by Contractor within unincorporated areas of King County is based upon a final decision holding that KCC 10.08.020 is unenforceable by virtue of the absence of any interlocal agreement(s) that may be required by the last sentence of the first paragraph of RCW 36.58.040, then the Contractor's

obligations under this Section 5.A.1 may be reinstated, at the County's sole option, if, within one hundred twenty (120) days following the date upon which the termination of Contractor's obligations under this Section 5.A.1 becomes effective, the County has entered into and given written notice to the Contractor of the interlocal agreement(s) necessary to satisfy the requirements of RCW 36.58.040 or the County is in compliance with its requirements as a result of an amendment of RCW 36.58.040 or otherwise. The reinstatement of Contractor's obligations under this Section 5.A.1 shall apply prospectively from the date upon which the County's written notice of the County's compliance with RCW 36.58.040 is received by Contractor. If the County reinstates pursuant to this paragraph, the Contractor shall promptly discontinue any action that would have been prohibited in accordance with 5.A.1(a)(2) if it had remained in effect; and provided the Contractor does so, the County shall not exercise its right of termination under Section 3.A. on account of such discontinued action. The County's right of reinstatement under this subparagraph (c) shall not be exercisable if this Agreement already has been terminated by the County pursuant to its right of termination under Section 3.A. The County's right of reinstatement under this subparagraph (c) is a permissive option available to the County if it elects to exercise it.

2. For so long as the Agreement remains in effect, the Contractor shall at all times accept CDL Waste delivered to it originating from the County's Jurisdiction up to at least the minimum monthly quantity as established in subsection 5.B.
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 required by Section 8, and shall not knowingly accept in any Receiving 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. Notwithstanding anything to the contrary contained in the Contract, the Contractor may, but is not obligated to, accept and Handle Solid Waste (including CDL 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 5.A(3), and provided that such acceptance and Handling does 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 5.A(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 at Contractor 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. The Contractor may accept or handle non-CDL Solid Waste from outside the County's Jurisdiction in the same Contractor Facilities located in the County's Jurisdiction which are used to Handle the County's CDL provided that, such acceptance and handling shall not interfere with the Contractor's obligations under this Contract and transportation to and disposal of such waste in King County must be permissible under applicable law, including but not limited to the laws of those counties adjacent to King County.
7. The Contractor may accept or handle CDL Waste from outside the County's Jurisdiction and Seattle's Jurisdiction at Contractor Facilities located in the County's Jurisdiction used to handle the County's CDL Waste under this Contract provided that, such acceptance and handling shall not interfere with the Contractor's obligations under this Contract and transportation to and disposal of such waste in King County must be permissible under applicable law, including but not limited to the laws of those counties adjacent to King County.
8. The Contractor shall not accept or handle at Contractor Receiving Facilities, Transfer Facilities, Intermodal Facilities or Transportation Modes, any CDL Waste from any source or jurisdiction except as allowed by this Contract.
9. Contractor Intermodal 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's acceptance at Receiving Facilities of Solid Waste from outside of the County's Jurisdiction shall not be permitted by Contractor to interfere with the Contractor's obligations under this Contract.
11. For purposes of administering the waste acceptance and prohibition provisions set forth in this Section 5.A, 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.

12. The Contractor is and throughout the term of this Contract shall remain authorized by the County to dispose CDL Waste at any landfill or other disposal site of Contractor's choosing, provided that such landfill or other disposal site is authorized by law to accept such material for disposal and meets applicable Contract requirements.

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 5.A 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 5.B 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 5.B, 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 5.B, 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 sufficient to accept and handle at a minimum the monthly quantity of County CDL Waste specified in Section 5.B 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.
- (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 back-up measure and only with the prior approval of the Solid Waste Division under the following three circumstances: (a) 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 (b) 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 Contractor 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 Contract, and the County may either assess liquidated damages or seek actual damages pursuant to Section 18 of this Contract.

D. Receiving CDL Waste

The Contractor shall operate at least two (2) Receiving Facilities in King County, 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 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 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 Receiving 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 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 ninety (90) 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 two block radius of such Receiving Facilities.

In order to reduce the potential for debris falling out of trucks, Contractor shall post notice at Receiving Facilities that incoming loads shall be covered or otherwise secured to prevent litter and impose a special fee to be set by Contractor on violators in addition to the fees charged pursuant to Section 10.

E. Minimum Recycling

The Contractor shall Divert all Recyclable CDL Waste contained in Pure Loads of Recyclable CDL Waste received at Contractor's Receiving Facilities, unless and except to the extent that the Contractor reasonably determines that: (i) the processing of a particular load will damage its equipment, or (ii) there is no viable market for the materials.

The Contractor agrees not to dispose of Recyclable CDL Waste 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 CDL Waste, as indicated by the Contractor's reasonable visual inspection of an incoming load before it is deposited at a Receiving Facility, and/or when the Contractor determines it to be economically infeasible to separate such materials for purposes of recycling.

The County and Contractor shall work together to promote recycling and to raise public awareness regarding Recycling Compliant Facilities, including providing information on the availability and benefits of using such facilities in Solid Waste Division publications, websites, and teleresponse centers, as appropriate, when addressing CDL Waste management issues. The County may post the facility Diversion rates for all facilities included in the Contract, calculated on the basis of both the Inbound Tons Appropriate for Processing and the Total Inbound Tons. The Contractor shall reflect their facility recycling rates (calculated on the basis of both the inbound Tons Appropriate for Processing and the Total Inbound Tons) in marketing and promotional efforts aimed at recycling and raising public awareness.

The Contractor shall process 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, 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.
9. asphalt roofing

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 Recyclable CDL Waste and 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 Mixed CDL Waste for recycling. The County reserves the right to prohibit, by ordinance or public rule, the disposal of Recyclable CDL Waste. 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. In the event the County enacts an ordinance or rule prohibiting the disposal of Recyclable Materials, and such rule increases Contractor's processing or other operational costs under this Contract, then with the County's prior approval, which shall not be unreasonably withheld, the Contractor shall be entitled to a reasonable adjustment of the rates, to be agreed upon in good faith by the parties.

The Contractor may refuse to receive at its receiving facilities any Source Separated CDL Waste or otherwise separated CDL Waste 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 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, Recycling Compliant Facilities, Intermodal 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 all applicable laws and regulations 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 Intermodal 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 Transportation Mode. 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 the 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 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 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 173-351, Washington State Criteria for Municipal Solid Waste Landfills, in the case of Disposal Facilities; (b) to reduce the risk of liner puncture associated with the unique characteristics of CDL Waste; 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 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 standards equal to or more stringent than the requirements of Washington Administrative Code regulations, WAC 173-351, Criteria for Municipal Solid Waste Landfills 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 standards equal to or more stringent than the requirements of Washington Administrative Code regulations, WAC 173-351, Criteria for Municipal Solid Waste Landfills, 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, WAC 173-351, Criteria for Municipal Solid Waste Landfills, 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 Contractor 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 Contractor Facilities used in the performance of this Contract consistently with the following principles:

1. Prior to excavation at any such Contractor 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 and County are not responsible for performance under this Contract where a force majeure event beyond its control prevents performance under this Contract. Such force majeure 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 make available to the County records of: (1) the weight of loads of each kind of County CDL Waste, (i.e. Recyclable, Non-Recyclable, Mixed) as defined in Section 4.B, received at each Receiving Facility, and the weight of any loads of specific separated CDL Waste; (2) the geographic origin of loads of CDL Waste accepted at Receiving Facilities, at minimum indicating whether the load originated in the area of the County's Jurisdiction, Seattle's Jurisdiction, or from other areas; (3) the disposition of all CDL Waste

received, at minimum the portion by weight and kind of material(s) separated for Diversion and the portion by weight and kinds of material(s) deposited or transported for disposal at a Disposal Facility; and (4) summaries of the gross tonnage and number of deliveries of all other Solid Waste at 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. Contractor shall permit the County to review Contractor's list of customers delivering loads to the Receiving Facilities, without making copies thereof and to record such information for its own use.

B. 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.

C. 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, and subject to the normal safety and security rules in place at any of Contractor's Facilities. Such rules shall be made available to County employees through the Plan of Operations or other means.

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.

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Section 8. PLAN OF OPERATIONS

A Plan of Operations for each of the 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 5.A(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.

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 of Operations 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 173-351, Criteria for Municipal Solid Waste Landfills; 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 Contractor Facilities located in the State of Washington and meets or exceeds all

applicable requirements of any Regulatory Agencies with Jurisdiction pertaining to closure and post-closure financial assurances for Contractor 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, 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 rates and any subsequent changes thereto.
- B. Contractor agrees that its maximum fee will not exceed \$80.16 per ton (2004 dollars), adjusted annually on June 1 of each year during the term of this Contract (the Annual Adjustment Date), beginning in 2005, 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 All Urban Consumers for the Seattle-Tacoma-Bremerton area (however designated), published by the Bureau of Labor Statistics, United States Department of Labor (the "CPI").

In the event the Bureau of Labor Statistics stops publishing a CPI for the Seattle-Tacoma-Bremerton area, then the parties shall utilize the consumer price index most closely related to the CPI to adjust the maximum fee.

With prior County approval, which shall not be unreasonably withheld, Contractor may increase its maximum fee to reflect material changes after January 1, 2005, 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, including any County ordinances or rules that prohibit disposal of certain materials.

- C. The County currently imposes, and retains the authority to amend, a surcharge on the Contractor's fees or services. If the County decides to amend the surcharge, upon the giving of written notice to the Contractor, the Contractor shall commence paying the surcharge to the County 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 10.B shall not apply to CDL Waste requiring special handling by applicable Regulatory Agencies with Jurisdictions.
- E. Recycling Incentives. To promote recycling and as consideration for this Contract,

the Contractor shall be eligible to receive recycling incentives, in accordance with the terms of this Section 10.E. For purposes of determining the number of tons Recycled or put to Beneficial Use under this Section, the following general calculation principle shall apply: the Contractor shall be allowed to use the same percentage of CDL Waste Diverted for the entire Receiving Facility (measured as a percentage of the Inbound Tons Appropriate for Processing) and apply that percentage to the Receiving Facility's Inbound Tons Appropriate for Processing of CDL from the County's Jurisdiction.

1. Recycling Compliant Facilities. The Contractor may request at any time that the County certify one or more Receiving Facilities at which CDL Waste generated with the County's Jurisdiction is accepted as being a "Recycling Compliant Facility" for purposes of this Contract. The Contractor shall provide the County with any information and documentation requested by the County that is relevant to making a determination in response to such a request. The County shall make a determination in response to Contractor's request no more 45 days after receiving all information and documentation deemed necessary by the County to make such determination. To obtain certification of a Receiving Facility as a Recycling Compliant Facility, and to maintain the Receiving Facility's certification as such, so as to make the Contractor eligible to receive the recycling incentives set forth herein for CDL Waste Diverted by the Receiving Facility, the tonnage of all CDL Waste that the Receiving Facility Diverts in a month must be at least forty percent (40)% of the Inbound Tons Appropriate for Processing, by weight, of all CDL Waste received by the Receiving Facility during the same month. No more than 5% of the tons used to calculate a Facility's Recycling Compliant status may be attributable to the Diversion of concrete, rock and asphalt. All tons of concrete, rock and asphalt Diverted at a facility are, however, eligible to receive the recycling incentives described in this section if the Facility meets the requirements of Sections 10.E.2, 3, and 4. The County's certification of a Receiving Facility as a Recycling Compliant Facility in response to a Contractor request for such certification shall be effective retroactively with respect to each month on and after the Service Commencement Date in which the Receiving Facility is demonstrated to have qualified for certification. A Receiving Facility certified by the County as a Recycling Compliant Facility automatically will lose its Recycling Compliant Facility certification with respect to any month in which the tonnage of CDL that it Diverts is less than 40% of the Inbound Tons Appropriate for Processing received during that month. A Receiving Facility that loses its Recycling Compliant Facility certification may be re-certified as a Recycling Compliant Facility in the manner provided for by this paragraph with respect to any subsequent month(s) in which the Contractor is able to demonstrate that the Receiving Facility qualifies for such status.

- 2. Bonus Incentive for Early Implementation. For each Receiving Facility which achieves and maintains Recycling Compliant Facility certification for a minimum of ninety (90) days within the first eighteen (18) months following the Service Commencement Date, and Diverts a minimum of at least 15% of the Total Inbound Tons, or 700 Tons per month at the Receiving Facility during such 90 day period, the Contractor will receive a one-time, lump sum payment of \$75,000; provided that the total payment to the Contractor under this section shall not exceed \$150,000. This incentive is to promote recycling as expeditiously as possible.

- 3. Basic Diversion Incentive. To encourage CDL Diversion at all Contractor Facilities, the Contractor will receive, subject to paragraph 6 of this section, and in addition to any other incentives set forth in the Section 10, the following incentives on a monthly basis for each ton of CDL Waste in King County that is received at Contractor's Facilities and Recycled or put to Beneficial Use.

Incentive for tons of County CDL Waste Recycled:	\$2.00 per ton
Incentive for tons of County CDL Waste put to Beneficial Use:	\$1.00 per ton

Contractor must Divert at least 15% of the Total Inbound Tons, or 700 Tons per month, whichever is less, in order to qualify for the Basic Recycling Incentive.

Within 45 days of the end of a given month, the Contractor will submit its calculation to the County of the County CDL Waste Diverted and the County surcharge owed by Contractor pursuant to Section 10.C for the previous month along with any supporting documentation reasonably requested by the County. The County shall pay the Contractor the incentives due under this Section 10.E.3 within 90 days following the end of that month, and may opt to pay the incentives by offsetting amounts owed by Contractor to County under this Contract.

- 4. Recycling Compliant Facility Monthly Incentives. To promote a greater level of recycling, for each month in which a Receiving Facility maintains Recycling Compliant Facility certification, as defined in Section 10.E.1 above, the Contractor will receive, subject to the limitations of paragraph 6 of this section, and in addition to any other incentives set forth in this Section 10, the following incentives for each ton of CDL Waste generated within the County's Jurisdiction that is Diverted during any month with respect to which the Receiving Facility is certified as a Recycling Compliant Facility:

Incentive for tons of County CDL Waste Recycled:	\$11.00 per ton
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Incentive for tons of County CDL Waste put to Beneficial Use: \$7.60 per ton

The tonnage of CDL Waste generated within the County's Jurisdiction that is Diverted by the Receiving Facility during a given month shall be deemed to be (a) the tonnage of all CDL Waste Diverted by the Receiving Facility during the month, multiplied by (b) the tonnage of CDL Waste generated within the County's Jurisdiction received at the Receiving Facility during that month, divided by (c) the tonnage of all CDL Waste received at the Receiving Facility during the month.

The Contractor will pay the County all surcharges that the Contractor is required to have collected within a calendar month within 45 days following the end of that month, and shall submit within that same 45-day period its calculation to the County of the County CDL Waste Diverted by a receiving Facility for which Contractor seeks payment of incentives under this section, along with any supporting documentation reasonably requested by the County. The County shall pay Contractor the incentives due under this Section 10.E.4 within 90 days following the end of the month to which they apply, and may opt to pay the incentives by issuing to the contractor a credit memo permitting Contractor to offset amounts subsequently payable by Contractor to County under this Contract.

- 5. Annual Recycling Incentives. To promote continuous efforts to recycle, for each full calendar year (and any partial calendar year in which this Contract begins or terminates other than as a consequence of a breach or default by Contractor) in which the tonnage of all CDL Waste that the Receiving Facility Diverts is at least fifty percent (50)% of the Inbound Tons Appropriate for Processing, by weight, of all CDL Waste received by the Receiving Facility, the Contractor will receive, subject to the limitations of paragraph 6 of this section, the following additional annual recycling incentives for each ton of CDL Waste generated within the County's Jurisdiction that was received at that Recycling Compliant Receiving Facility and Diverted during that year:

Incentive for tons of County CDL Waste Recycled: \$3.70 per ton

Incentive for County CDL tons put to other Beneficial Use: \$2.60 per ton

No more than 5% of the tons used to calculate a Facility's average annual Diversion rate under this Section may be attributable to the Diversion of concrete, rock and asphalt. All tons of concrete, rock and asphalt Diverted at a Facility are, however, eligible to receive the recycling incentives described below if the Facility meets the 50% average annual Diversion rate set forth in this Section.

With respect to any period to which the annual incentive is payable, the tonnage of CDL Waste generated within the County's Jurisdiction that is Diverted by the Receiving Facility shall be deemed to be (a) the tonnage of all CDL Waste Diverted by the Receiving Facility, multiplied by (b) the tonnage of CDL Waste generated within the County's Jurisdiction received at the Receiving Facility within that time period, divided by (c) the tonnage of all CDL Waste received at the Receiving Facility within that time period.

Within 45 days of the end of a given calendar year or at termination of this Contract, the Contractor will submit its calculation to County of the annual recycling incentives for which it claims to be entitled for that year along with any supporting documentation reasonably requested by the County. Subject to paragraph 6 of this section, the County shall pay Contractor the incentive within 90 days following the end of the calendar year or the termination of this Contract (as the case may be), and may opt to pay the incentive by offsetting amounts owed by Contractor to County under this Contract.

6. Limitation On Incentives Payable By County At Any Given Time. In no event shall the aggregate amount payable by the County at any given time as basic, monthly, and annual incentives to the Contractor and Second Contractor in under paragraphs 10.E.3, 10.E.4 and 10.E.5 exceed;

(a) the cumulative surcharge revenue received by the County from the Contractor and the Second Contractor pursuant to Section 10.C less any taxes paid or payable by the County thereon; plus

(b) the cumulative amount of any fines collected by the County in enforcing the provisions of KCC Chapter 10.30 against third parties; minus

(c) the cumulative amount of all payments and credits previously issued to Contractor and Second Contractor as monthly or annual incentives.

Any overpayment of incentives to the Contractor shall be refunded to the County within 30 days of Contractor's receipt of written notice of such overpayment. Alternatively, the County may offset any future incentive or other payments due the Contractor by the amount of such overpayment.

7. Allocation of Recycling Incentives. All allocation shall be in accordance with paragraph 10.E.6. All basic incentives and monthly incentives set forth in sections 10.E.4 and 5 will be paid from the total cumulative surcharge revenue received as of the previous month by the County. Should the amounts owing under Sections 10.E.4 and 5 exceed the cumulative surcharge revenue, as set forth in Section 10.E.6, the recycling incentive payments shall be allocated and paid on a pro rata basis. Annual incentives payable to Contractor and/or Second Contractor will have priority over any

other incentives that may be payable at the same time, and will be paid in full but will not be allocated until and unless sufficient revenue has been received.

8. Adjustment of Incentives. If in the exercise of the authority reserved under Section 10.C above the County increases the surcharge on Contractor's fee or services, then the recycling incentives provided for by Section 10.E.3, Section 10.E.4 and Section 10.E.5 shall be increased in proportion to and contemporaneously with the increase in the surcharge.
9. LEED Certification. For those construction contractors seeking LEED (Leadership in Energy and Environmental Design) certification on a particular project, the Contractor, if requested, agrees to document and provide certification that such construction contractor's CDL Waste materials were in fact processed for Diversion at the Contractor's Facility.
10. Final Payment. Except as provided for by Section 10.E.7, if following a termination of this Contract the amount of any unutilized credits for monthly and/or annual incentives to which Contractor is entitled under this Section 10.E exceeds all amounts payable by Contractor to County as surcharges under Section 10.C, then subject to the limitations of Section 10.E.6, the County promptly shall pay the difference to the Contractor.

Section 11. HOLD HARMLESS AND INDEMNIFICATION.

- A. In providing services under this Contract, the Contractor is an independent contractor, and neither the Contractor nor its officers, agents or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

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

- B. The Contractor further agrees that it is financially responsible for and will repay the

County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives.

This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

- C. The Contractor shall protect, defend, indemnify, and save harmless the County, [and the State of Washington (when any funds for this Contract are provided by the State of Washington)], their officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the acts or omissions of the Contractor, its officers, employees, sub contractors and/or agents in the performance of their obligations hereunder. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs attorney fees and/or costs in the defense of claims, for damages within the scope of this section, such fees and costs shall be recoverable from the Contractor. In addition King County shall be entitled to recover from the Contractor fees, and costs incurred to enforce the provisions of this section.
- 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) 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.
- E. 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.
- 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) 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.
- G. The Contractor shall 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 obtain from its subcontractors and prospective subcontractors the same indemnification of the County that the County requires of the Contractor.

- H. Notwithstanding any other provisions of this Contract, the Contractor shall not be liable and shall have no indemnification obligation for the gross negligence of the County, or the County's knowing violation of this Contract or knowing violation of law.

Section 12. INSURANCE.

Minimum Scope and Limits of Insurance.

The Contractor shall obtain and maintain and shall cause its subcontractors to procure and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Contract. The cost of any insurance shall be paid for by the Contractor or its subcontractors

Insurance coverage shall be at least as broad as stated below and with limits no less than:

- A. **General Liability.** Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering **COMMERCIAL GENERAL LIABILITY**. 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 Railroad Protective policy shall be provided to cover this exposure. Minimum coverage limits: \$10,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$10,000,000 aggregate limit.
- B. **Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 or CA 00 12 covering **BUSINESS AUTO COVERAGE** or **TRUCKERS LIABILITY** symbol 1 or 42 "any auto/truck" for a

minimum limit of \$10,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) or hazardous materials the auto/truckers policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90 (or its equivalent).

- C. **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
- D. **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy for a minimum limit Of \$ 10,000,000.
- E. **U.S. Longshoreman and Harbor Workers' coverage.** If this contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. This contract requires proof of insurance coverage in compliance with the statutory requirements of **Longshoreman and Harbor Workers' Compensation Act** (administered by the U.S. Department of Labor).
- F. **Builder's Risk/Installation Floater:** If the Contractor engages in the construction of any facilities in conjunction with this contract, the Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project, which ever is longer, "All Risk" Builders Risk Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of King County, Contractor and subcontractors of all tiers with King County listed as a Named Insured as its interests may appear.
- G.. **Professional Liability Errors and Omissions.** In the event that services delivered pursuant to this Contract either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions shall be provided for a minimum limit of \$ 1,000,000. per claim and in the aggregate
- H. **Pollution Liability To include Transfer Facilities/Transportation Modes/Disposal Facilities** Coverage shall include but not be limited to: 3rd Party Claims for On-site Bodily Injury and Property Damage; Third Party claims for Off-site Cleanup resulting from Pre-existing Conditions; Third Party Claims for Off-site Clean-up resulting from New Conditions; Third Party Claims for Off-site Bodily Injury and Property Damage; and Pollution conditions resulting from the transport of Cargo.

Minimum limits of liability shall be no less than \$ 12,000,000 Per Occurrence and \$ 50,000,000 in the Aggregate.

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 300% 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.

I. Marine Liabilities

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. Such coverage shall include Crew. \$10,000,000
- 3. Water Pollution Liability:
 - a. Pollution Liability covering claims Statutory under the Federal Water Pollution Control Act as amended for Vessels operated under this Contract. \$10,000,000
 - b. Liability to Third Parties for Pollution Damage resulting from sudden discharge upon waters for vessels operated under this Contract. \$10,000,000

Deductibles/Self-Insured Retentions.

Any deductibles or self-insured retention's must be declared to, and approved by, the County. Any deductible or self-insured retention in excess of \$500,000. shall be subject to County review and approval of the deductible/self-insured retention financing plan. The deductible and/or self-insured retention 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.

If the deductible or self-insured retention exceeds \$ 50,000. and there is a loss or claim that falls within or exceeds the deductible or self-insured retention and the claim or loss is tendered by the County to the Contractor, Contractor shall procure, subject to the approval of the County, an attorney to represent the County's interests in such loss or claim. Contractor shall be responsible for all attorney fees and costs associated with such representation.

Other Insurance Provisions.

A. The insurance policies required in this Contract are to contain and be endorse to contain the following provisions:

1. With respect to all Liability Policies except Professional Liability and Workers Compensation:
 - a. The County, its officers, officials, employees, agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. CG 2010 11/85 or its equivalent.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, agents and consultants shall not contribute with the Contractor's insurance or benefit the Contractor in any way.
 - c. All Marine Liability policies shall name King County, its offices, officials, agents and employees as additional insureds and shall waive the right of subrogation against King County.
 - d. Hull and Machinery policies shall waive the right of subrogation against the County
 - e. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - f. A Per Project Aggregate shall apply to the General Liability policy

Acceptability of Insurers.

- A. Unless otherwise approved by the County:
 - 1. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.
 - 2. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+; VII.
- B. If at any time the foregoing required policies shall fail to meet the above minimum requirements the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

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 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.

Cancellation:

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.

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.

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.

K. 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.

L. 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 or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 and 12.17 is incorporated herein by reference, and such requirements shall apply to this Contract.
- B. Nondiscrimination in Subcontracting Practices. During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
- C. Compliance with Laws and Regulations. The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI, and VII of the Civil Rights Act of 1964, the American with Disabilities Act and the Restoration Act of 1987. The Contractor shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

- D. Equal Employment Opportunity. The Contractor will implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.
- E. Fair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. 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. Contractor acknowledges that it is an unfair employment practice under King County Code Chapter 12.18 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 therefore, 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 that person has opposed any practice forbidden by KCC Chapter 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 provisions of KCC 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 KCC Chapter 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 workplace unless:
 - a. The employer can show that requiring employees speak only English at certain times is justified by business necessity, and

- b. The employer informs employees of the requirement and the consequences of violating the rule.
- F. Record-Keeping Requirements and Site Visits. The Contractor shall maintain, for at least 6 years after completion of all work under this Contract, the following:
1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
 2. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit, at any time, the site of the work and the Contractor's office to review the foregoing records. The Contractor shall provide every assistance requested by the County during such visits. In all other respects, the Contractor shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.

- G. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by contract and by applicable law.

Section 14. Minority and Women Owned Business Participation

Small Business and Minority and Women Business Enterprises Opportunities - King County encourages the Contractor to utilize small businesses, including Minority-owned and Women-owned Businesses Enterprises ("M/WBEs") in County contracts. The County encourages the Contractor to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs:

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform small businesses and other firms of contracting and subcontracting opportunities.
2. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to these firms capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.

3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
4. Establishing delivery schedules, where the requirements of this contract permit, that encourage participation by small businesses, including M/WBEs.
5. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, specifications, and requirements of the contract.
6. Using the services of available community organizations, Contractor groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.
7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can provide a list of certified M/WBEs. OMWBE may be reached at (360) 753-9693.

Further, the County encourages small businesses, including M/WBEs, to participate in the following practices to promote open competitive opportunities:

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to receive project information and to inform prime bidders/proposers of contracting and subcontracting capabilities.
2. Requesting placement on solicitation lists, and receipt of written notice of subcontracting opportunities.
3. Utilizing the services of available community organizations, Contractor groups, local assistance offices, local publications including newspapers which advertise contracting opportunities, the County, and other organizations that provide assistance in the recruitment and placement of small businesses, including M/WBEs.

Section 15. Accessibility to People With Disabilities

The Contractor shall complete and submit to OCRC an Affidavit of Assurance stating that it intends to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990. The Contractor also shall complete and keep on file a self-evaluation and corrective action plan, if appropriate, to be reviewed periodically by the OCRC Disability Compliance 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 15.A 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. 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 Performance and Payment Bond, or other functionally equivalent security reasonably acceptable to and approved by the County (hereafter "Bond") in an amount equal to One Million Dollars (\$1,000,000).

The Bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond in like amount, 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 otherwise reasonably 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 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 after the Service Commencement Date in accordance with terms and conditions of the Contract, or
- (b) Contractor uses Back-up Facilities or Back-up Transportation Modes beyond the date authorized by the County for such use, except as otherwise expressly permitted by this Contract, 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, if the Contractor's Response Notice indicates an intent to cure, then 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"), and if the Contractor or its surety fails to cure or commence cure actions within said Cure Period to the reasonable 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 18.D, and shall specify whether the County seeks to terminate the Contract for such default.

If the Contractor or the Contractor's surety contests a Default Notice or a 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 meeting with the Manager of the Solid Waste Division for the purpose of attempting to resolve the matter. 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 18.B(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. M.

- (2) **Interruption of Services:** 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 18.D, 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 18.D.

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

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 with respect to all or any material portion of the Contractor's assets, 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 18.B.

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 served upon Contractor, 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 18.D(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 18.B, 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 18.B.

Subject to the provisions of Section 2.A and Section 5.C 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 minimum monthly capacity specified in Section 5.B, 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 comply with the County's obligations under Section 19; or (b) for any force majeure event as provided in Section 5.M 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 5.M of this Contract, unless otherwise expressly permitted by the Agreement.

(For example, if the County's basic fee were \$84/ton at the time of the breach, the computation each day the breach continued would be as follows: $.10 \times \$84 \times (25,000 \text{ divided by } 22) = \9545 .) 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 18.D(1) and (2), including performance failures that are components of, result in or result from the events described in subsections 18.D(1) and 18.D(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, and in the case where 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 5.I.

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.

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

Section 19. Enforcement

- A. To the extent permitted by law, the County shall maintain an ordinance (“CDL Provisions”) that directs all Non-Recyclable CDL Waste and all Mixed CDL Waste (or the Residual CDL Waste therefrom if the load is first taken to a non-Contractor Recycling Facility) be taken only to the Contractor's Facilities or to the facilities of the Second Contractor. The ordinance shall include penalties for violations of CDL Waste stream rules and shall empower the County to bring enforcement actions against waste generators or haulers who violate those rules. The County will keep in force and implement throughout the term of this Agreement reasonable internal procedures for enforcement of Solid Waste regulations, including the CDL Provisions, which the County may amend from time to time in its sole discretion. The Contractor may bring known violations of the CDL Provisions to the County’s attention. The County shall provide written notice to the Contractor as to whether or not it will take enforcement action in response to such notice. In the event Contractor attempts to enforce the provisions of this Agreement against third-party violators, the County shall render its reasonable cooperation.

In consideration for the rights and privileges set forth in this Contract and except as otherwise allowed herein, the County agrees to refrain from accepting CDL Waste at its Receiving Facilities, except as set forth in this Contract.

- B. If the City of Seattle prohibits the Handling of the County's CDL Waste in Contractor Facilities located in Seattle's Jurisdiction, the County may amend its CDL Provisions to prohibit the Handling of Seattle's CDL Waste in Contractor Facilities located in the County's Jurisdiction.
- C. Under the CDL Provisions, Pure Loads of Recyclable CDL Waste may be transported to any Recycling Facility, Transfer Facility, Recycling Compliant Facility, or to a recycling market within or outside of King County. Under the CDL Provisions, the County will reserve the right to prohibit, by ordinance, the disposal of certain materials and require that they be recycled.
- D. Under the CDL Provisions, the County may continue to accept CDL Waste at its Solid Waste Handling facilities, as permitted by County ordinance or public rule, limited to materials transported by vehicles that do not have hydraulic or otherwise mechanized dump beds or to incidental amounts of CDL Waste contained in loads of Mixed Municipal Solid Waste, where the CDL Waste does not exceed 10% of the load by weight. In addition, the County may accept CDL Waste in excess of the limitations of this section in particular cases in its sole discretion and then take formal or informal enforcement action against the individual or entity transporting such waste to a County facility.

- E. To the extent allowed by law, under the CDL Provisions or public rule, and subject to the provisions of Section 5.E, Mixed CDL Waste may be taken only to: (1) the Contractor's Facilities in King County; (2) to the facilities of the Second Contractor in King County; (3) to Contractor Facilities or Second Contractor facilities in Snohomish County, subject to execution of an interlocal agreement between King and Snohomish Counties; or (4) to any Recycling Facility within King County, provided that: (i) Contractor's Facilities or Second Contractor's Facilities cannot Recycle the specific type(s) of materials and the Recycling Facility is able to Recycle such materials (e.g., gypsum); (ii) the specific types of materials at issue comprise greater than 50% of the load being delivered; and (iii) any Residual CDL Waste from the original load is sent to Contractor or Second Contractor's Facility.
- F. Under the CDL Provisions, the County will not guarantee any minimum volume of Recyclable or 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 parties agree to cooperate as necessary to facilitate any interlocal agreements or other measures needed to make the CDL Provisions effective.
- H. The Solid Waste Division agrees that it shall consider regulatory provisions that require building contractors and developers comply with the terms of the County's CDL Provisions, for example, by requiring that prior to issuance of a certificate of occupancy in connection with a building permit, the permittee demonstrate and/or certify that he has complied with the terms of the County's CDL Provisions in connection with the project at issue.
- I. The Solid Waste Division agrees that it shall discuss with Contractor and Second Contractor the prospect of the County Hiring a person specifically tasked with monitoring enforcement of the County's CDL Provisions, and the prospect of Contractor and Second Contractor helping to fund this position.

Section 20. Relationship to Second Contractor

A. Second Contractor

The parties understand and agree that the County may also extend and amend the Second Contract for CDL Waste Handling services with the Second Contractor. In the event the Second Contract is so extended and during the period in which the Second Contract remains in force, Contractor agrees not to unlawfully interfere with the performance of the Second Contractor under the Second Contract. In any instance in which the County and the Second Contractor agree to any extension, renewal or modification of the Second Contract, the County will provide Contractor with the opportunity, at Contractor's option, to enter contemporaneous extension,

renewal or modification so as to cause this Contract to become identical in all material respects to the Second Contract as so extended, renewed or modified. The County's obligations under this section shall not continue after a termination of this Contract.

B. Failure of Execution, or Termination of Second Contract

- (1) 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 amend the CDL Provisions, as necessary, and be required to continue to comply with Section 19, for the term of the Contract. In such event, the Contractor's Bond shall be increased to \$2,000,000, and liquidated damages obligations shall be increased based on a minimum monthly handling capacity of 50,000 tons. In addition, all references in this Contract to the Second Contract and the Second Contractor shall be stricken and deemed null and void.
- (2) 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 of the County, not unreasonably to be withheld, 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.

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 (including, but not limited to, any responsibilities of the Contractor arising under RCW 36.58 and/or RCW 39.12).

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 21.C 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, or to another corporate affiliate that hold assets equal to or greater than Contractor.

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 18.A; 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 18.A. This security shall be in addition to the Bond required in Section 18.A.

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.

F. Contract Amendment

This document contains all terms, conditions, and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment. This Agreement may be amended in writing by the King County Executive or his designee and a duly authorized representative of the Contractor.

G. Severability Clause

Except as set forth in Section 3, if any portion of this Agreement is ruled by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect.

Section 22. Contract Representatives, Administration, Informal Dispute Resolution, Mediation and Arbitration

A. Contract Representatives/Notices/Registered Agent

1. Representatives/Notices

The County hereby designates the Solid Waste Division's Engineering Services Manager 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:

Kevin E. Kiernan, P.E.
Engineering Service Manager
Solid Waste Division
King County Department of Natural Resources & Parks
201 So. Jackson Street, Suite 701
Seattle, WA 98104-3855

The Contractor hereby designates Jerry Hardebeck 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:

Jerry Hardebeck
Waste Management

801 Second Avenue, Suite 614
Seattle, WA 98038

14987

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.

14987

KING COUNTY

CONTRACTOR:
WASTE MANAGEMENT, INC.

Acting through Waste Management of Washington

Printed Name

Printed Name

Signature

(Signature of Authorized Representative)

King County Executive

Title

ATTEST:

Approved as to Form:
For Norm Maleng
King County Prosecuting Attorney

Director – Department of Natural Resources
and Parks

Senior Deputy Prosecuting Attorney